STATE OF TENNESSEE
DEPERTMENT OF FINANCE AND ADMINISTRATION
DIVISION OF TENNCARE

REQUEST FOR PROPOSALS
FOR
ASSET VERIFICATION SYSTEM (AVS)

RFP # 31865-00645

RFP Release #2

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1. INTRODUCTION

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

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

1.1. Statement of Procurement Purpose

TennCare seeks to select a contractor to provide electronic verification of resources to be used in the TennCare application and renewal processes. Contractor will be required to maintain a national link to Financial Institutions to provide near real time verification and identification of assets.

Pursuant to Section 1940 of the Social Security Act (42 U.S.C.A. § 1396w), TennCare is required to implement a system for verifying the assets of aged, blind or disabled Applicants and Recipients of Medicaid, and any other person whose resources are required by law to be disclosed to determine the eligibility of the Applicant or Recipient for such assistance. Therefore, the State is seeking an Asset Verification System (AVS) to meet the requirements of 42 U.S.C.A. § 1396w, all applicable state and federal laws, and RFP Attachment 6.6, pro forma contract. The State must have the ability to electronically forward a request for asset information for individuals applying and/or receiving TennCare Medicaid and any other person whose resources are required by law to be disclosed. Each Financial Institution shall respond electronically, providing any information it has about the assets of the Applicant, Recipient and any other person whose resources are required by law to be disclosed. This information must be brought into the Tennessee Eligibility Determination System (TEDS), where the information is used to determine whether Applicant and/or Recipients meet certain financial eligibility requirements.

The maximum liability in RFP Attachment 6.6, Section C.1, will be populated based on the Cost Proposal rates and associated volumes as projected to complete the scope of work in the pro forma contract. There is no way to accurately project the amount of this project until the cost proposals are received.

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

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

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

The *pro forma* contract substantially represents the contract document that the successful Respondent <u>must</u> sign.

1.3. Nondiscrimination

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

1.4. RFP Communications

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

RFP # 31865-00645

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

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

Mitchell Plumer
Department of Finance and Administration
Division of TennCare
310 Great Circle Road
Nashville, TN 37243
629-237-0722
Mitchell.D.Plumer@tn.gov

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

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

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

Talley A. Olson
Director, Office of Civil Right Compliance
Department of Finance and Administration
Division of TennCare
310 Great Circle Road
Nashville TN 37243
Phone: 615-507-6841
Email: Talley.A.Olson@tn.gov

1.4.2.3. Respondents must complete the TennCare Blackout Period Attestation associated with this RFP, which can be submitted online at: Upcoming Procurements (tn.gov) and is included at an attachment in the Procurement Library. The Attestation must be returned to the Solicitation Coordinator as soon as possible but no later than the Response Deadline listed in RFP Section 2.1, Schedule of Events. If a Respondent fails to provide the Attestation by the deadline, the State, at its sole discretion, may determine that the Respondent is non-responsive to this RFP and reject the response.

1.4.3. Only the State's official, written responses and communications with Respondents are binding with regard to this RFP. Oral communications between a State official and one or more Respondents are unofficial and non-binding.

1.4.4. Potential Respondents must ensure that the State receives all written questions and comments, including questions and requests for clarification, no later than the Written Questions & Comments Deadline detailed in the RFP Section 2, Schedule of Events.

1.4.4.1 Tennessee's Central Procurement Office (CPO) requires, per *CPO Policy #2013-009 Business Conduct and Ethics*, that all Organizational Conflict of Interest (OCI) pertaining to this procurement be disclosed to CPO. An OCI is defined as: "Organizational Conflict of Interest" means, as to Procurements, contracts or proposed contracts with the State, a circumstance arising out of a Contracting Party's existing or past activities, business or financial interests, Immediate Familial relationships, contractual relationships, or organizational structure (e.g., parent entities, subsidiaries, Affiliates, etc.) that results in: (i) Impaired Objectivity of a Contracting Party; (ii) An Unfair Competitive Advantage for any Respondent with respect to a Procurement; (iii) Biased Ground Rules; or (iv) Impropriety, as determined by the Chief Procurement Officer, with respect to any of the State's Procurements or contracts.

Examples of an Organizational Conflict of Interest include:

(1) When a Respondent would be evaluating the contract performance of its own services.
(2) A Respondent or proposed subcontractor is an existing TennCare contractor and has access to nonpublic, competitively useful information.
(3) If a Respondent employs a former TennCare employee.
(4) A Respondent participates in drafting a portion of the solicitation being procured.

1.4.4.2 CPO Policy #2013-009 requires OCIs be disclosed along with an OCI mitigation plan to avoid or mitigate the conflict. Potential Respondents must ensure that the State receives OCI disclosures no later than the Written Questions & Comments Deadline detailed in RFP Section 2, Schedule of Events.

The OCI mitigation plan must contain, at a minimum, the following requirements:

(1) A description of the OCI and how it is currently being handled by your organization;
(2) The proposed steps your organization will take to avoid or mitigate the conflict during this procurement;
(3) The person(s) responsible for reporting OCIs; and
(4) How the proposed plan will be communicated to employees and subcontractors.

1.4.4.3. Respondents are required to disclose the existence of OCIs that are known or discovered at any time during the procurement process. The disclosure requirement continues through the term of any contract awarded pursuant to the procurement. Upon request, any Respondents and the awardee must disclose all facts bearing on an OCI.

1.4.5. Respondents must assume the risk of the method of dispatching any communication or response to the State. The State assumes no responsibility for delays or delivery failures resulting from the Respondent's method of dispatch. Actual or digital "postmarking" of a communication or response to the State by a specified deadline is not a substitute for the State's actual receipt of a communication or response. It is encouraged for Respondents to submit bids digitally.

1.4.6. The State will convey all official responses and communications related to this RFP to the prospective Respondents from whom the State has received a Notice of Intent to Respond (refer to RFP Section 1.4.2.1.).

1.4.7. The State reserves the right to determine, at its sole discretion, the method of conveying official, written responses and communications related to this RFP. Such written communications may be transmitted by mail, hand-delivery, facsimile, electronic mail, Internet posting, or any other means deemed reasonable by the State. For internet posting, please refer to the following website: https://www.tn.gov/generalservices/procurement/central-procurement-office--cpo-/supplier-information/request-for-proposals--rfp--opportunities1.html.

1.4.8. The State reserves the right to determine, at its sole discretion, the appropriateness and adequacy of responses to written comments, questions, and requests related to this RFP. The State's official, written responses will constitute an amendment of this RFP.

1.4.9. Any data or factual information provided by the State (in this RFP, an RFP amendment or any other communication relating to this RFP) is for informational purposes only. The State will make reasonable efforts to ensure the accuracy of such data or information, however it is the Respondent's obligation to independently verify any data or information provided by the State. The State expressly disclaims the accuracy or adequacy of any information or data that it provides to prospective Respondents.

1.5. Assistance to Respondents With a Handicap or Disability

Prospective Respondents with a handicap or disability may receive accommodation relating to the communication of this RFP and participating in the RFP process. Prospective Respondents may contact the Solicitation Coordinator to request such reasonable accommodation no later than the Disability Accommodation Request Deadline detailed in the RFP Section 2, Schedule of Events.

1.6. Respondent Required Review & Waiver of Objections

1.6.1. Each prospective Respondent must carefully review this RFP, including but not limited to, attachments, the RFP Attachment 6.6., *Pro Forma* Contract, and any amendments, for questions, comments, defects, objections, or any other matter requiring clarification or correction (collectively called "questions and comments").

1.6.2. Any prospective Respondent having questions and comments concerning this RFP must provide them in writing to the State no later than the Written Questions & Comments Deadline detailed in the RFP Section 2, Schedule of Events.

1.6.3. Protests based on any objection to the RFP shall be considered waived and invalid if the objection has not been brought to the attention of the State, in writing, by the Written Questions & Comments Deadline.

1.7. Pre-Response Conference

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

The conference will be held at:

https://teams.microsoft.com/l/meetup-join/19%3ameeting_YzEzMjk5MWQtYzliOS00YzQ3LWI4ODUtNzdiMGJlZWY2ZmRm%40thread.v

2/0?context=%7b%22Tid%22%3a%22f345bebf-0d71-4337-9281-24b941616c36%22%2c%22Oid%22%3a%22ba7a6686-b54c-4eee-969f-a8c6f88e5134%22%7d

Dial in by phone:
+1 629-209-4396,,948276855#
Phone conference ID: 948 276 855#

The purpose of the conference is to discuss the RFP scope of goods or services. The State will entertain questions, however prospective Respondents must understand that the State's oral response to any question at the Pre-response Conference shall be unofficial and non-binding. Prospective Respondents must submit all questions, comments, or other concerns regarding the RFP in writing prior to the Written Questions & Comments Deadline date detailed in the RFP Section 2, Schedule of Events. The State will send the official response to these questions and comments to prospective Respondents from whom the State has received a Notice of Intent to respond as indicated in RFP Section 1.4.2.1. and on the date detailed in the RFP Section 2, Schedule of Events.

1.8. **Notice of Intent to Respond**

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

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

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

1.9. **Response Deadline**

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

2. RFP SCHEDULE OF EVENTS

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

EVENT	TIME (central time zone)	DATE
1. RFP Issued		August 13, 2024
2. Disability Accommodation Request Deadline	2:00 p.m.	August 16, 2024
3. Pre-response Conference	2:00 p.m.	August 22, 2024
4. Notice of Intent to Respond Deadline	2:00 p.m.	August 26, 2024
5. Written "Questions & Comments" Deadline	2:00 p.m.	September 10, 2024
6. State Response to Written "Questions & Comments" and Organizational Conflict of Interest Disclosure Deadline		October 15, 2024
7. Response Deadline	2:00 p.m.	October 29, 2024
8. State Completion of Technical Response Evaluations		November 27, 2024
9. State Opening & Scoring of Cost Proposals	2:00 p.m.	December 3, 2024
10. State Notice of Intent to Award Released and RFP Files Opened for Public Inspection	2:00 p.m.	December 23, 2024
11. End of Open File Period		December 30, 2024
12. State sends contract to Contractor for signature		January 8, 2025
13. Contractor Signature Deadline	2:00 p.m.	January 23, 2025

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

3. RESPONSE REQUIREMENTS

3.1. Response Form

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

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

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

3.1.1.1. A Respondent should duplicate and use the RFP Attachment 6.2., Technical Response & Evaluation Guide to organize, reference, and draft the Technical Response by duplicating the attachment, adding appropriate page numbers as required, and using the guide as a table of contents covering the Technical Response.

3.1.1.2. A response should be economically prepared, with emphasis on completeness and clarity. A response, as well as any reference material presented, must be written in English and must be written on standard 8 ½" x 11" pages (although oversize exhibits are permissible) and use a 12 point font for text. All response pages must be numbered.

3.1.1.3. All information and documentation included in a Technical Response should correspond to or address a specific requirement detailed in the RFP Attachment 6.2., Technical Response & Evaluation Guide. All information must be incorporated into a response to a specific requirement and clearly referenced. Any information not meeting these criteria will be deemed extraneous and will not contribute to evaluations.

3.1.1.4. The State may determine a response to be non-responsive and reject it if:

a. the Respondent fails to organize and properly reference the Technical Response as required by this RFP and the RFP Attachment 6.2., Technical Response & Evaluation Guide; or

b. the Technical Response document does not appropriately respond to, address, or meet all of the requirements and response items detailed in the RFP Attachment 6.2., Technical Response & Evaluation Guide.

3.1.2. **Cost Proposal**. A Cost Proposal must be recorded on an exact duplicate of the RFP Attachment 6.3., Cost Proposal & Scoring Guide.

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

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

3.1.2.2. The proposed cost shall incorporate ALL costs for services under the contract for the total contract period, including any renewals or extensions.

3.1.2.3. A Respondent must sign and date the Cost Proposal.

3.1.2.4. A Respondent must submit the Cost Proposal to the State in a sealed package separate from the Technical Response (as detailed in RFP Sections 3.2.3., *et seq.*).

3.2. **Response Delivery**

3.2.1. A Respondent must ensure that both the Technical Response and Cost Proposal files meet all form and content requirements, including all required signatures, as detailed within this RFP.

3.2.2. A Respondent must submit their response as specified in one of the two formats below.

3.2.2.1. Digital Media Submission

3.2.2.1.1. Technical Response

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

"RFP # 31865-00645 TECHNICAL RESPONSE ORIGINAL"

and three (3) digital copies of the Technical Response each in the form of one (1) digital document in "PDF" format properly recorded on its own otherwise blank, standard CD-R recordable disc or USB flash drive clearly labeled:

"RFP # 31865-00645 TECHNICAL RESPONSE COPY"

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

3.2.2.1.2. Cost Proposal:

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

"RFP # 31865-00645 COST PROPOSAL"

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

3.2.2.2. E-mail Submission

3.2.2.2.1. Technical Response

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

"RFP # 31865-00645 TECHNICAL RESPONSE"

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

3.2.2.2.2. Cost Proposal:

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

"RFP # 31865-00645 COST PROPOSAL"

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

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

3.2.3.1. The Technical Response and copies must be placed in a sealed package that is clearly labeled:

"DO NOT OPEN… RFP # 31865-00645 TECHNICAL RESPONSE FROM [RESPONDENT LEGAL ENTITY NAME]"

3.2.3.2. The Cost Proposal must be placed in a separate, sealed package that is clearly labeled:

"DO NOT OPEN… RFP # 31865-00645 COST PROPOSAL FROM [RESPONDENT LEGAL ENTITY NAME]"

3.2.3.3. The separately, sealed Technical Response and Cost Proposal components may be enclosed in a larger package for mailing or delivery, provided that the outermost package is clearly labeled:

"RFP # 31865-00645 SEALED TECHNICAL RESPONSE & SEALED COST PROPOSAL FROM [RESPONDENT LEGAL ENTITY NAME]"

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

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

Mitchell Plumer
Division of TennCare
310 Great Circle Road
Nashville, TN 37243
RFP 31865-00645

3.3. **Response & Respondent Prohibitions**

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

3.3.2. A response must not restrict the rights of the State or otherwise qualify either the offer to deliver goods or provide services as required by this RFP or the Cost Proposal. If a response restricts the rights of the State or otherwise qualifies either the offer to deliver goods or provide services as required by this RFP or the Cost Proposal, the State, at its sole discretion, may determine the response to be a non-responsive counteroffer and reject it.

3.3.3. A response must not propose alternative goods or services (*i.e*., offer services different from those requested and required by this RFP) unless expressly requested in this RFP. The State may consider a response of alternative goods or services to be non-responsive and reject it.

3.3.4. A Cost Proposal must be prepared and arrived at independently and must not involve any collusion between Respondents. The State will reject any Cost Proposal that involves collusion, consultation, communication, or agreement between Respondents. Regardless of the time of detection, the State will consider any such actions to be grounds for response rejection or contract termination.

3.3.5. A Respondent must not provide, for consideration in this RFP process or subsequent contract negotiations, any information that the Respondent knew or should have known was materially incorrect. If the State determines that a Respondent has provided such incorrect information, the State will deem the Response non-responsive and reject it.

3.3.6. A Respondent must not submit more than one Technical Response and one Cost Proposal in response to this RFP, except as expressly requested by the State in this RFP. If a Respondent submits more than one Technical Response or more than one Cost Proposal, the State will deem all of the responses non-responsive and reject them.

3.3.7. A Respondent must not submit a response as a prime contractor while also permitting one or more other Respondents to offer the Respondent as a subcontractor in their own responses. Such may result in the disqualification of all Respondents knowingly involved. This restriction does not, however, prohibit different Respondents from offering the same subcontractor as a part of their responses (provided that the subcontractor does not also submit a response as a prime contractor).

3.3.8. The State shall not consider a response from an individual who is, or within the past six (6) months has been, a State employee. For purposes of this RFP:

3.3.8.1. An individual shall be deemed a State employee until such time as all compensation for salary, termination pay, and annual leave has been paid;

3.3.8.2. A contract with or a response from a company, corporation, or any other contracting entity in which a controlling interest is held by any State employee shall be considered to be a contract with or proposal from the employee; and

3.3.8.3. A contract with or a response from a company, corporation, or any other contracting entity that employs an individual who is, or within the past six (6) months has been, a State employee shall not be considered a contract with or a proposal from the employee and shall not constitute a prohibited conflict of interest.

3.3.9. This RFP is also subject to Tenn. Code Ann. § 12-4-101—105.

3.4. Response Errors & Revisions

A Respondent is responsible for any and all response errors or omissions. A Respondent will not be

allowed to alter or revise response documents after the Response Deadline time and date detailed in the RFP Section 2, Schedule of Events unless such is formally requested, in writing, by the State.

3.5. Response Withdrawal

A Respondent may withdraw a submitted response at any time before the Response Deadline time and date detailed in the RFP Section 2, Schedule of Events by submitting a written request signed by an authorized Respondent representative. After withdrawing a response, a Respondent may submit another response at any time before the Response Deadline. After the Response Deadline, a Respondent may only withdraw all or a portion of a response where the enforcement of the response would impose an unconscionable hardship on the Respondent.

3.6. Additional Services

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

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

3.7. Response Preparation Costs

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

4. GENERAL CONTRACTING INFORMATION & REQUIREMENTS

4.1. RFP Amendment

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

4.2. RFP Cancellation

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

4.3. State Right of Rejection

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

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

4.4. Assignment & Subcontracting

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

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

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

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

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

4.5. Right to Refuse Personnel or Subcontractors

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

4.6. **Insurance**

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

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

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

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

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

4.8. **Disclosure of Response Contents**

4.8.1. All materials submitted to the State in response to this RFP shall become the property of the State of Tennessee. Respondents are cautioned not to provide any materials in response to this RFP that are trade secrets, as defined under Tenn. Code Ann. § 47-25-1702 and any other applicable law. By submitting a response to this RFP, the respondent acknowledges and agrees that the State shall have no liability whatsoever for disclosure of a trade secret under the Uniform Trade Secrets Act, as provided at Tenn. Code Ann. § 47-25-1701-1709, or under any other applicable law. Selection or rejection of a response does not affect this right. By submitting a response, a Respondent acknowledges and accepts that the full response contents and associated documents will become open to public inspection in accordance with the laws of the State of Tennessee.

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

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

4.9. **Contract Approval and Contract Payments**

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

4.9.2. This RFP and its contractor selection processes do not obligate the State and do not create rights, interests, or claims of entitlement in either the Respondent with the apparent best-evaluated response or any other Respondent. State obligations pursuant to a contract award

shall commence only after the Contract is signed by the State agency head and the Contractor and after the Contract is approved by all other state officials as required by applicable laws and regulations.

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

4.9.3.1. The State shall not be liable for payment of any type associated with the Contract resulting from this RFP (or any amendment thereof) or responsible for any goods delivered or services rendered by the Contractor, even goods delivered or services rendered in good faith and even if the Contractor is orally directed to proceed with the delivery of goods or the rendering of services, if it occurs before the Contract Effective Date or after the Contract Term.

4.9.3.2. All payments relating to this procurement will be made in accordance with the Payment Terms and Conditions of the Contract resulting from this RFP (refer to RFP Attachment 6.6., *Pro Forma* Contract, Section C).

4.9.3.3. If any provision of the Contract provides direct funding or reimbursement for the competitive purchase of goods or services as a component of contract performance or otherwise provides for the reimbursement of specified, actual costs, the State will employ all reasonable means and will require all such documentation that it deems necessary to ensure that such purchases were competitive and costs were reasonable, necessary, and actual. The Contractor shall provide reasonable assistance and access related to such review. Further, the State shall not remit, as funding or reimbursement pursuant to such provisions, any amounts that it determines do not represent reasonable, necessary, and actual costs.

4.10. **Contractor Performance**

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

4.11. **Contract Amendment**

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

4.12. **Severability**

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

4.13. **Next Ranked Respondent**

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

5. EVALUATION & CONTRACT AWARD

5.1. Evaluation Categories & Maximum Points

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

EVALUATION CATEGORY	MAXIMUM POINTS POSSIBLE
General Qualifications & Experience (refer to RFP Attachment 6.2., Section B)	**10**
Technical Qualifications, Experience & Approach (refer to RFP Attachment 6.2., Section C)	**70**
Cost Proposal (refer to RFP Attachment 6.3.)	**20**

5.2. Evaluation Process

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

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

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

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

a. the response adequately meets RFP requirements for further evaluation;

b. the State will request clarifications or corrections for consideration prior to further evaluation; or,

c. the State will determine the response to be non-responsive to the RFP and reject it.

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

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

5.2.1.4. For each response evaluated, the Solicitation Coordinator will calculate the average of the Proposal Evaluation Team member scores for RFP Attachment 6.2., Technical Response & Evaluation Guide, and record each average as the response score for the respective Technical Response section.

5.2.1.5. Before Cost Proposals are opened, the Proposal Evaluation Team will review the Technical Response Evaluation record and any other available information pertinent to whether or not each Respondent is responsive and responsible. If the Proposal Evaluation Team identifies any Respondent that does not meet the responsive and responsible thresholds such that the team would not recommend the Respondent for Cost Proposal Evaluation and potential contract award, the team members will fully document the determination.

5.2.2. **Cost Proposal Evaluation.** The Solicitation Coordinator will open for evaluation the Cost Proposal of each Respondent deemed by the State to be responsive and responsible and calculate and record each Cost Proposal score in accordance with the RFP Attachment 6.3., Cost Proposal & Scoring Guide.

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

5.3. **Contract Award Process**

5.3.1 The Solicitation Coordinator will submit the Proposal Evaluation Team determinations and scores to the head of the procuring agency for consideration along with any other relevant information that might be available and pertinent to contract award.

5.3.2. The Solicitation Coordinator will determine the apparent best-evaluated Response using the scoring provided by the Proposal Evaluation Team. To effect a contract award to a Respondent other than the one receiving the highest evaluation process score, the Solicitation Coordinator must provide written justification and obtain the written approval of the Chief Procurement Officer and the Comptroller of the Treasury.

5.3.3. The State will issue a Notice of Intent to Award identifying the apparent best-evaluated response and make the RFP files available for public inspection at the time and date specified in the RFP Section 2, Schedule of Events.

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

5.3.4. The Respondent identified as offering the apparent best-evaluated response must sign a contract drawn by the State pursuant to this RFP. The Contract shall be substantially the same as the RFP Attachment 6.6., *Pro Forma* Contract. The Respondent must sign the contract by the Contractor Signature Deadline detailed in the RFP Section 2, Schedule of Events. If the Respondent fails to provide the signed Contract by this deadline, the State may determine that the Respondent is non-responsive to this RFP and reject the response.

5.3.5. Notwithstanding the foregoing, the State may, at its sole discretion, entertain limited terms and conditions or pricing negotiations prior to Contract signing and, as a result, revise the *pro forma* contract terms and conditions or performance requirements in the State's best interests,

PROVIDED THAT such revision of terms and conditions or performance requirements shall NOT materially affect the basis of response evaluations or negatively impact the competitive nature of the RFP and contractor selection process.

5.3.6. If the State determines that a response is non-responsive and rejects it after opening Cost Proposals, the Solicitation Coordinator will re-calculate scores for each remaining responsive Cost Proposal to determine (or re-determine) the apparent best-evaluated response.

RFP ATTACHMENT 6.1.

RFP # 31865-00645 STATEMENT OF CERTIFICATIONS AND ASSURANCES

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

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

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

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

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

SIGNATURE: _____

PRINTED NAME & TITLE: _____

DATE: _____

RESPONDENT LEGAL ENTITY NAME: _____

TECHNICAL RESPONSE & EVALUATION GUIDE

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

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

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

RESPONDENT LEGAL ENTITY NAME:			
Response Page # (Respondent completes)	**Item Ref.**	**Section A— Mandatory Requirement Items**	**Pass/Fail**
		2. Provide documentation disclosing the amount of cash flows from operating activities for the Respondent's most current operating period. Said documentation must indicate whether the cash flows are positive or negative, and, if the cash flows are negative for the most recent operating period, the documentation must include a detailed explanation of the factors contributing to the negative cash flows. 3. Provide a consolidated current financial statement for the parent company of Respondent, if applicable. 4. Provide a financial guaranty from the parent company, if applicable.	
	A.4.	Provide a current bank reference indicating that the Respondent maintains a satisfactory business relationship with the financial institution. Such reference must be written in the form of a standard business letter, signed, and dated within the past three (3) months.	
State Use – Solicitation Coordinator Signature, Printed Name & Date:			

TECHNICAL RESPONSE & EVALUATION GUIDE

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

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

RESPONDENT LEGAL ENTITY NAME:		
Response Page # (Respondent completes)	**Item Ref.**	**Section B— General Qualifications & Experience Items**
		NOTE: All persons, agencies, firms, or other entities that provide legal opinions regarding the Respondent must be properly licensed to render such opinions. The State may require the Respondent to submit proof of license for each person or entity that renders such opinions.
	B.11.	Provide a brief, descriptive statement detailing evidence of the Respondent's ability to deliver the goods or services sought under this RFP (*e.g.*, prior experience, training, certifications, resources, program and quality management systems, *etc.*).
	B.12.	Provide a narrative description of the proposed project team, its members, and organizational structure along with an organizational chart identifying the key people who will be assigned to deliver the goods or services required by this RFP.
	B.13.	Provide a personnel roster listing the names of key people who the Respondent will assign to meet the Respondent's requirements under this RFP along with the estimated number of hours that each individual will devote to that performance. Follow the personnel roster with a resume for each of the people listed. The resumes must detail the individual's title, education, current position with the Respondent, and employment history.
	B.14.	Provide a statement of whether the Respondent intends to use subcontractors to meet the Respondent's requirements of any contract awarded pursuant to this RFP, and if so, detail: (a) the names of the subcontractors along with the contact person, mailing address, telephone number, and e-mail address for each; (b) a description of the scope and portions of the goods each subcontractor involved in the delivery of goods or performance of the services each subcontractor will perform; (c) an explanation of each subcontractor's experience in providing services that the subcontractor will perform; (d) a statement of whether or not each subcontractor has any current contracts with TennCare or provides goods or services to TennCare as a subcontractor on a current contract. If a subcontractor does have a current contract with TennCare or provides goods or services to TennCare as a subcontractor on a current contract, provide the following information: 1. the name, title, telephone number and email address of the TennCare contact knowledgeable about the contract; 2. a brief description of the contract's scope of services or the goods or services it provides as a subcontractor on a current contract; 3. the contract period; and 4. the contract number. (e) a statement specifying that each proposed subcontractor has expressly assented to being proposed as a subcontractor in the Respondent's response to this RFP.
	B.15.	Provide documentation of the Respondent's commitment to diversity as represented by the following: (a) <u>Business Strategy</u>. Provide a description of the Respondent's existing programs and procedures designed to encourage and foster commerce with business enterprises owned by minorities, women, service-disabled veterans, persons with disabilities, and small business enterprises. Please also include a list of the Respondent's certifications as a diversity business, if applicable. (b) <u>Business Relationships</u>. Provide a listing of the Respondent's current contracts with business enterprises owned by minorities, women, service-disabled veterans, persons with disabilities, and small business enterprises. Please include the following information: (i) contract description;

RESPONDENT LEGAL ENTITY NAME:		
Response Page # (Respondent completes)	**Item Ref.**	**Section B— General Qualifications & Experience Items**
		(ii) contractor name and ownership characteristics (*i.e.*, ethnicity, gender, service-disabled veteran-owned or persons with disabilities); (iii) contractor contact name and telephone number. (c) Estimated Participation. Provide an estimated level of participation by business enterprises owned by minorities, women, service-disabled veterans, persons with disabilities and small business enterprises if a contract is awarded to the Respondent pursuant to this RFP. Please include the following information: (i) a percentage (%) indicating the participation estimate. (Express the estimated participation number as a percentage of the total estimated contract value that will be dedicated to business with subcontractors and supply contractors having such ownership characteristics only and **DO NOT INCLUDE DOLLAR AMOUNTS**); (ii) anticipated goods or services contract descriptions; (iii) names and ownership characteristics (i.e., ethnicity, gender, service-disabled veterans, or disability) of anticipated subcontractors and supply contractors. NOTE: In order to claim status as a Diversity Business Enterprise under this contract, businesses must be certified by the Governor's Office of Diversity Business Enterprise (Go-DBE). Please visit the Go-DBE website at https://tn.diversitysoftware.com/FrontEnd/StartCertification.asp?TN=tn&XID=9810 for more information. (d) Workforce. Provide the percentage of the Respondent's total current employees by ethnicity and gender. NOTE: Respondents that demonstrate a commitment to diversity will advance State efforts to expand opportunity to do business with the State as contractors and subcontractors. Response evaluations will recognize the positive qualifications and experience of a Respondent that does business with enterprises owned by minorities, women, service-disabled veterans, persons with disabilities, and small business enterprises and who offer a diverse workforce.
	B.16.	Provide a statement of whether or not the Respondent has any current contracts with the State of Tennessee or has completed any contracts with the State of Tennessee within the previous five (5) year period. If so, provide the following information for all of the current and completed contracts: (a) the name, title, telephone number and e-mail address of the State contact knowledgeable about the contract; (b) the procuring State agency name; (c) a brief description of the contract's scope of services; (d) the contract period; and (e) the contract number.
	B.17.	Provide a statement and any relevant details addressing whether the Respondent is any of the following: (a) has within the past five (5) years been debarred, suspended, had regulatory action, sanction, proposal for debarment, or voluntarily excluded from covered transactions by any federal or state department or agency, including both monetary and non-monetary sanctions imposed by any federal or state regulatory entity. If so, identify and describe any letter of deficiency and/or any overview of findings issued by, as well as any corrective actions requested or required by, any federal or state regulatory entity within the last five (5) years that relate to Medicaid or CHIP contracts;

RESPONDENT LEGAL ENTITY NAME:		
Response Page # (Respondent completes)	**Item Ref.**	**Section B— General Qualifications & Experience Items**
		(b) has within the past three (3) years, been convicted of, indicted, criminally or civilly charged, or had a civil judgment rendered against the contracting party, including parent or subsidiary company, from commission of fraud (Medicaid- or Non-Medicaid-related), or a criminal offence in connection with obtaining, attempting to obtain, or performing a public (federal, state, or local) transaction or grant under a public transaction; violation of federal or state antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property; (c) is presently indicted or otherwise criminally or civilly charged by a government entity (federal, state, or local) with commission of any of the offenses detailed above in (a) or (b), Medicaid- or Non-Medicaid-related, including a parent or subsidiary company; and has within a three (3) year period preceding the contract had one or more public transactions (federal, state, or local) terminated for cause or default; and (d) has within a three (3) year period preceding the contract had one or more public transactions (federal, state, or local) terminated for cause or default.
	B.18.	For any and all contracts including an AVS as detailed in RFP Attachment 6.6, Pro Forma Contract, provide a full listing of: (a) Any and all Liquidated Damages paid, deducted, or set off from any payment due to Respondent and a narrative specifying the triggering event within the last two (2) years; and (b) Terminated contracts (mutually or otherwise) with any other public entity (federal, state, local, or territories) within the last two (2) years. For each termination, provide a narrative explanation. Include both terminations for cause and convenience.
	B.19.	Provide a brief, descriptive statement detailing how Respondent's assessment methods and data algorithms that will be used to deliver services under this Contract are regularly assessed for bias and promote equity when generating results.
SCORE *(for all Section B—Qualifications & Experience Items above)*: *(maximum possible score = 10)*		
State Use – Evaluator Identification:		

TECHNICAL RESPONSE & EVALUATION GUIDE

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

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

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

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

RESPONDENT LEGAL ENTITY NAME:					
Response Page # (Respondent completes)	**Item Ref.**	**Section C— Technical Qualifications, Experience & Approach Items**	**Item Score**	**Evaluation Factor**	**Raw Weighted Score**
	C.1.	Provide a narrative that illustrates the Respondent's understanding of the State's requirements and project schedule.		**10**	
	C.2.	Provide a narrative that illustrates how the Respondent will complete the scope of services, manage the project, ensure the completion of required objectives, and meet the State's project schedule.		**35**	
	C.3.	Provide plans for recruiting and retaining Financial Institutions and Letters of Commitment from Financial Institutions who have already agreed to participate. Additionally, please provide a plan of maintaining Financial Institution participation levels high enough to ensure that no less than forty percent (40%) of state calls result in a match as required in *Pro Forma* Contract Section A.6.6.		**15**	
	C.4.	Provide the details that illustrate how Respondent will comply with the TEDS interface layout as described in *Pro Forma* Contract Section A.4 and the Interface Control Documents for Asset Verification Interface (refer to Attachment C - Interface Controls Document).		**15**	
	C.5.	Provide a narrative that illustrates how the Respondent will meet the requirements in *Pro Forma* Contract Section A.5, including a detailed description of the software and technology platform on which your system operates.		**5**	

RESPONDENT LEGAL ENTITY NAME:					
Response Page # (Respondent completes)	**Item Ref.**	**Section C— Technical Qualifications, Experience & Approach Items**	**Item Score**	**Evaluation Factor**	**Raw Weighted Score**
	C.6.	Provide a detailed description of the support the Respondent will provide to the State regarding system integration as required in Pro Forma Contract Sections A.3 and A.5...		**15**	
	C.7.	Provide a detailed description of how the Respondent will provide the required operational services as required in *Pro Forma* Contract Section A.3.8.		**5**	
The Solicitation Coordinator will use this sum and the formula below to calculate the section score. All calculations will use and result in numbers rounded to two (2) places to the right of the decimal point.				**Total Raw Weighted Score:** *(sum of Raw Weighted Scores above)*	
Total Raw Weighted Score / **Maximum Possible Raw Weighted Score** *(i.e., 5 x the sum of item weights above)*			**X 70** *(maximum possible score)*	**= SCORE:**	
State Use – Evaluator Identification:					
State Use – Solicitation Coordinator Signature, Printed Name & Date:					

COST PROPOSAL & SCORING GUIDE

NOTICE: THIS COST PROPOSAL MUST BE COMPLETED EXACTLY AS REQUIRED

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

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

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

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

RESPONDENT SIGNATURE:	
PRINTED NAME & TITLE:	
DATE:	

RESPONDENT LEGAL ENTITY NAME:			
Cost Item Description	**Proposed Cost**	**State Use Only**	
		Evaluation Factor	**Evaluation Cost** (cost x factor)
Start-Up Activities	**$** **/ Start-up cost**	1	
Monthly Maintenance Fee (Contract Sections A.4. through A.12.) *Base Years	**$** **/ Month**	36	
Verification Requests (Contract Section A.3)*Base Years	**$** **/ Verification**	4,500,000	
Monthly Maintenance Fee (Contract Sections A.4. through A.12.) *Optional Year 1	**$** **/ Month**	12	
Verification Requests (Contract Section A.3) *Optional Year 1	**$** **/ Verification**	4,500,000	

RESPONDENT LEGAL ENTITY NAME:			
Cost Item Description	**Proposed Cost**	**State Use Only**	
		Evaluation Factor	**Evaluation Cost** (cost x factor)
Monthly Maintenance Fee (Contract Sections A.4. through A.12.) *Optional Year 2	**$ / Month**	12	
Verification Requests (Contract Section A.3) *Optional Year 2	**$ / Verification**	4,500,000	
EVALUATION COST AMOUNT (sum of evaluation costs above)**:** The Solicitation Coordinator will use this sum and the formula below to calculate the Cost Proposal Score. Numbers rounded to two (2) places to the right of the decimal point will be standard for calculations.			
lowest evaluation cost amount from all proposals / **evaluation cost amount being evaluated**	**x 20 (maximum section score)**	**= SCORE:**	
State Use – Solicitation Coordinator Signature, Printed Name & Date:			

REFERENCE QUESTIONNAIRE

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

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

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

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

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

Written:

(a) Add the Respondent's name to the standard reference questionnaire at RFP Attachment 6.4. and make a copy for each reference.

(b) Send a reference questionnaire and new, standard #10 envelope to each reference.

(c) Instruct the reference to:

  (i) complete the reference questionnaire;

  (ii) sign and date the completed reference questionnaire;

  (iii) seal the completed, signed, and dated reference questionnaire within the envelope provided;

  (iv) sign his or her name in ink across the sealed portion of the envelope; and

  (v) return the sealed envelope directly to the Respondent (the Respondent may wish to give each reference a deadline, such that the Respondent will be able to collect all required references in time to include them within the sealed Technical Response).

(d) Do NOT open the sealed references upon receipt.

(e) Enclose all sealed reference envelopes within a larger, labeled envelope for inclusion in the Technical Response as required.

Email:

(a) Add the Respondent's name to the standard reference questionnaire at RFP Attachment 6.4. and make a copy for each reference.

(b) E-mail a reference questionnaire to each reference.

(c) Instruct the reference to:

  (i) complete the reference questionnaire;

  (ii) sign and date the completed reference questionnaire;

  (iii) E-mail the reference directly to the Solicitation Coordinator by the RFP Technical Response Deadline with the Subject line of the e-mail as "[Respondent's Name] Reference for RFP **# 31865-00645**".

NOTES:

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

- While the State will base its reference check on the contents of the reference e-mails or sealed reference envelopes included in the Technical Response package, the State reserves the right to confirm and clarify information detailed in the completed reference questionnaires, and may consider clarification responses in the evaluation of references.
- The State is under no obligation to clarify any reference information.

RFP # 31865-00645 REFERENCE QUESTIONNAIRE

REFERENCE SUBJECT: RESPONDENT NAME (completed by Respondent before reference is requested)

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

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

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

Physical:

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

E-Mail:

- e-mail the completed questionnaire to:
  Solicitation Coordinator, Mitchell Plumer, Mitchell.D.Plumer@tn.gov

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

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

NAME:	
TITLE:	
TELEPHONE #	
E-MAIL ADDRESS:	

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

(4) If the goods or services that the reference subject provided to your company or organization are completed, were the goods or services provided in compliance with the terms of the contract, on time, and within budget? If not, please explain.

(5) If the reference subject is still providing goods or services to your company or organization, are these goods or services being provided in compliance with the terms of the contract, on time, and within budget? If not, please explain.

(6) How satisfied are you with the reference subject's ability to perform based on your expectations and according to the contractual arrangements?

REFERENCE SIGNATURE:
(by the individual completing this request for reference information)

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

DATE: _____

RFP ATTACHMENT 6.5.

SCORE SUMMARY MATRIX

	RESPONDENT NAME		*RESPONDENT NAME*		*RESPONDENT NAME*	
GENERAL QUALIFICATIONS & EXPERIENCE **(maximum: 10)**						
EVALUATOR NAME						
EVALUATOR NAME						
REPEAT AS NECESSARY						
	AVERAGE:		**AVERAGE:**		**AVERAGE:**	
TECHNICAL QUALIFICATIONS, EXPERIENCE & APPROACH **(maximum: 70)**						
EVALUATOR NAME						
EVALUATOR NAME						
REPEAT AS NECESSARY						
	AVERAGE:		**AVERAGE:**		**AVERAGE:**	
COST PROPOSAL **(maximum: 20)**	**SCORE:**		**SCORE:**		**SCORE:**	
TOTAL RESPONSE EVALUATION SCORE: **(maximum: 100)**						
Solicitation Coordinator Signature, Printed Name & Date:						

RFP ATTACHMENT 6.6.

RFP # 31865-00645 *PRO FORMA* CONTRACT

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

CONTRACT

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

Begin Date	End Date	Agency Tracking #	Edison Record ID

Contractor Legal Entity Name	Edison Vendor ID

Goods or Services Caption (one line only)

Contractor	Assistance Listing Number#
☒ Contractor	

Funding —

FY	State	Federal	Interdepartmental	Other	TOTAL Contract Amount
TOTAL:					

Contractor Ownership Characteristics:

☐ Minority Business Enterprise (MBE):

☐ African American ☐ Asian American ☐ Hispanic American ☐ Native American

☐ Woman Business Enterprise (WBE)

☐ Tennessee Service Disabled Veteran Enterprise (SDVBE)

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

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

Speed Chart (optional)	Account Code (optional)

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

This Contract, by and between the State of Tennessee, Department of Finance and Administration, Division of TennCare ("State" or "TennCare") and Contractor Legal Entity Name ("Contractor"), is for the provision of Asset Verification System (AVS), as further defined in the "SCOPE." State and Contractor may be referred to individually as a "Party" or collectively as the "Parties" to this Contract.

The Contractor is a/an Individual, For-Profit Corporation, Non-Profit Corporation, Special Purpose Corporation Or Association, Partnership, Joint Venture, Or Limited Liability Company.
Contractor Place of Incorporation or Organization: Location
Contractor Edison Registration ID # Number

A. SCOPE:

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

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

a. Account Executive – The identified individual in charge of TennCare's account who is responsible for ensuring all services are provided in a consistent and timely fashion.
b. Applicant - An individual who is seeking an eligibility determination for himself through an application submission or a transfer from another agency or insurance affordability program. Applicant also includes an individual who is seeking an eligibility determination for himself through an application for Medicare Savings Programs (MSP).
c. Asset Verification System (AVS) – The digital interface whereby TennCare verifies the assets of aged, blind or disabled Applicants and Recipients of TennCare Medicaid, and any other person whose resources are required by law to be disclosed to determine the eligibility of the Applicant or Recipient for such assistance.
d. Banking Day - Banking days include all the days when offices of a bank is open for business to public. Business includes all banking functions. Usually banking day is all day except Saturday, Sunday and legally defined holidays.
e. Business Day – any day, Monday through Friday, which is not a federal or state holiday.
f. Centers for Medicare and Medicaid Services (CMS) – The Federal Health and Human Services agency responsible for Medicare and parts of Medicaid.
g. Corrective Action Plan – A step by step plan of action that is developed to achieve targeted outcomes for resolution of identified errors in an effort to: Identify the most cost-effective actions that can be implemented to correct errors and the root cause(s) of errors.
h. Financial Asset Verification Report – The report provided by the Contractor with all resource information returned from the Financial Institution.
i. Financial Institution - Any office or branch of a bank, brokerage firm, savings and loan, or credit union.
j. Interface Control Documents for Asset Verification Interface – Internal documents provided by the Systems Integrator that explain the functionality of the Asset Verification Interface including its method of information exchange with the AVS contractor.
k. Key Personnel - Personnel identified by the State and Contractor as essential to work on the scope of services under this Contract.
l. Letter of Commitment – An official document from a Financial Institution that has committed to joining the network of Financial Institutions maintained by the Contractor, defining the level of access and communication agreed to by the Financial Institution.
m. Recipient - An individual eligible for and enrolled in the TennCare program or in any Tennessee federal Medicaid waiver program approved by the Secretary of the U. S. Department of Health and Human Services pursuant to Sections 1115 or 1915 of the Social Security Act or in the CoverKids program. (42

U.S.C. §§ 1315 or 1396n). Recipient also includes individuals eligible for and enrolled in the Medicare Savings Programs (MSPs).

n. Systems Integrator - The State contractor responsible for design, development, implementation and ongoing maintenance of TEDS.
o. Technical Manager – The identified individual in charge of the Contractor's interface with TEDS, TennCare's eligibility determination system.
p. Tennessee Eligibility Determination System (TEDS) – eligibility and enrollment system to be used by TennCare to process Medicaid and CHIP applications, renewals, and changes.
q. TennCare - The program administered by the Single State agency as designated by the State and CMS pursuant to Title XIX of the Social Security Act and the Section 1115 Research and Demonstration waiver granted to the State of Tennessee.
r. Turnover Plan –. Documented activities involved in transitioning the Contract responsibilities to TennCare, a designated Contractor, and/or successor Contractor at the end of the Contract term.
s. Work Plan – A document including a detailed description of the schedule, tasks, deliverables, critical events, task dependencies, and payment schedule.

A.3. The Contractor shall provide an Asset Verification System (AVS) to meet the requirements of 42 U.S.C.A. § 1396w, all applicable state and federal laws, and Attachment C to this Contract. The AVS shall have the ability to electronically forward a request for asset information for individuals applying and/or receiving TennCare Medicaid. The Contractor shall ensure that each Financial Institution responses electronically, providing any information it has about assets the Applicant, Recipient, and any other person whose resources are required by law to be disclosed, has or has had in the institution within the previous sixty (60) months. This information must be brought into the Tennessee Eligibility Determination System (TEDS), where the information is used to determine whether Applicant and/or Recipients meet certain financial eligibility requirements.

A.3.1. The AVS shall be able to interface with TEDS and meet the requirements established by law and the Centers for Medicare and Medicaid Services (CMS). The State, in its sole discretion, shall decide whether the AVS is satisfactorily and timely implemented and fully operational.

A.3.2. The request and response system of the AVS shall be electronic. Verification inquiries shall be sent electronically via the internet or similar means from the State to the Financial Institution and returned in the same manner.

A.3.3. The AVS shall not be based on mailing paper-based requests.

A.3.4. The AVS shall establish and maintain a database of Financial Institutions that participate in the State's AVS.

A.3.5. Verification requests shall be sent to Financial Institutions not identified by Applicants or Recipients, based on State approved logic including, but not limited to, geographic proximity to the Applicant's or Recipient's home address or previous addresses held within the last five (5) years, or other reasonable factors whenever the State determines that such requests are needed to determine or redetermine the individual's eligibility.

A.3.6. The verification requests required in Section A.3.5. shall include a request for information at the time of application, change of Applicant or Recipient status, renewal of eligibility, or at any other time as determined by the State.

A.3.7. The Contractor shall generate reports from the AVS on verification activity, including but not limited to, the number of requests, number of responses, and amounts of undisclosed assets found. These reports shall be delivered to the State as needed on an agreed-upon schedule.

A.3.8. Associated operational services shall be included in the AVS. This includes, but is not limited to, contracting with Financial Institutions, technical operations to focus on start-up, maintenance and changes to the system, and reporting.

A.3.9. The AVS shall have the ability to handle a minimum of five thousand to twelve thousand (5,000-12,000) inquiries per month for the State and be automatically scalable to handle inquiry amounts above this minimum level, as needed.

A.3.10. The Contractor shall submit a finalized Work Plan within ten (10) business days after the Effective Date of the Contract. The Work Plan shall include a detailed description of the schedule, tasks, deliverables, critical events, and task dependencies. The Work Plan shall be updated when deemed necessary by the State.

A.4. Financial Asset Verification Requirements. The Contractor shall provide an AVS that meets the following functional requirements:

A.4.1. The AVS shall provide an interface with TEDS in accordance with the Interface Control Documents for Asset Verification Interface (set forth in Attachment C) from which each active user may request a Financial Asset Verification Report for an Applicant, a Recipient, or any other person whose resources are required by law to be disclosed. The Financial Asset Verification Report shall identify open accounts in which the Applicant, Recipient, or any other person whose resources are required by law to be disclosed holds an ownership interest that has a positive account balance within a specified date range. The specified date range shall begin with the date of application, renewal application, or such other date as the State may request.

A.4.2. The Financial Asset Verification Report shall include at a minimum, the following specific information regarding each such account:

a. The name of the Financial Institution holding the account along with the branch location address and telephone number where the account is serviced;
b. The type of account (checking, savings, annuity, retirement, etc.) and the last four digits of the account number.
c. A statement that the Applicant or Recipient is not a current account holder:
d. A statement or message in accordance with the Interface Control Documents for Asset Verification Interface located in Contract Attachment C when there is a mismatch on one or more data elements if multiple other data elements are matched:

e. The account balance in each account as of the start date of the specified date range sent in the request; and
f. Other information as requested by the State.

A.5. System Requirements

A.5.1. The Contractor shall ensure that the AVS meets all the requirements of 42 U.S.C.A. § 1396w, all applicable state and federal laws, and Attachment C to this Contract.

A.5.2 The Contractor shall provide an AVS interface, which shall be a bi-directional interface between TEDS and the AVS. A service call will originate from TEDS to AVS, and AVS shall send a response to TEDS within ten (10) business days. Both service calls shall prompt a real-time acknowledgement from the receiving system. TEDS will use this information during application, change and update flows to either prevent a member from getting eligibility for benefits that requires a resource check or to ensure that resources are appropriately verified.

A.5.3. Inquiries shall be sent electronically via the AVS to Financial Institutions, and verifications shall be returned electronically from the Financial Institutions to the AVS.

a. The AVS shall not be based on mailing or faxing of paper-based requests.

b. The AVS shall have the capability to provide for both electronic submission of requests to Financial Institutions and electronic receipt of responses from Financial Institutions.

A.5.4 The AVS shall provide at a minimum, verification of checking, savings, investment accounts, IRA's, notes and bonds, certificates of deposit, annuities, and any other assets that may be held or managed by a Financial Institution. The AVS shall use Personally Identifiable Information (PII) to verify accounts located at the Financial Institutions.

A.5.5. The AVS shall allow for verification requests to be sent to Financial Institutions based on suspicion of possible activity concerning financial assets or the declaration of the Applicant, Recipient, and any other person whose resources are required by law to be disclosed.

A.5.6. The AVS shall allow for verification requests to be sent to Financial Institutions other than those identified by the Applicants, Recipients, and any other person whose resources are required by law to be disclosed, based on State approved logic such as geographic proximity to the Applicant's home address, residential history or some other factors, as agreed upon by the State, when it is determined that such requests are needed to determine or redetermine the individual's eligibility.

A.5.7 The AVS shall employ search techniques and algorithms to identify assets that might otherwise not be discovered through the eligibility determination process and may not have been disclosed by the Applicant, Recipient, or any other person whose resources are required by law to be disclosed.

A.5.8. The AVS shall provide for identification of assets in Financial Institutions located inside and outside the state of Tennessee.

A.5.9. The AVS shall request and return information to determine if the name of the Applicant, Recipient, or any other person whose resources are required by law to be disclosed, appeared on any account as a single or joint owner.

A.5.10. The AVS shall notify or alert TEDS once a response from a Financial Institution is received, within ten (10) business days of the inquiry.

A.5.11. The AVS shall provide to TEDS documentary evidence that the search was conducted, even when no assets were found.

A.6. Asset Verification Financial Institution Enrollment and Support Requirements:

A.6.1. The Contractor shall have a pre-existing network of Financial Institutions that will participate in the AVS. The network shall be geographically diverse and shall include matching with Financial Institutions located outside of Tennessee.

A.6.2. The Contractor shall routinely identify Financial Institutions which are not enrolled in the AVS and therefore cannot be accessed. The Contractor shall update the enrollment status of Financial Institutions and any and all branches or member institutions in the system on a daily basis.

A.6.3. The AVS shall allow for verification requests to be sent to Financial Institutions based on the declaration of the Applicant, Recipient, or any other person whose resources are required by law to be disclosed or the State's suspicion of possible banking activity. In addition, the AVS shall allow for verification requests to be sent to Financial Institutions other than those identified by Applicants, Recipients, or any other person whose resources are required by law to be disclosed based on State approved logic such as geographic proximity to the Applicant's home address, residential history or some other commonly utilized factors when it is determined by the State that such requests are needed to determine or redetermine the Applicant or Recipient's eligibility.

A.6.4. The Contractor shall provide a Letter of Commitment upon request by the State for currently participating Financial Institutions that indicates the level of access and communication agreed to by the Financial Institution.

A.6.5. The Contractor shall have an established system and be responsible for recruiting, registering, training, and supporting Financial Institutions for participation in the AVS for Tennessee. The Contractor shall be responsible for all costs related to these activities. The Contractor shall be responsible for recruiting, registering, training, and maintaining participation of Financial Institutions through the Term. The Contractor shall maintain a good working relationship with Financial Institutions and Professional Associations with which they are required to be in contact with during the performance of the Contract.

A.6.6 The Contractor shall be responsible for any and all on-going support or assistance needed to maintain Financial Institution participation levels high enough to ensure that no less than forty percent (40%) of State verification requests result in a match. The Contractor shall be responsible for all costs related to these activities.

A.6.7. The Contractor shall maintain a list of participating Financial Institutions as well as any and all branches or member institutions. This information shall be updated daily. The AVS shall incorporate this data into its system in a manner that is readily accessible. At a minimum, the list must include the following:

a. The name and address of the enrolled Financial Institution; and
b. The name, phone number, and e-mail address of the Financial Institution's preferred personal contact.

A.6.8 In the event a Financial Institution ends its enrollment, the Contractor shall ensure that all outstanding requests for data that the Contractor has made on behalf of the State to that Financial Institution are completed and responses are provided within timeframes required herein.

A.6.9. The Contractor may describe the contractual relationship between the Contractor and the State in its effort to enroll Financial Institutions in the Contractor's system. However, the Contractor shall not communicate or otherwise imply a legal or regulatory requirement exists for the Financial Institution to enroll in the Contractor's system or to provide information to the Contractor or to the State that is not otherwise required to be disclosed or provided by law or regulation.

A.7. Performance Standards

A.7.1. The Contractor shall be responsible for ensuring Financial Institutions respond timely to inquiries submitted through the AVS. Responses shall be considered timely if all requirements below are met:

a. Ninety five percent (95%) of all inquiries are responded to within ten (10) Business Days.

b. Ninety-nine percent (99%) of all inquiries are responded to within fifteen (15) Business Days,

c. Inquiries are considered submitted based on the request date in the transaction initiated by TEDS.

d. Inquiries are considered to be responded to when the Financial Institution's response is received by TEDS.

A.7.2. The Contractor shall monitor outstanding requests and initiate contact to Financial Institutions that have pending inquiries more than ten (10) Business Days old and attempt to solicit a response within five (5) banking days.

A.8. Maintenance and Availability

A.8.1. The AVS shall be available and accessible for TEDS interfaces twenty-four (24) hours a day, seven (7) days a week, except for State-approved time for system maintenance.

A.8.2 The system must have a ninety-nine percent (99.9%) uptime guarantee excluding scheduled maintenance and downtime that has been mutually agreed upon between the Contractor and the State.

A.8.3. Scheduled maintenance and scheduled downtime must be entirely performed during off- hours that fall outside of 6:00 am to 6:00 pm Central Standard Time (CST).

A.8.4. Monthly reports shall be provided to State designated personnel to document system and application performance against the requirements stated herein.

A.8.5. The Contractor shall immediately notify the State of any unscheduled downtime as soon as Contractor becomes aware of the need for downtime. Any unscheduled downtime shall also be documented and explained in writing according to the requirements set forth in Section A.12 and Section A.13.

A.8.6. The Contractor shall formally request approval for scheduled maintenance periods at least two (2) Business Days prior to period. Scheduled maintenance periods shall be mutually agreed upon in writing between the Contractor and the State.

A.8.7. The Contractor shall notify the State within fifteen (15) minutes of discovery of outage{s) of State system(s) for which the Contractor has access.

A.9. System Help Requirements

A.9.1. The Contractor shall provide help desk support for State personnel for follow-up, tracking progress, and other related assistance with requests referred to the Contractor.

A.9.2. The Contractor shall provide a dedicated toll-free telephone for the help desk.

A.9.3. The help desk shall provide technical assistance, answer questions related to referred requests, develop approaches to resolve issues or discrepancies, analyze problem or issue trends, and report final disposition of the call.

A.9.4. The help desk shall be available Business Days from 7:30 a.m. to 5:30 p.m., CST,

A.10. Reporting Requirements

A.10.1. The AVS shall allow for the flexible development of reports on verification activity, including but not limited to information such as the number of requests, number of responses, and amounts of undisclosed assets found.

A.10.2. The Contractor shall provide reports in a manner specified by the State.

A.10.3. Asset Verification Performance Report - The Contractor shall provide the State with a monthly report of the Contractor's performance. At a minimum, the report must provide:

a. A summary of inquiries made and the time in days until responses are received.
b. The number of detection responses that are provided to TEDS and the number of verifications that are provided to TEDS.
c. A calculation showing the month's performance relative to the standards established herein.
d. An aging summary of outstanding inquiries.
e. The status and corrective actions planned or taken on every inquiry outstanding for more than twenty-five (25) banking days during the period of the report.

A.10.4. The Contractor shall provide the State with all information regarding the AVS needed to comply with applicable federal reporting requirements found in 42 U.S.C.A. § 1396w. Such information shall be provided at such times, in such format, and containing all information that the State deems appropriate.

A.11. Key Personnel

A.11.1 The Contractor shall submit to the State for prior review and approval the names, titles, and resumes of candidates for initial engagement of Key Personnel and whenever a change in Key Personnel is proposed. If, during the Term, any Key Personnel should leave the Contractor's employment or the State requests that a specific Key Personnel no longer work on this contract, the Contractor shall fill the vacant Key Personnel position, within thirty (30) calendar days from the date of the Key Personnel leaving his/her position with the Contractor or being barred from working on this contract, with a replacement that is satisfactory to the State. Until a qualified and acceptable replacement is available, the Contractor shall temporarily fill such Key Personnel position, within three (3) Business Days of a vacancy occurring, with a qualified Contractor staff resource who shall perform the Key Personnel duties. Failure to timely replace Key Personnel may result in Liquidated Damages as set forth in Attachment B.

A.11.2. Upon the State's request, the Contractor shall offer the State an opportunity to interview Contractor's initial proposed Key Personnel and any proposed replacement(s) to Key Personnel. The State may, at any time during the Term disapprove any Key Personnel assigned by the Contractor to perform work under this Contract. Upon notification by the State to the Contractor that Key Personnel has been disapproved, the Key Personnel shall immediately cease work under this Contract. The decision of the State on these matters shall not be subject to appeal.

A.11.3. The Contractor shall not remove any approved Key Personnel from their assigned duties under the Contract for any period of time exceeding two (2) weeks without State prior written approval. The Contractor shall notify the State in writing of any proposed change in Key Personnel at least thirty (30) calendar days prior to the change or as soon as the change is known if the employee's notification to the Contractor is less than this period. The State understands that Key Personnel will on occasion take vacation time or attend corporate functions, which will require brief time away from their assigned duties.

A11.4. For each position designated as Key Personnel, and other positions upon State request, the Contractor shall identify the individual(s) who will serve as "back up" or interim successor(s) to these Key Personnel positions in the event the Key Personnel position becomes vacant. Both the interim and permanent replacement shall remain subject to the State's right to review and approve such appointments.

A.11.5. Unless substitution is approved by the State, Key Personnel shall be the same personnel proposed in the Contractor's Technical Proposal, which will be incorporated into the Contract by reference. This shall include, at a minimum, an Account Executive and a Technical Manager.

A.12. Problem Notification

A.12.1. At the point at which the Contractor discovers or should have known of any problem that is likely to jeopardize the Contractor's ability to perform any function as specified in this Contract, the Contractor shall notify the applicable State staff (as well as the State's designated general contact for this Contract) by email within one (1) hour if the problem is discovered within the Business Day and no later than 9:00 a.m. CST the following Business Day if the problem occurs after close of business.

A.12.2. Unless otherwise directed by the State, the Contractor shall, within three (3) Business Days of a problem's occurrence, deliver comprehensive written documentation, including a proposed Corrective Action Plan that describes how the Contractor shall determine the root cause of the issue, remedy the immediate operational

challenges, and prevent this or similar problems from occurring again. The Corrective Action Plan shall be approved by the State prior to Contractor beginning the remedial work set forth therein.

A.13. Control Memorandum Process

a. The Control Memorandum ("CM") process shall be utilized by the State to clarify Contract requirements, issue instruction to the Contractor, document action required of the Contractor, or request information from the Contractor. In addition, the CM process shall be used by the State to impose assessments of damages, either actual or liquidated. This process will be used to address issues or matters that do not require a contract amendment. Each CM must be in writing and indicate the date on which it was issued. CMs may provide relevant history, background, and other pertinent information regarding the issue(s) being addressed in the CM. Each CM will establish a deadline or timeframe for the Contractor's reply or other action. All CMs submitted to the Contractor must be signed and approved by the State's Project Director (or his/her designee). When the CM pertains to damages, either actual or liquidated, the State may issue consecutive CMs, as may be necessary or appropriate.

b. A CM may include one (1) or more of the five (5) components of the CM process described below:

1. On Request Report - a request directing the Contractor to provide information by the time and date set out in the CM.

2. Control Directive (CD) - instructions that require the Contractor to complete, within a designated timeframe, one (1) or more deliverables or to perform any other request from the State that is within the scope of the Contract. The CD may include a Corrective Action Plan (CAP). A CD may also provide clarification of certain Contract terms. Once a CM/CD has been issued, it shall be considered to be incorporated into this Contract.

3 Notice of Potential Damages (Actual or Liquidated) (NPD) - notification to the Contractor that the State has determined that a potential Contract performance or compliance failure exists and that the State is contemplating assessing damages. The NPD shall identify the Contract provision(s) on which the State determination rests.

4. Notice of Calculation of Potential Damages (Actual or Liquidated) (NCPD) - notification lo the Contractor that provides a calculation of the amount of potential damages that the State is contemplating assessing against the Contractor. NPDs and NPCDs may be issued consecutively or simultaneously.

5. Notice of Intent to Assess Damages (Actual or Liquidated) (NIAD) - notification to the Contractor that the State is assessing damages and specifying whether the damages, due to a performance or compliance failure, are actual damages or liquidated Damages and setting out the performance or compliance failure underlying each intended damage assessment. The NIAD shall identify the NPD and NCPD upon which it is based. The NIAD shall specify the total amount and type of damages, whether actual or liquidated, that the State intends to assess. Following the issuance of an NIAD, the State may elect to withhold damages from payments due to Contractor. The State may not issue a NIAD without first issuing a NPD and a NPCD. The State may not obtain both Liquidated Damages and Actual Damages for the same occurrence of a Contract performance or compliance failure.

c. Damages for failure to comply with CM. The Contractor shall fully comply with all CMs. Failure to do so may result in the State pursuing recovery of damages, as defined in Section E.10, including Liquidated Damages as listed in Contract Attachment B, a corrective action plan, and/or termination of the Contract.

d. Appeal of Damages by Contractor. Contractor may appeal either the basis for NPD or calculation of NCPD potential damages, either actual or liquidated. To do so, the Contractor shall submit to the State's Project Director (or his/her designee) a written response to the NPD and/or NCPD within ten (10) business days of receipt of a CM which includes a NPD or a NCPD. The State's Project Director (or his/her designee) shall review the appeal and provide notice of his/her determination to the Contractor through a CM. If the Contractor disagrees with the State's Project Director's (or his/her designee) initial appeal determination or the State's Project Director (or his/her designee) is unable to resolve the appeal, the Contractor may submit a written request to the State's Project Director (or his/her designee) that the matter be escalated to senior management of the Agency. Contractor shall submit such a request for escalation within ten (10) business days of its receipt of the initial appeal determination from the State's Project Director (or his/her designee) or of notification by the State's Project Director that he/she is unable to resolve the appeal. The State's senior management shall provide written notice of its final determination to the Contractor within (10) days of the receipt of the appeal from the Contractor. Upon appeal or escalation, the State shall not increase the amount of the potential damages.

A.14. Non-Disclosure and Contractors

The Contractor shall, as directed by the State and at no additional cost to the State, coordinate with, facilitate the prompt exchange of information between, and work collaboratively with any and all other State contractors and State agencies. If required in order for the Contractor to proceed with any part of the Scope of Services which involves sharing or obtaining information of a confidential, proprietary, or otherwise valuable nature with or from another State contractor or State agency, the Contractor may be requested to sign mutually agreeable documents, including but not limited to Non-Disclosure Agreements (Non-Disclosure Documents), which are reasonably necessary to maintain cooperation and collaboration among and with any and all other State contractors and State agencies in the performance of the Contract.

All information the Contractor may receive, have disclosed to it, or otherwise becomes known to Contractor during the performance of this Contract from any other State contractor or State agency, that the State contractor or State agency considers to be propriety or confidential in nature pursuant to a Non-Disclosure Document entered into between the Contractor and another State contractor or State agency, shall be governed by such Non-Disclosure Document.

Nothing in this Section, including failure to negotiate and enter into a Non-Disclosure Document acceptable to Contractor with another State contractor or State agency, shall be construed to relieve the Contractor of its duty to perform any requirements or deliverables under this Contract. Other than as permitted in Section C of this Contract, Payment Terms and Conditions, the Contractor shall not invoice the State for any such coordination services, and the State shall not be liable to the Contractor for payment of any such coordination services.

A.15. 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.16. Inspection and Acceptance. The State shall have the right to inspect all goods or services provided by Contractor under this Contract. If, upon inspection, the State determines that the goods or services are Defective, the State shall notify Contractor, and Contractor shall re-deliver the goods or provide the services at no additional cost to the State. If after a period of thirty (30) days following delivery of goods or performance of services the State does not provide a notice of any Defects, the goods or services shall be deemed to have been accepted by the State.

B. TERM OF CONTRACT:

B.1. This Contract shall be effective on DATE ("Effective Date") and extend for a period of thirty-six (36) months after the Effective Date ("Term"). The State shall have no obligation for goods or services provided by the Contractor prior to the Effective Date.

B.2. Renewal Options. This Contract may be renewed upon satisfactory completion of the Term. The State reserves the right to execute up to two (2) renewal options under the same terms and conditions for a period not to exceed twelve (12) months each by the State, at the State's sole option. In no event, however, shall the maximum Term, including all renewals or extensions, exceed a total of sixty (60) months.

C. PAYMENT TERMS AND CONDITIONS:

C.1. Maximum Liability. In no event shall the maximum liability of the State under this Contract exceed Written Dollar Amount ($Number) ("Maximum Liability"). This Contract does not grant the Contractor any exclusive rights. The State does not guarantee that it will buy any minimum quantity of goods or services under this Contract. Subject to the terms and conditions of this Contract, the Contractor will only be paid for goods or services provided under this Contract after a purchase order is issued to Contractor by the State or as otherwise specified by this Contract.

C.2. Compensation Firm. The payment methodology in Section C.3. of this Contract shall constitute the entire compensation due the Contractor for all goods or services provided under this Contract regardless of the difficulty, materials or equipment required. The payment methodology includes all applicable taxes, fees, overhead, and all other direct and indirect costs incurred or to be incurred by the Contractor.

C.3. Payment Methodology. The Contractor shall be compensated based on the payment methodology for goods or services authorized by the State in a total amount as set forth in Section C.1.

a. The Contractor's compensation shall be contingent upon the satisfactory provision of goods or services as set forth in Section A.

b. The Contractor shall be compensated based upon the following payment methodology:

1) AVS Interface connection activities shall be paid as follows:

Goods or Services Description	**Amount** (per compensable increment)
Start-Up Activities – all activities required to connect Asset Verification System to TEDS	$ Number (to be paid in following increments) 10% to be paid upon Contract Effective Date.

	40% upon successful connection to the TEDS interface system 50% upon satisfactory testing of the interface

2) For services performed from base Year 1 - 3, the following rates shall apply

Goods or Services Description	**Amount** (per compensable increment)
Monthly Maintenance Fee (Contract Sections A.4. through A.12.)	$ / Month
Verification Requests (Contract Section A.3)	$ / per verification

3) For services performed from Optional Year 1, the following rates shall apply:

Goods or Services Description	**Amount** (per compensable increment)
Monthly Maintenance Fee (Contract Sections A.4. through and A.12.)	$ / Month
Verification Requests (Contract Section A.3)	$ / per verification

4) For services performed from Optional Year 2, the following rates shall apply:

Goods or Services Description	**Amount** (per compensable increment)
Monthly Maintenance Fee (Contract Sections A.4. through A.12.)	$ / Month
Verification Requests (Contract Section A.3)	$ / per verification

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

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

Division of TennCare
310 Great Circle Road
Nashville, TN 37243

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

(1) Invoice number (assigned by the Contractor);
(2) Invoice date;
(3) Contract number (assigned by the State);
(4) Customer account name: Department of Finance and Administration, Division of TennCare;
(5) Customer account number (assigned by the Contractor to the above-referenced Customer);
(6) Contractor name;
(7) Contractor Tennessee Edison registration ID number;
(8) Contractor contact for invoice questions (name, phone, or email);

(9) Contractor remittance address;
(10) Description of delivered goods or services provided and invoiced, including identifying information as applicable;
(11) Number of delivered or completed units, increments, hours, or days as applicable, of each good or service invoiced;
(12) Applicable payment methodology (as stipulated in Section C.3.) of each good or service invoiced;
(13) Amount due for each compensable unit of good or service; and
(14) Total amount due for the invoice period.

b. Contractor's invoices shall:

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

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

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

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

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

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

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

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

D. MANDATORY TERMS AND CONDITIONS:

D.1. Required Approvals. The State is not bound by this Contract until it is duly approved by the Parties and all appropriate State officials in accordance with applicable Tennessee laws and regulations. Depending upon the specifics of this Contract, this may include approvals by the Commissioner of Finance and Administration, the Commissioner of Human Resources, the Comptroller of the Treasury, and the Chief Procurement Officer. Approvals shall be evidenced by a signature or electronic approval.

D.2. Communications and Contacts. All instructions, notices, consents, demands, or other communications required or contemplated by this Contract shall be in writing and shall be made by certified, first class mail, return receipt requested and postage prepaid, by overnight courier service with an asset tracking system, or by email or facsimile transmission with recipient confirmation. All communications, regardless of method of transmission, shall be addressed to the respective Party at the appropriate mailing address, facsimile number, or email address as stated below or any other address provided in writing by a Party.

The State:

Deputy Commissioner
Department of Finance and Administration
Division of TennCare
310 Great Circle Road
Nashville TN 37243
Telephone # (615) 507-6444

The Contractor:

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

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

D.3. Modification and Amendment. This Contract may be modified only by a written amendment signed by all Parties and approved by all applicable State officials. The State's exercise of a valid Renewal Option or Term Extension does not constitute an amendment so long as there are no other changes to the Contract's terms and conditions.

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

D.5. Termination for Convenience. The State may terminate this Contract for convenience without cause and for any reason. The State shall give the Contractor at least thirty (30) days written notice before the termination date. The Contractor shall be entitled to compensation for all conforming goods delivered and accepted by the State or for satisfactory, authorized services completed as of the termination date. In no event shall the State be liable to the Contractor for compensation for any goods neither requested nor accepted by the State or for any services neither requested by the State nor satisfactorily performed by the Contractor. In no event shall the State's exercise of its right to terminate this Contract for convenience relieve the Contractor of any liability to the State for any damages or claims arising under this Contract.

D.6. Termination for Cause. If the Contractor fails to properly perform its obligations under this Contract in a timely or proper manner, or if the Contractor materially violates any terms of this Contract ("Breach Condition"),the State shall have the right to immediately terminate the Contract and withhold payments in

excess of compensation for completed services or provided goods. Notwithstanding the above, the Contractor shall not be relieved of liability to the State for damages sustained by virtue of any Breach Condition and the State may seek other remedies allowed at law or in equity for breach of this Contract.

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

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

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

D.9. Nondiscrimination. The Contractor hereby agrees, warrants, and assures that no person shall be excluded from participation in, be denied benefits of, or be otherwise subjected to discrimination in the performance of this Contract or in the employment practices of the Contractor on the grounds of handicap or disability, age, race, creed, color, religion, sex, national origin, or any other classification protected by federal or state law. The Contractor shall, upon request, show proof of nondiscrimination and shall post in conspicuous places, available to all employees and applicants, notices of nondiscrimination. This Section D.9 shall not be deemed to limit or abridge any requirement set forth in Section E.34.

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 by submitting to the State a completed Attestation (accessible through the Edison Supplier Portal) and included at Attachment A, semi-annually during the Term. If the Contractor is a party to more than one contract with the State, the Contractor may submit one attestation that applies to all contracts with the State. All Contractor attestations shall be maintained by the Contractor and made available to State officials upon request.

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

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

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

e. For purposes of this Contract, "illegal immigrant" shall be defined as any person who is not: (i) a United States citizen; (ii) a Lawful Permanent Resident; (iii) a person whose physical presence in the United States is authorized; (iv) allowed by the federal Department of Homeland Security and who, under federal immigration laws or regulations, is authorized to be employed in the U.S.; or (v) is otherwise authorized to provide services under the Contract.

D.11. Records. The Contractor shall maintain documentation for all charges under this Contract. The books, records, and documents of the Contractor, for work performed or money received under this Contract, shall be maintained for a period of ten (10) full years from the date of the final payment and shall be subject to audit at any reasonable time and upon reasonable notice by the State, the Comptroller of the Treasury, or their duly appointed representatives. The financial statements shall be prepared in accordance with generally accepted accounting principles.

D.12. Monitoring. The Contractor's activities conducted and records maintained pursuant to this Contract shall be subject to monitoring and evaluation by the State, the Comptroller of the Treasury, or their duly appointed representatives.

D.13. Progress Reports. The Contractor shall submit brief, periodic, progress reports to the State as requested.

D.14. Strict Performance. Failure by any Party to this Contract to require, in any one or more cases, the strict performance of any of the terms, covenants, conditions, or provisions of this Contract shall not be construed as a waiver or relinquishment of any term, covenant, condition, or provision. No term or condition of this Contract shall be held to be waived, modified, or deleted except by a written amendment signed by the Parties.

D.15. Independent Contractor. The Parties shall not act as employees, partners, joint venturers, or associates of one another. The Parties are independent contracting entities. Nothing in this Contract shall be construed to create an employer/employee relationship or to allow either Party to exercise control or direction over the manner or method by which the other transacts its business affairs or provides its usual services. The employees or agents of one Party are not employees or agents of the other Party.

D.16 Patient Protection and Affordable Care Act. The Contractor agrees that it will be responsible for compliance with the Patient Protection and Affordable Care Act ("PPACA") with respect to itself and its employees, including any obligation to report health insurance coverage, provide health insurance coverage, or pay any financial assessment, tax, or penalty for not providing health insurance. The Contractor shall indemnify the State and hold it harmless from any costs to the State arising from Contractor's failure to fulfill its PPACA responsibilities for itself or its employees.

D.17. Limitation of State's Liability. The State shall have no liability except as specifically provided in this Contract. In no event will the State be liable to the Contractor or any other party for any lost revenues, lost profits, loss of business, decrease in the value of any securities or cash position, time, goodwill, or any indirect, special, incidental, punitive, exemplary or consequential damages of any nature, whether based on warranty, contract, statute, regulation, tort (including but not limited to negligence), or any other legal theory that may arise under this Contract or otherwise. The State's total liability under this Contract (including any exhibits, schedules, amendments or other attachments to the Contract) or otherwise shall under no circumstances exceed the Maximum Liability. This limitation of liability is cumulative and not per incident.

D.18. Limitation of Contractor's Liability. In accordance with Tenn. Code Ann. § 12-3-701, the Contractor's liability for all claims arising under this Contract shall be limited to an amount equal to two (2) times the Maximum Liability amount detailed in Section C.1. and as may be amended, PROVIDED THAT in no event shall this Section limit the liability of the Contractor for: (i) intellectual property or any Contractor indemnity obligations for infringement for third-party intellectual property rights; (ii) any claims covered by

any specific provision in the Contract providing for liquidated damages; or (iii) any claims for intentional torts, criminal acts, fraudulent conduct, or acts or omissions that result in personal injuries or death. For clarity, except as otherwise expressly set forth in this Section, Contractor's indemnification obligations and other remedies available under this Contract are subject to the limitations on liability set forth in this Section.

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

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

D.20. HIPAA Compliance. The State and Contractor shall comply with obligations under the Health Insurance Portability and Accountability Act of 1996 ("HIPAA"), Health Information Technology for Economic and Clinical Health ("HITECH") Act and any other relevant laws and regulations regarding privacy (collectively the "Privacy Rules"). The obligations set forth in this Section shall survive the termination of this Contract.

a. Contractor warrants to the State that it is familiar with the requirements of the Privacy Rules, and will comply with all applicable requirements in the course of this Contract.

b. Contractor warrants that it will cooperate with the State, including cooperation and coordination with State privacy officials and other compliance officers required by the Privacy Rules, in the course of performance of the Contract so that both parties will be in compliance with the Privacy Rules.

c. The State and the Contractor will sign documents, including but not limited to business associate agreements, as required by the Privacy Rules and that are reasonably necessary to keep the State and Contractor in compliance with the Privacy Rules. This provision shall not apply if information received or delivered by the parties under this Contract is NOT "protected health information" as defined by the Privacy Rules, or if the Privacy Rules permit the parties to receive or deliver the information without entering into a business associate agreement or signing another document.

d. The Contractor will indemnify the State and hold it harmless for any violation by the Contractor or its subcontractors of the Privacy Rules. This includes the costs of responding to a breach of protected health information, the costs of responding to a government enforcement action related to the breach, and any fines, penalties, or damages paid by the State because of the violation.

D.21. Tennessee Consolidated Retirement System. Subject to statutory exceptions contained in Tenn. Code Ann. §§ 8-36-801, *et seq*., the law governing the Tennessee Consolidated Retirement System ("TCRS"), provides that if a retired member of TCRS, or of any superseded system administered by TCRS, or of any local retirement fund established under Tenn. Code Ann. §§ 8-35-101, *et seq.*, accepts State employment, the member's retirement allowance is suspended during the period of the employment. Accordingly and notwithstanding any provision of this Contract to the contrary, the Contractor agrees that if it is later determined that the true nature of the working relationship between the Contractor and the State under this Contract is that of "employee/employer" and not that of an independent contractor, the

Contractor, if a retired member of TCRS, may be required to repay to TCRS the amount of retirement benefits the Contractor received from TCRS during the Term.

D.22. Tennessee Department of Revenue Registration. The Contractor shall comply with all applicable registration requirements contained in Tenn. Code Ann. §§ 67-6-601 – 608. Compliance with applicable registration requirements is a material requirement of this Contract.

D.23. Debarment and Suspension. The Contractor certifies, to the best of its knowledge and belief, that it, its current and future principals, its current and future subcontractors and their principals:

a. are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any federal or state department or agency;

b. have not within a three (3) year period preceding this Contract been convicted of, or had a civil judgment rendered against them from commission of fraud, or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, state, or local) transaction or grant under a public transaction; violation of federal or state antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification, or destruction of records, making false statements, or receiving stolen property;

c. are not presently indicted or otherwise criminally or civilly charged by a government entity (federal, state, or local) with commission of any of the offenses detailed in section b. of this certification; and

d. have not within a three (3) year period preceding this Contract had one or more public transactions (federal, state, or local) terminated for cause or default.

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

D.24. Force Majeure. "Force Majeure Event" means fire, flood, earthquake, elements of nature or acts of God, wars, riots, civil disorders, rebellions or revolutions, acts of terrorism or any other similar cause beyond the reasonable control of the Party except to the extent that the non-performing Party is at fault in failing to prevent or causing the default or delay, and provided that the default or delay cannot reasonably be circumvented by the non-performing Party through the use of alternate sources, workaround plans or other means. A strike, lockout or labor dispute shall not excuse either Party from its obligations under this Contract. Except as set forth in this Section, any failure or delay by a Party in the performance of its obligations under this Contract arising from a Force Majeure Event is not a default under this Contract or grounds for termination. The non-performing Party will be excused from performing those obligations directly affected by the Force Majeure Event, and only for as long as the Force Majeure Event continues, provided that the Party continues to use diligent, good faith efforts to resume performance without delay. The occurrence of a Force Majeure Event affecting Contractor's representatives, suppliers, subcontractors, customers or business apart from this Contract is not a Force Majeure Event under this Contract. Contractor will promptly notify the State of any delay caused by a Force Majeure Event (to be confirmed in a written notice to the State within one (1) day of the inception of the delay) that a Force Majeure Event has occurred, and will describe in reasonable detail the nature of the Force Majeure Event. If any Force Majeure Event results in a delay in Contractor's performance longer than forty-eight (48) hours, the State may, upon notice to Contractor: (a) cease payment of the fees for the affected obligations until Contractor resumes performance of the affected obligations; or (b) immediately terminate this Contract or any purchase order, in whole or in part, without further payment except for fees then due and payable. Contractor will not increase its charges under this Contract or charge the State any fees other than those provided for in this Contract as the result of a Force Majeure Event.

D.25. State and Federal Compliance. The Contractor shall comply with all State and federal laws and regulations applicable to Contractor in the Contractor's performance of this Contract.

D.26. Governing Law. This Contract shall be governed by and construed in accordance with the laws of the State of Tennessee, without regard to its conflict or choice of law rules. The Tennessee Claims Commission or the state or federal courts in Tennessee shall be the venue for all claims, disputes, or disagreements arising under this Contract. The Contractor acknowledges and agrees that any rights, claims, or remedies against the State of Tennessee or its employees arising under this Contract shall be subject to and limited to those rights and remedies available under Tenn. Code Ann. §§ 9-8-101 - 408.

D.27. Entire Agreement. This Contract is complete and contains the entire understanding between the Parties relating to its subject matter, including all the terms and conditions of the Parties' agreement. This Contract supersedes any and all prior understandings, representations, negotiations, and agreements between the Parties, whether written or oral.

D.28. Severability. If any terms and conditions of this Contract are held to be invalid or unenforceable as a matter of law, the other terms and conditions of this Contract shall not be affected and shall remain in full force and effect. The terms and conditions of this Contract are severable.

D.29. Headings. Section headings of this Contract are for reference purposes only and shall not be construed as part of this Contract.

D.30. Incorporation of Additional Documents. Each of the following documents is included as a part of this Contract by reference. In the event of a discrepancy or ambiguity regarding the Contractor's duties, responsibilities, and performance under this Contract, these items shall govern in order of precedence below:

a. any amendment to this Contract, with the latter in time controlling over any earlier amendments;
b. this Contract with any attachments or exhibits (excluding the items listed at subsections c. through f., below), which includes Attachment A Attestation Re Personnel, Attachment B Liquidated Damages, Attachment C Interface Controls Document, Attachment D Business Associate Agreement
c. any clarifications of or addenda to the Contractor's proposal seeking this Contract;
d. the State solicitation, as may be amended, requesting responses in competition for this Contract;
e. any technical specifications provided to proposers during the procurement process to award this Contract; and
f. the Contractor's response seeking this Contract.

D.31. Iran Divestment Act. The requirements of Tenn. Code Ann. § 12-12-101, *et seq*., addressing contracting with persons as defined at Tenn. Code Ann. §12-12-103(5) that engage in investment activities in Iran, shall be a material provision of this Contract. The Contractor certifies, under penalty of perjury, that to the best of its knowledge and belief that it is not on the list created pursuant to Tenn. Code Ann. § 12-12-106.

D.32. Insurance. Contractor shall maintain insurance coverage as specified in this Section. The State reserves the right to amend or require additional insurance coverage, coverage amounts, and endorsements required under this Contract. Contractor's failure to maintain or submit evidence of insurance coverage, as required, is a material breach of this Contract. If Contractor loses insurance coverage, fails to renew coverage, or for any reason becomes uninsured during the Term, Contractor shall immediately notify the State. All insurance companies providing coverage must be: (a) acceptable to the State; (b) authorized by the Tennessee Department of Commerce and Insurance ("TDCI"); and (c) rated A- / VII or better by A.M. Best. All coverage must be on a primary basis and noncontributory with any other insurance or self-insurance carried by the State. Contractor agrees to name the State as an additional insured on any insurance policy with the exception of workers' compensation (employer liability) and professional liability (errors and omissions) insurance. All policies must contain an endorsement for a waiver of subrogation in favor of the State. Any deductible or self insured retention ("SIR") over fifty thousand dollars ($50,000) must be approved by the State. The deductible or SIR and any premiums are the Contractor's sole responsibility. The Contractor agrees that the insurance requirements specified in this Section do not reduce any liability the Contractor has assumed under this Contract including any indemnification or hold harmless requirements.

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

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

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

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

a. Commercial General Liability ("CGL") Insurance

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

shall apply separately to this policy or location of occurrence or the general aggregate limit shall be twice the required occurrence limit.

b. Workers' Compensation and Employer Liability Insurance

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

i. Workers' compensation in an amount not less than one million dollars ($1,000,000) including employer liability of one million dollars ($1,000,000) per accident for bodily injury by accident, one million dollars ($1,000,000) policy limit by disease, and one million dollars ($1,000,000) per employee for bodily injury by disease.

2) If the Contractor certifies that it is exempt from the requirements of Tenn. Code Ann. §§ 50-6-101 – 103, then the Contractor shall furnish written proof of such exemption for one or more of the following reasons:

i. The Contractor employs fewer than five (5) employees;

ii. The Contractor is a sole proprietor;

iii. The Contractor is in the construction business or trades with no employees;

iv. The Contractor is in the coal mining industry with no employees;

v. The Contractor is a state or local government; or

vi. The Contractor self-insures its workers' compensation and is in compliance with the TDCI rules and Tenn. Code Ann. § 50-6-405.

c. Automobile Liability Insurance

1) The Contractor shall maintain automobile liability insurance which shall cover liability arising out of any automobile (including owned, leased, hired, and non-owned automobiles).

2) The Contractor shall maintain bodily injury/property damage with a limit not less than one million dollars ($1,000,000) per occurrence or combined single limit.

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

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

credit file or identity monitoring or remediation services and expenses in the performance of services for the State or on behalf of the State hereunder.

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

D.34. Confidentiality of Records. Strict standards of confidentiality of records and information shall be maintained in accordance with applicable state and federal law. All material and information, regardless of form, medium or method of communication, provided to the Contractor by the State or acquired by the Contractor on behalf of the State that is regarded as confidential under state or federal law shall be regarded as "Confidential Information." Nothing in this Section shall permit Contractor to disclose any Confidential Information, regardless of whether it has been disclosed or made available to the Contractor due to intentional or negligent actions or inactions of agents of the State or third parties. Confidential Information shall not be disclosed except as required or permitted under state or federal law. The Contractor shall only use Confidential information for activities pursuant to and related to the performance of the Contract, including limited disclosures of information to subcontractors to satisfy the requirements of the Contract. Contractor shall take all necessary steps to safeguard the confidentiality of such material or information in conformance with applicable state and federal law.

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

D.35. Boycott of Israel. The Contractor certifies that it is not currently engaged in, and covenants that it will not, for the duration of the Contract, engage in a Boycott of Israel, as that term is defined in Tenn. Code Ann. § 12-4-119.

D.36 Prohibited Contract Terms. The prohibited contract terms and conditions enumerated in Tenn. Code Ann. § 12-3-515, shall be a material provision of this Contract. The Contractor acknowledges, understands, and agrees that the inclusion of a term or condition prohibited by Tenn. Code Ann. § 12-3-515, shall be null and void and the Contract shall be enforceable as if the Contract did not contain such term or condition.

E. SPECIAL TERMS AND CONDITIONS:

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

E.2. Contractor Commitment to Diversity. The Contractor shall comply with and make reasonable business efforts to exceed the commitment to diversity represented by the Contractor's Response to RFP 31865-00645 (RFP Attachment 6.2. Section B.15) and resulting in this Contract.

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

E.3. State Ownership of Goods. The State shall have ownership, right, title, and interest in all goods provided by Contractor under this Contract including full rights to use the goods and transfer title in the goods to any third parties, as outlined in 42 CFR §433, inclusive of all subsections, and State Medicaid Director letter 18-005 or the most recent guidance.

E.4. 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.5. Intellectual Property Indemnity. The Contractor agrees to indemnify and hold harmless the State of Tennessee as well as its officers, agents, and employees from and against any and all claims or suits which may be brought against the State concerning or arising out of any claim of an alleged patent, copyright, trade secret or other intellectual property infringement. In any such claim or action brought against the State, the Contractor shall satisfy and indemnify the State for the amount of any settlement or final judgment, and the Contractor shall be responsible for all legal or other fees or expenses incurred by the State arising from any such claim. The State shall give the Contractor notice of any such claim or suit, however, the failure of the State to give such notice shall only relieve Contractor of its obligations under this Section to the extent Contractor can demonstrate actual prejudice arising from the State's failure to give notice. This Section shall not grant the Contractor, through its attorneys, the right to represent the State of Tennessee in any legal matter, as provided in Tenn. Code Ann. § 8-6-106.

E.6. Software License Warranty. Contractor grants a license to the State to use all software provided under this Contract in the course of the State's business and purposes.

E.7. Software Support and Maintenance Warranty. Contractor shall provide to the State all software upgrades, modifications, bug fixes, or other improvements in its software that it makes generally available to its customers.

E.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. Transfer of Ownership of Custom Software Developed for the State.

a) Definitions.

1) "Contractor-Owned Software," shall mean commercially available software the rights to which are owned by Contractor, including but not limited to commercial "off-the-shelf" software which is not developed using State's money or resources.

2) "Custom-Developed Application Software," shall mean customized application software developed by Contractor for the State under this Contract intended to function with the Contractor-Owned Software or any Work Product provided under this Contract.

3) "Rights Transfer Application Software," shall mean any pre-existing application software and documentation owned or supplied by Contractor or a third party necessary for the use, functioning, support, or maintenance of the Contractor-Owned Software, the Custom-Developed Application Software, Third-Party Software, and any Work Product provided to State.

4) "Third-Party Software," shall mean software supplied by Contractor under this Contract or necessary for the functioning of any Work Product not owned by the State or the Contractor.

5) "Work Product," shall mean all deliverables such as software, software source code, documentation, planning, etc., that are created, designed, developed, or documented by the Contractor for the State under this Contract. Work Product shall include Rights Transfer Application Software.

b) Rights and Title to the Software

1) All right, title and interest in and to the Contractor-Owned Software shall at all times remain with Contractor, subject to any license or transfer of rights or ownership granted under this Contract. Contractor grants the State a perpetual non-exclusive license to the Contractor-Owned Software to be used solely with the Custom-Developed Application Software and the Work Product.

2) Contractor shall provide the source code in the Custom-Developed Application Software Work Product and the Contractor-Owned Software, with all subsequent modifications, enhancements, bug-fixes or any other changes in the source code of the Work Product and the Contractor-Owned Software and all other code and documentation necessary for the Custom-Developed Application Software to be installed and function as intended and as set forth in this Contract, to the State.

3) Contractor may lease or sell the Custom-Developed Application Software to third parties with the written permission of the State, which permission may be conditioned on the State receiving royalties from such sales or licenses.

4) All right, title and interest in and to the Custom-Developed Application Software, and to modifications thereof made by State, including without limitation all copyrights, patents, trade secrets and other intellectual property and other proprietary rights embodied by and arising out of the Custom-Developed Application Software, shall belong to State. To the extent such rights do not automatically belong to State, Contractor hereby assigns, transfers, and conveys all right, title and interest in and to the Custom-Developed Application Software, including without limitation the copyrights, patents, trade secrets, and other intellectual property rights arising out of or embodied by the Custom-Developed Application Software. Contractor and its employees, agents, contractors or representatives shall execute any other documents that State or its counsel deem necessary or desirable to document this transfer or allow State to register its claims and rights to such intellectual property rights or enforce them against third parties.

5) All right, title and interest in and to the Third-Party Software shall at all times remain with the third party, subject to any license or other rights granted to the State under this Contract or otherwise.

c) The Contractor may use for its own purposes the general knowledge, skills, experience, ideas, concepts, know-how, and techniques obtained and used during the course of performing under this Contract. The Contractor may develop for itself, or for others, materials which are similar to or competitive with those that are produced under this Contract.

d) Notwithstanding anything to the contrary in this Section, the State shall have all ownership rights in software or modifications thereof and associated documentation that is designed, developed, installed, or improved hereunder with Federal Financial Participation under 45 C.F.R. 95.617 and 45 C.F.R. 92.34, and the Federal government reserves a royalty-free, nonexclusive, and irrevocable license to reproduce, publish, or otherwise use and to authorize others to use for Federal Government purposes, such software, modification, and documentation.

E.10. 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 continental United States, inclusive of backup data.

(2) The Contractor shall encrypt Confidential State Data at rest and in transit using the current version of Federal Information Processing Standard ("FIPS") 140-2 or 140-3 (current applicable version) validated encryption technologies. The State shall control all access to encryption keys. The Contractor shall provide installation and maintenance support at no cost to the State.

(3) The Contractor and the Contractor's processing environment containing Confidential State Data shall either (1) be in accordance with at least one of the following security standards: (i) International Standards Organization ("ISO") 27001; (ii) Federal Risk and Authorization Management Program ("FedRAMP"); or (2) 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") Type II audit. The State shall approve the SOC audit control objectives. The Contractor shall provide proof of current ISO certification or FedRAMP authorization for the Contractor and Subcontractor(s), or provide the State with the Contractor's and Subcontractor's annual SOC Type II audit report within 30 days from when the CPA firm provides the audit report to the Contractor or Subcontractor. 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 or 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 certifications, authorizations, or audits as these are included in the Maximum Liability of this Contract.

(4) 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.

(5) 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

(6) Upon termination of this Contract 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.

(7) All State data must remain in the United States, regardless of whether the data is processed, stored, in-transit, or at rest.

i. Access to State data shall be limited to US-based (onshore) resources only.

ii. Configuration or development of software and code is permitted outside of the United States. However, software applications designed, developed, manufactured, or supplied by persons owned or controlled by, or subject to the jurisdiction or direction of, a foreign adversary, which the U.S. Secretary of Commerce acting pursuant to 15 CFR 7has defined to include the People's Republic of China, among others are prohibited.

iii. Any testing of code outside of the United States must use fake data. A copy of production data may not be transmitted or used outside the United States.

b. Minimum Requirements

(2) 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.

(3) 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.

(4) 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: Twelve (12) hours

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: Twelve (12) hours

(2) The Contractor and the Subcontractor(s) 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. Business Continuity and Disaster Recovery (BC-DR)

1. The Contractor shall develop and maintain a BC-DR plan in accordance with NIST 800-34 r1 (or the most current version) Contingency Planning Guide for Federal Systems, governing disaster preparedness and recovery, including the ability to continue operations in the event that the AVS is rendered inoperable.

2. The Contractor shall maintain the ability to implement the BC-DR plan within a two (2) hour window from the time of the State's direction to implement such plan. Such plan must provide for seamless operation of all contracted activities specified herein. Contractor employees must be familiar with emergency procedures (See Contract Section E.10.d).

3. Upon the State's request, the Contractor shall test the BC-DR with the results added to the BC-DR plan document. The BC-DR must be able to meet the requirements of any

applicable state and federal regulations and policies of the State. The BC-DR must include sufficient information to show that the following requirements are met:

a. Emergency procedures that include but are not limited to steps that must be taken in the event of short-term interruptions in normal operations, including but not limited to fire drills, temporary technical computer/application/server outage issues, and temporary power outages.

b. Emergency procedures that include steps that must be taken in the occurrence of system interruption or failure resulting from network, operating hardware, software, communications infrastructure or operational errors that compromise the integrity of transactions that are active in a live system at the time of the outage or of data maintained in a live or archival system that does or does not cause unscheduled system unavailability.

c. Emergency procedures that include steps that must be taken in the event of a disaster by storm, fire, water damage, sabotage, criminal action, bomb threats, etc., rendering the AVS inoperable.

4. The Contractor shall periodically, but no less than annually, test its BC-DR plan through simulated disasters and lower level failures in order to demonstrate to the State that it can restore functions per the standards outlined in this Contract. Advance notice of the test shall be given to the State. Test results must be shared with the State within three (3) Business Days of the conclusion of the test.

5. In the event that the Contractor fails to demonstrate in the tests of its BC-DR plan that it can restore system functions per the standards outlined in this Contract, the Contractor shall submit to the State a proposed Corrective Action Plan for review and approval by the State that describes how the failure shall be resolved. The Contractor shall deliver the Corrective Action Plan within three (3) Business Days of the conclusion of the test.

E.11. State Furnished Property. The Contractor shall be responsible for the correct use, maintenance, and protection of all articles of nonexpendable, tangible personal property furnished by the State for the Contractor's use under this Contract. Upon termination of this Contract, all property furnished by the State shall be returned to the State in the same condition as when received, less reasonable wear and tear. Should the property be destroyed, lost, or stolen, the Contractor shall be responsible to the State for the fair market value of the property at the time of loss.

E.12. Work Papers Subject to Review. The Contractor shall make all audit, accounting, or financial analysis work papers, notes, and other documentation available for review by the Comptroller of the Treasury or his representatives, upon request, during normal working hours either while the analysis is in progress or subsequent to the completion of this Contract.

E.13. 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.14. Lobbying. The Contractor certifies, to the best of its knowledge and belief, that:

b) No federally appropriated funds have been paid or will be paid, by or on behalf of the Contractor, to any person for influencing or attempting to influence an officer or employee of an agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.

a) If any funds other than federally appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with

any contract, grant, loan, or cooperative agreement, the Contractor shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying,'' in accordance with its instructions.

b) The Contractor shall require that the language of this certification be included in the award documents for all sub-awards at all tiers (including subcontracts, sub-grants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into and is a prerequisite for making or entering into this transaction imposed by 31 USC § 1352.

E.15. Liquidated Damages. In the event of a Contract performance or compliance failure by the Contractor, the State may, but is not obligated to address such Contract performance failure and/or assess damages ("Liquidated Damages") in accordance with Attachment B Liquidated Damages of the Contract. The State shall notify the Contractor of any amounts to be assessed as Liquidated Damages via the Control Memorandum process specified in Contract Section A.15.. The Parties agree that due to the complicated nature of the Contractor's obligations under this Contract it would be difficult to specifically designate a monetary amount for a Contract performance or compliance failure, as these amounts are likely to be uncertain and not easily proven. Contractor has carefully reviewed the Liquidated Damages contained in Contract Attachment B. Liquidated Damages and agrees that these amounts represent a reasonable relationship between the amount and what might reasonably be expected in the event of a Contract performance or compliance failure, are reasonable estimates of the damages that would occur from a Contract performance or compliance failure, and are not punitive. The Parties agree that although the Liquidated Damages represent the reasonable estimate of the damages and injuries sustained by the State due to the Contract performance or compliance failure, they do not include any injury or damage sustained by a third party. The Contractor agrees that the Liquidated Damages are in addition to any amounts Contractor may owe the State pursuant to the indemnity provision or any other sections of this Contract.

The State is not obligated to assess Liquidated Damages as a result of a Contract performance or compliance failure before availing itself of any other remedy. In the event of multiple Contract performance or compliance failures, the Parties recognize that the cumulative effect of these Contract performance failures may exceed the compensation provided by Liquidated Damages. The State may choose to avail itself of any other remedy available under this Contract or at law or equity. The Parties further recognize that the State may not obtain both Liquidated Damages and Actual Damages for the same occurrence of a Contract performance failure.

Without regard to whether the State has imposed Liquidated Damages or pursued any other remedy due to any action or inaction by the Contractor, the State may impose a corrective action plan or similar measure through a Control Memorandum. Such measure is neither punitive nor related to any damages the State might suffer.

E.16. Partial Takeover of Contract. The State may, at its convenience and without cause, exercise a partial takeover of any service that the Contractor is obligated to perform under this Contract, including any service which is the subject of a subcontract between Contractor and a third party (a "Partial Takeover"). A Partial Takeover of this Contract by the State shall not be deemed a breach of contract. The Contractor shall be given at least thirty (30) days prior written notice of a Partial Takeover. The notice shall specify the areas of service the State will assume and the date the State will be assuming. The State's exercise of a Partial Takeover shall not alter the Contractor's other duties and responsibilities under this Contract. The State reserves the right to withhold from the Contractor any amounts the Contractor would have been paid but for the State's exercise of a Partial Takeover. The amounts shall be withheld effective as of the date the State exercises its right to a Partial Takeover. The State's exercise of its right to a Partial Takeover of this Contract shall not entitle the Contractor to any actual, general, special, incidental, consequential, or any other damages irrespective of any description or amount.

E.17. End of Contract Turnover Plan. As part of the transition of this Contract to a new vendor when this Contract ends, if applicable, the Contractor shall, at no additional cost to the State, develop and provide to the State a Turnover Plan no later than one hundred and eighty (180) days prior to the Contract end date.

The Turnover Plan shall contain the information requested by TennCare in a Control Memorandum as described in Section A.15.

E.18. Turnover Requirements. Prior to the end of the Contract term or extension of the Contract term, or in the event of a Contract Termination or Partial Takeover pursuant to Contract Sections pertaining to "Termination for Cause", "Termination for Convenience", and "Partial Takeover of Contract", the State may contract with a successor contractor (Successor Contractor) to assume the Contactor's duties and requirements upon termination of this Contract. This may result in a period of transition during which the Contractor continues to provide services while the Successor Contractor prepares to assume those services, with a switch over from the Contractor to the Successor Contractor occurring on an implementation date (Implementation Date) specified by the State. The Implementation Date will typically coincide with the Successor Contractor's Go-Live Date pursuant to its contract with the State. However, the State may elect, in its sole discretion, to have the Contractor continue some portion of its services and systems after the Successor Contractor's Implementation Date, in which case, unless otherwise agreed to in writing by the State and Contractor, the Contractor shall be compensated for such services and systems in accordance with the provisions of Contract Section C. The Contractor shall be required to participate as directed by the State, at no additional cost, in assisting with the transition by providing specified deliverables, information relating to the Contractor's duties and attending meetings with the State and/or Successor Contractor. The Contractor shall help the State and/or the Successor Contractor develop a comprehensive Turnover Plan covering both the Contractor's and the Successor Contractor's duties and responsibilities to ensure an orderly transition of responsibilities. The Contractor shall, at all times, act in good faith toward the State and/or Successor Contractor to facilitate as seamless a transition as possible. The State will use the Control Memorandum process (as described in Section A.15) to specify deliverables required of the Contractor in aid of the transition process. Failure to fully and timely cooperate with the State's request or provide the requested deliverables may result in liquidated damages as specified in this Contract or in the applicable Control Memorandum. The State shall not be liable to the Contractor for any costs and expenses relating to these deliverables or to the services provided by the Contractor during the transition period, other than as set forth in Contract Section C.

E.19. Unencumbered Personnel. The Contractor shall not restrict its employees, agents, subcontractors or principals who perform services for the State under this Contract from performing the same or similar services for the State after the termination of this Contract, either as a State employee, an independent contractor, or an employee, agent, subcontractor or principal of another contractor with the State.

E.20. Personally Identifiable Information. While performing its obligations under this Contract, Contractor may have access to Personally Identifiable Information held by the State ("PII"). For the purposes of this Contract, "PII" includes "Nonpublic Personal Information" as that term is defined in Title V of the Gramm-Leach-Bliley Act of 1999 or any successor federal statute, and the rules and regulations thereunder, all as may be amended or supplemented from time to time ("GLBA") and personally identifiable information and other data protected under any other applicable laws, rule or regulation of any jurisdiction relating to disclosure or use of personal information ("Privacy Laws"). Contractor agrees it shall not do or omit to do anything which would cause the State to be in breach of any Privacy Laws. Contractor shall, and shall cause its employees, agents and representatives to: (i) keep PII confidential and may use and disclose PII only as necessary to carry out those specific aspects of the purpose for which the PII was disclosed to Contractor and in accordance with this Contract, GLBA and Privacy Laws; and (ii) implement and maintain appropriate technical and organizational measures regarding information security to: (A) ensure the security and confidentiality of PII; (B) protect against any threats or hazards to the security or integrity of PII; and (C) prevent unauthorized access to or use of PII. Contractor shall immediately notify State: (1) of any disclosure or use of any PII by Contractor or any of its employees, agents and representatives in breach of this Contract; and (2) of any disclosure of any PII to Contractor or its employees, agents and representatives where the purpose of such disclosure is not known to Contractor or its employees, agents and representatives. The State reserves the right to review Contractor's policies and procedures used to maintain the security and confidentiality of PII and Contractor shall, and cause its employees, agents and representatives to, comply with all reasonable requests or directions from the State to enable the State to verify or ensure that Contractor is in full compliance with its obligations under this Contract in relation to PII. Upon termination or expiration of the Contract or at the State's direction at any time in its sole discretion, whichever is earlier, Contractor shall immediately return to the State any and all PII which it has received under this Contract and shall destroy all records of such PII.

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

E.21. Federal Funding Accountability and Transparency Act (FFATA). This Contract requires the Contractor to provide supplies or services that are funded in whole or in part by federal funds that are subject to FFATA. The Contractor is responsible for ensuring that all applicable requirements, including but not limited to those set forth herein, of FFATA are met and that the Contractor provides information to the State as required.

The Contractor shall comply with the following:

a) Reporting of Total Compensation of the Contractor's Executives.

1) The Contractor shall report the names and total compensation of each of its five most highly compensated executives for the Contractor's preceding completed fiscal year, if in the Contractor's preceding fiscal year it received:

i) 80 percent or more of the Contractor's annual gross revenues from federal procurement contracts and federal financial assistance subject to the Transparency Act, as defined at 2 CFR 170.320 (and subawards); and

ii) $25,000,000 or more in annual gross revenues from federal procurement contracts (and subcontracts), and federal financial assistance subject to the Transparency Act (and subawards); and

iii) The public does not have access to information about the compensation of the executives through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 USC 78m(a), 78o(d)) or section 6104 of the Internal Revenue Code of 1986. (To determine if the public has access to the compensation information, see the U.S. Security and Exchange Commission total compensation filings at http://www.sec.gov/answers/execomp.htm).

As defined in 2 C.F.R. § 170.315, "Executive" means officers, managing partners, or any other employees in management positions.

2) Total compensation means the cash and noncash dollar value earned by the executive during the Contractor's preceding fiscal year and includes the following (for more information see 17 C.F.R. § 229.402l(2)):

i) Salary and bonus.

ii) Awards of stock, stock options, and stock appreciation rights. Use the dollar amount recognized for financial statement reporting purposes with respect to the fiscal year in accordance with the Statement of Financial Accounting Standards No. 123 (Revised 2004) (FAS 123R), Shared Based Payments.

iii) Earnings for services under non-equity incentive plans. This does not include group life, health, hospitalization or medical reimbursement plans that do not discriminate in favor of executives, and are available generally to all salaried employees.

iv) Change in pension value. This is the change in present value of defined benefit and actuarial pension plans.

v) Above-market earnings on deferred compensation which is not tax qualified.

vi) Other compensation, if the aggregate value of all such other compensation (e.g. severance, termination payments, value of life insurance paid on behalf of the employee, perquisites or property) for the executive exceeds $10,000.

b) The Contractor must report executive total compensation described above to the State by the end of the month during which this Contract is awarded.

c) If this Contract is amended to extend the Term, the Contractor must submit an executive total compensation report to the State by the end of the month in which the term extension becomes effective.

d) The Contractor will obtain a Data Universal Numbering System (DUNS) number and maintain its DUNS number for the term of this Contract. More information about obtaining a DUNS Number can be found at: http://fedgov.dnb.com/webform/

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

E.22. Drug-Free Workplace. The Contractor shall provide a drug-free workplace pursuant to the Drug-Free Workplace Act of 1988, Title 41 U.S.C. §§ 701, *et seq*., and the regulations in Title 41 U.S.C.A. §§ 8101 through 8106.

E.23. Survival. The terms, provisions, representations, and warranties contained in this Contract including, but not limited to D.34 (Confidentiality of Records), E.20 (Personally Identifiable Information), E.26 (Notification of Breach and Notification of Suspected Breach), E.28 Social Security Administration (SSA) Required Provisions for Data Security, and E.32 (Internal Revenue Service (IRS) Safeguarding Of Return Information) which by their sense and context are intended to survive the performance and termination of this Contract, shall so survive the completion of performance and termination of this Contract.

E.24. Applicable Legal Authority The Contractor agrees to comply with all applicable federal and State laws, rules, regulations, sub-regulatory guidance, executive orders, TennCare waivers, the State Medicaid Manual, and all current, modified or future Court decrees, orders or judgments applicable to the State's TennCare program. Such compliance shall be performed at no additional cost to the State.

E.25. Business Associate. As the Contractor will provide services to TennCare pursuant to which the Contractor will have access to, receive from, create, or receive on behalf of TennCare Protected Health Information, or Contractor will have access to, create, receive, maintain or transmit on behalf of TennCare Electronic Protected Health Information (as those terms are defined under HIPAA and HITECH), Contractor hereby acknowledges its designation as a business associate under HIPAA and agrees to comply with all applicable HIPAA regulations and any further responsibilities set forth in the Business Associate Agreement (See Contract Attachment D) between the Parties.

E.26. Notification of Breach and Notification of Suspected Breach. The Contractor shall notify TennCare's Privacy Office immediately upon becoming aware of —and in no case later than forty-eight (48) hours after discovery of —any incident, either confirmed or suspected, that represents or may represent unauthorized access, use or disclosure of encrypted or unencrypted computerized data that materially compromises the security, confidentiality, or integrity of enrollee PHI maintained or held by the Contractor, including any unauthorized acquisition of enrollee PHI by an employee or otherwise Authorized User of the Contractor 's system. This includes, but is not limited to, loss or suspected loss of remote computing or telework devices such as laptops, Personal Digital Assistants (PDA), Blackberry devices (or other Smartphones), Universal Serial Bus (USB) drives, thumb drives, flash drives, Compact Discs (CD), and/or hard disks.

E.27. Transmission of Contract Deliverables. All information or data that is necessary for one or more deliverable set forth in this Contract shall be transmitted between TennCare and Contractor via the data transfer method specified in advance by TennCare. This may include, but shall not be limited to, transfer through TennCare's SFTP system. Failure by the Contractor to transmit information or data that is

necessary for a deliverable in the manner specified by TennCare, may, at the option of TennCare, result in liquidated damages as set forth in Contract Attachment B –Liquidated Damages.

E.28. Social Security Administration (SSA) Required Provisions for Data Security.

a. Definitions.

1. SSA-supplied data" or "data" as used in this section means an individual's personally identifiable information (e.g., name, social security number, income), supplied by the Social Security Administration to TennCare to determine entitlement or eligibility for federally-funded programs pursuant to a Computer Matching and Privacy Protection Act Agreement and Information Exchange Agreement between SSA and the State of Tennessee.

b. The Contractor shall comply with limitations on use, treatment, and safeguarding of data under the Privacy Act of 1974 (5 U.S.C. 552a), as amended by the Computer Matching and Privacy Protection Act of 1988, related Office of Management and Budget guidelines, the Federal Information Security Management Act of 2002 (44 U.S.C. §3541, *et seq.*), and related National Institute of Standards and Technology guidelines, which provide the requirements that the SSA stipulates that the Contractor must follow with regard to use, treatment, and safeguarding data in the event data is exchanged with a federal information system. In addition, the Contractor shall have in place administrative, physical, and technical safeguards for data. The Contractor shall also comply with Section 1106(a) of the Act (42 U.S.C. 1306) and the regulations promulgated pursuant to that section (20 C.F.R. Part 401).

c. The Contractor shall specify in its agreements with any agent or subcontractor that will have access to data that such agent or subcontractor agrees to be bound by the same restrictions, terms and conditions that apply to the Contractor pursuant to this Section;

d. The Contractor shall not duplicate in a separate file or disseminate, without prior written permission from TennCare, the data governed by the Contract for any purpose other than that set forth in this Contract for the administration of the TennCare program. Should the Contractor propose a redisclosure of said data, the Contractor must specify in writing to TennCare the data the Contractor proposes to redisclose, to whom, and the reasons that justify the redisclosure. TennCare will not give permission for such redisclosure unless the redisclosure is required by law or essential to the administration of the TennCare program.

e. The Contractor agrees to abide by all relevant federal laws, restrictions on access, use, and disclosure, and security requirements in this Contract.

f. The Contractor shall maintain a current list of the employees of such contractor with access to SSA data and provide such lists to TennCare upon request and at any time there are changes.

g. The Contractor shall restrict access to the data obtained from TennCare to only those authorized employees who need such data to perform their official duties in connection with purposes identified in this Contract. The Contractor shall not further duplicate, disseminate, or disclose such data without obtaining TennCare's prior written approval.

h. The Contractor shall ensure that its employees:

1. Properly safeguard SSA-supplied data furnished by TennCare under this Contract from loss, theft, or inadvertent disclosure;
2. Receive regular, relevant, and sufficient SSA data-related training, including use, access, and disclosure safeguards and information regarding penalties for misuse of information;
3. Understand and acknowledge that they are responsible for safeguarding this information at all times, regardless of whether or not the Contractor employee is at his or her regular duty station;
4. Ensure that laptops and other electronic devices/ media containing SSA-supplied data are encrypted and/or password-protected;
5. Send emails containing SSA-supplied data only if the information is encrypted or if the transmittal is secure; and,

6. Limit disclosure of the information and details relating to a SSA-supplied data loss only to those with a need to know.

i. Contractor employees who access, use, or disclose TennCare or TennCare SSA-supplied data in a manner or purpose not authorized by this Contract may be subject to civil and criminal sanctions pursuant to applicable federal statutes.

j. Loss or Suspected Loss of Data - If an employee of the Contractor becomes aware of suspected or actual loss of SSA-supplied data, the Contractor must notify TennCare immediately upon becoming aware to report the actual or suspected loss. The Contractor must provide TennCare with timely updates as any additional information about the loss of SSA-supplied data becomes available. If the Contractor experiences a loss or breach of said data, TennCare will determine whether or not notice to individuals whose data has been lost or breached shall be provided and the Contractor shall bear any costs associated with the notice or any mitigation.

k. TennCare may immediately and unilaterally suspend the data flow under this Contract, or terminate this Contract, if TennCare, in its sole discretion, determines that the Contractor has: (1) made an unauthorized use or disclosure of TennCare SSA-supplied data; or (2) otherwise violated or failed to follow the terms and conditions of this Contract.

E.29. Medicaid and CHIP. The Contractor must provide safeguards that restrict the use or disclosure of information concerning Medicaid and Children's Health Insurance Plan (CHIP) applicants and beneficiaries to purposes directly connected with the administration of the plan:

a) Purposes directly related to the administration of Medicaid and CHIP include:

1) establishing eligibility;

2) determining the amount of medical assistance;

3) providing services for beneficiaries; and,

4) conducting or assisting an investigation, prosecution, or civil or criminal proceeding related to Medicaid or CHIP administration.

b) The Contractor must have adequate safeguards to assure that:

1) Information is made available only to the extent necessary to assist in the valid administrative purposes of those receiving the information, and

2) Information received under the Internal Revenue Code (Title 26 of the United States Code (USC)) is exchanged only with parties authorized to receive that information under that section of the United States Code; and, the information is adequately stored and processed so that it is protected against unauthorized disclosure for other purposes.

c) The Contractor must have criteria that govern the types of information about applicants and beneficiaries that are safeguarded. This information must include at least:

1) Names and addresses;

2) Medical services provided;

3) Social and economic conditions or circumstances;

4) Contractor evaluation of personal information;

5) Medical data, including diagnosis and past history of disease or disability

6) Any information received for verifying income eligibility and amount of medical assistance payments, including income information received from SSA or the Internal Revenue Service;

7) Income information received from SSA or the Internal Revenue Service must be safeguarded according to Medicaid and CHIP requirements;

8) Any information received in connection with the identification of legally liable third party resources; and.

9) Social Security Numbers.

d) The Contractor must have criteria approved by TennCare specifying:

1) The conditions for release and use of information about applicants and beneficiaries;

2) Access to information concerning applicants or beneficiaries must be restricted Contractor representatives or other representatives who are subject to standards of confidentiality that are comparable to those of TennCare;

3) The Contractor shall not publish names of applicants or beneficiaries;

4) The Contractor shall obtain permission from a family or individual, whenever possible, before responding to a request for information from an outside source, unless the information is to be used to verify income, eligibility and the amount of medical assistance payment to an authorized individual or entity; or if, because of an emergency situation, time does not permit obtaining consent before release, the Contractor shall notify TennCare, the family, or individual immediately after supplying the information

5) The Contractor's policies must apply to all requests for information from outside sources, including governmental bodies, the courts, or law enforcement officials.

6) The Contractor shall notify TennCare of any requests for information on applicants or beneficiaries by other governmental bodies, the courts or law enforcement officials ten (10) days prior to releasing the requested information.

7) If a court issues a subpoena for a case record or for any Contractor representative to testify concerning an applicant or beneficiary, the Contractor must notify TennCare at least ten (10) days prior to the required production date so TennCare may inform the court of the applicable statutory provisions, policies, and regulations restricting disclosure of information.

8) The Contractor shall not request or release information to other parties to verify income, eligibility and the amount of assistance under Medicaid or CHIP, prior to express approval from TennCare.

E.30. Employees Excluded from Medicare, Medicaid, or CHIP. The Contractor does hereby attest, certify, warrant, and assure that the Contractor shall not knowingly employ, in the performance of this Contract, employees who have been excluded from participation in the Medicare, Medicaid, and/or CHIP programs pursuant to the Social Security Act, Section 1128 (Exclusion of Certain Individuals and Entities from Participation in Medicare and State Health Care Programs).

E.31. Offer of Gratuities. By signing this Contract, the Contractor signifies that no member of or a delegate of Congress, nor any elected or appointed official or employee of the State of Tennessee, the federal General Accounting Office, federal Department of Health and Human Services, CMS, or any other state or federal agency has or will benefit financially or materially from this Contract. This Contract may be terminated by TennCare as provided in Section D.6, if it is determined that gratuities of any kind were offered to or received by any of the aforementioned officials or employees from the Contractor, its agent, or employees.

E.32. Internal Revenue Service (IRS) Safeguarding Of Return Information:

a) PERFORMANCE

In performance of this Contract, the Contractor shall comply with, and assume responsibility for its officers' and employees' compliance with, the requirements outlined in Contract Section E.#. IRS Safeguard of Return Information. All cited regulations, statutes, publications, or IRS authority cited or referenced apply as they are in effect, or as subsequently amended or revised after the Effective Date of the Contract or any Amendment.

1) Contract Section E.#. IRS Safeguard of Return Information shall only apply if Contractor receives or delivers information under this Contract that is or includes “federal tax returns” or “federal return information” as defined by IRS Publication 1075 and IRC 6103.

2) All work will be performed under the supervision of the Contractor. The Contractor and Contractor’s officers or employees to be authorized access to FTI must meet background check requirements defined in IRS Publication 1075. The Contractor will maintain a list of officers or employees authorized access to FTI. Such list will be provided to TennCare and, upon request, to the IRS.

3) FTI in hardcopy or electronic format shall be used only for the purpose of carrying out the provisions of this Contract. FTI in any format shall be treated as confidential and shall not be divulged or made known in any manner to any person except as may be necessary in the performance of this Contract. Inspection or disclosure of FTI to anyone other than the Contractor or the Contractor’s officers or employees authorized is prohibited.

4) FTI will be accounted for upon receipt and properly stored before, during, and after processing. In addition, any related output and products require the same level of protection as required for the source material.

5) The Contractor will certify that FTI processed during the performance of this Contract will be completely purged from all physical and electronic data storage with no output to be retained by the Contractor at the time the work is completed. If immediate purging of physical and electronic data storage is not possible, the Contractor will certify that any FTI in physical or electronic storage will remain safeguarded to prevent unauthorized disclosures.

6) Any spoilage or any intermediate hard copy printout that may result during the processing of FTI will be given to TennCare. When this is not possible, the Contractor will be responsible for the destruction of the spoilage or any intermediate hard copy printouts and will provide TennCare with a statement containing the date of destruction, description of material destroyed, and the destruction method.

7) All computer systems receiving, processing, storing, or transmitting FTI must meet the requirements in IRS Publication 1075. To meet functional and assurance requirements, the security features of the environment must provide for the managerial, operational, and technical controls. All security features must be available and activated to protect against unauthorized use of and access to FTI.

8) No work involving FTI furnished under this Contract will be subcontracted without the prior written approval of the IRS.

9) Contractor will ensure that the terms of FTI safeguards described herein are included, without modification, in any approved subcontract for work involving FTI.

10) To the extent the terms, provisions, duties, requirements, and obligations of this Contract apply to performing services with FTI, the Contractor shall assume toward any subcontractor all obligations, duties and responsibilities that TennCare under this Contract assumes toward the Contractor, and any subcontractor, shall assume toward the Contractor all the same obligations, duties and responsibilities which the Contractor assumes toward the TennCare under this Contract.

11) In addition to any subcontractor’s obligations and duties under an approved subcontract, the terms and conditions of this Contract apply to all subcontractors, and all subcontractors are bound and obligated to the Contractor hereunder by the same terms and conditions by which the Contractor is bound and obligated to TennCare under this Contract.

12) For purposes of this Contract, the term “Contractor” includes any officer or employee of the Contractor with access to or who uses FTI, and the term “subcontractor” includes any officer or employee of the subcontractor with access to or who uses FTI.

13) TennCare will have the right to void the Contract if the Contractor fails to meet the terms of FTI safeguards described herein.

b) CRIMINAL/CIVIL SANCTIONS

1) Each officer or employee of the Contractor to whom FTI is or may be disclosed shall be notified in writing that FTI disclosed to such officer or employee can be used only for a purpose and to the extent authorized herein, and that further disclosure of any FTI for a purpose not authorized herein constitutes a felony punishable upon conviction by a fine of as much as five thousand dollars ($5,000) or imprisonment for as long as five (5) years, or both, together with the costs of prosecution.

2) Each officer or employee of the Contractor to whom FTI is or may be accessible shall be notified in writing that FTI accessible to such officer or employee may be accessed only for a purpose and to the extent authorized herein, and that access/inspection of FTI without an official need-to-know for a purpose not authorized herein constitutes a criminal misdemeanor punishable upon conviction by a fine of as much as one thousand dollars ($1,000) or imprisonment for as long as one (1) year, or both, together with the costs of prosecution.

3) Each officer or employee of the Contractor to whom FTI is or may be disclosed shall be notified in writing that any such unauthorized access, inspection or disclosure of FTI may also result in an award of civil damages to the IRS against the officer or employee in an amount equal to the sum of the greater of one thousand dollars ($1,000) for each unauthorized access, inspection, or disclosure, or the sum of actual damages sustained as a result of such unauthorized access, inspection, or disclosure, plus in the case of a willful unauthorized access, inspection, or disclosure or an unauthorized access/inspection or disclosure which is the result of gross negligence, punitive damages, plus the cost of the action. These penalties are prescribed by IRC sections 7213, 7213A and 7431 and set forth at 26 CFR 301.6103(n)-1. In addition to the civil damages outlined above, TennCare may pursue any potential remedy under this Contract, including but not limited to any Liquidated Damages Attachment or Exhibit, or at law or equity for Contract performance failures resulting or arising from Contractor’s noncompliance with this Contract Section on IRS Safeguard of Return Information.

4) Additionally, it is incumbent upon the Contractor to inform its officers and employees of the penalties for improper disclosure imposed by the Privacy Act of 1974, 5 U.S.C. 552a. Specifically, 5 U.S.C. 552a(i)(1), which is made applicable to contractors by 5 U.S.C. 552a(m)(1), provides that any officer or employee of a contractor, who by virtue of his/her employment or official position, has possession of or access to IRS and/or TennCare records which contain individually identifiable information, the disclosure of which is prohibited by the Privacy Act or regulations established thereunder, and who knowing that disclosure of the specific material is so prohibited, willfully discloses the material in any manner to any person or agency not entitled to receive it, shall be guilty of a misdemeanor and fined not more than five thousand dollars ($5,000).

5) Granting the Contractor access to FTI must be preceded by certifying that each officer or employee understands TennCare’s security policy and procedures for safeguarding FTI. The Contractor and each officer or employee must maintain their authorization to access FTI through annual recertification of their understanding of TennCare’s security policy and procedures for safeguarding FTI. The initial certification and recertifications must be documented and placed in TennCare's files for review. As part of the certification and at least annually afterwards, the Contractor and each officer or employee must be advised of the provisions of IRC sections 7213, 7213A, and 7431. (See Publication 1075 Exhibit 4, Sanctions for Unauthorized Disclosure, and Exhibit 5, Civil Damages for Unauthorized Disclosure). The training on TennCare’s security policy and procedures provided before the initial certification and annually thereafter must also cover the

incident response policy and procedure for reporting unauthorized disclosures and data breaches. (See Publication 1075 Section 10). For the initial certification and the annual recertifications, the Contractor and each officer or employee must sign, either with ink or electronic signature, a confidentiality statement certifying their understanding of the security requirements.

c) INSPECTION

The IRS and TennCare, with 24-hour notice, shall have the right to send its inspectors into the offices and plants of the Contractor to inspect facilities and operations performing any work with FTI under this Contract for compliance with requirements defined in IRS Publication 1075. The IRS' right of inspection shall include the use of manual and/or automated scanning tools to perform compliance and vulnerability assessments of information technology ("IT") assets that access, store, process or transmit FTI. Based on the inspection, corrective actions may be required in cases where the Contractor is found to be noncompliant with FTI safeguard requirements.

E.33. Discovery and Litigation. TennCare is frequently involved in litigation as either a party or a non-party with relevant information. If any such litigation should arise, the Contractor shall cooperate fully and timely with any State attorneys or paralegals at no additional cost to the State, which shall include the following responsibilities:

a. **Litigation Support**. The Contractor shall make its personnel available to testify in Tennessee, whether in person before a tribunal or by deposition. The Contractor agrees to waive any objections to any subpoena issued by a Tennessee tribunal, in any case relating to this Contract.

b. **Discovery and Litigation Hold Requirements**. The Contractor shall cooperate with all TennCare requests to aid in data and document retention and collection, as required for litigation. The Contractor shall promptly provide the State with all information within the Contractor's control if required to do so by a discovery demand or court order. The State will exert its best effort to narrow the scope of any discovery request.

The obligation to meet the requirements listed above shall survive the termination of the Contract and shall extend to any subcontractor hired by the Contractor to provide goods or perform services on its behalf as required herein.

E.34. Nondiscrimination Compliance Requirements. No person on the grounds of disability, age, race, color, religion, sex, national origin, or any other classifications protected under federal or state civil rights laws 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. The Contractor agrees to cooperate with the Division of TennCare's Office of Civil Rights ("OCRC") in carrying out its federal and state nondiscrimination compliance obligations, which include and are not limited to: the Title VI of the Civil Rights Act of 1964, Section 504 and 508 of the Rehabilitation Act of 1973, the Americans with Disabilities Act of 1990, the Age Discrimination Act of 1975, and 42 U.S.C. § 18116 (codified at 45 C.F.R. pt. 92) and Section D.9 of this Contract. The Contractor shall provide OCRC with the name and contact information for a staff member who will work with OCRC to fulfill the nondiscrimination compliance activities related to the terms of this Contract.

a. *Discrimination Complaints and Assistance.* The Contractor shall provide any discrimination complaint received relating to this Contract's services and activities within in two (2) days of receipt to OCRC at HCFA.Fairtment@tn.gov. The Contractor agrees to cooperate with OCRC and other federal and state authorities during discrimination complaint investigations and to assist individuals in obtaining information on how they can report a complaint or get assistance for a disability related need that involves TennCare's services or activities by contacting OCRC. To satisfy this obligation the Contractor may direct the individual to OCRC's webpage at: https://www.tn.gov/tenncare/members-applicants/civil-

rights-compliance.html or to call TennCare Connect at 855-259-0701 if they need assistance with filing a complaint.

b. *Electronic and Information Technology Accessibility Requirements.* To the extent that the Contractor is using electronic and information communication technology to fulfill its obligations under this Contract, the Contractor agrees to comply with the electronic and information technology accessibility requirements under the federal civil rights laws including Section 504 and Section 508 of the Rehabilitation Act of 1973 ("Section 508"), the Americans with Disabilities Act, and 45 C.F.R. pt. 92 (or any subsequent standard adopted by an oversight administrative body, including the Federal Accessibility Board). To comply with the accessibility requirements for Web content and non-Web electronic documents and software, the Contractor shall use the most current W3C's Web Content Accessibility Guidelines ("WCAG") level AA or higher with a goal to transition to WCAG 3 level silver (For the W3C's guidelines see: https://www.w3.org/WAI/standards-guidelines/ and Section 508 standards: https://www.access-board.gov/ict/). Additionally, the Contractor agrees to regularly inspect assessment methods and data algorithms to promote equity and eliminate bias when generating results.

The Contractor shall comply with the civil rights requirements set forth in 42 C.F.R. § 433.112 regarding the design, development, installation or enhancement of mechanized processing and information retrieval systems. In addition, the Contractor shall participate in the State's effort to comply with the nondiscrimination requirements for acquiring automatic data and processing equipment and services set forth in 45 C.F.R. § 95.633.

c. *Nondiscrimination Compliance Reports.* The Contractor shall submit the following nondiscrimination compliance deliverable to OCRC using TennCare's Office of Compliance Management Oversight Processing System ("TOPS") as follows:

On an annual basis, using TOPS, OCRC shall provide the Contractor with a Nondiscrimination Compliance Questionnaire. The Contractor shall answer the applicable questions and submit the completed questionnaire to OCRC within sixty (60) days of receipt of the questionnaire with any requested documentation, which shall include, the Contractor's: Assurance of Nondiscrimination, nondiscrimination policies, data capturing the amount of language and communication assistance services provided to individuals, and a civil rights and cultural compliance training report.

d. *Training*. The Contractor's staff members carrying out the terms of this Contract shall receive annual training on the entity's: policies on nondiscrimination and cultural competence and complaint procedures. The Contractor's new hires carrying out the terms of this Contract shall receive this training within thirty (30) days of joining the Contractor's workforce.

IN WITNESS WHEREOF,

CONTRACTOR LEGAL ENTITY NAME:

CONTRACTOR SIGNATURE **DATE**

PRINTED NAME AND TITLE OF CONTRACTOR SIGNATORY (above)

DEPARTMENT OF FINANCE AND ADMINISTRATION
DIVISION OF TENNCARE:

JIM BRYSON, COMMISSIONER **DATE**

ATTACHMENT A

ATTESTATION RE PERSONNEL USED IN CONTRACT PERFORMANCE

SUBJECT CONTRACT NUMBER:	
CONTRACTOR LEGAL ENTITY NAME:	
EDISON VENDOR IDENTIFICATION NUMBER:	

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

_____

CONTRACTOR SIGNATURE

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

_____

PRINTED NAME AND TITLE OF SIGNATORY

_____

DATE OF ATTESTATION

ATTACHMENT B

LIQUIDATED DAMAGES

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

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

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

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

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

	PROGRAM ISSUES		DAMAGE
1.	Failure by the Contractor to meet the standards for privacy, security, and confidentiality of individual data as evidenced by a breach of the security per Section D.34. and E.26.		The damage that may be assessed shall be one thousand dollars ($1,000.00) per affected member per occurrence.
2.	Failure by the Contractor to execute the appropriate agreements to effectuate transfer and exchange of enrollee PHI or TennCare confidential information including, but not limited to, a data use agreement, trading partner agreement, business associate agreement or qualified protective order prior to the use or disclosure of PHI to a third party. (See E.25. and Business Associate Agreement between the parties)		The damage that may be assessed shall be one thousand dollars ($1,000.00) per affected member per occurrence.
3.	Failure by the Contractor to seek express written approval from TennCare prior to the use or disclosure of enrollee data or TennCare confidential information in any form via any medium with any third party beyond the boundaries and jurisdiction of the United States. (See E.20 and Business Associate Agreement between the parties)		The damage that may be assessed shall be one thousand dollars ($1,000.00) per affected member per occurrence.
4.	Failure by the Contractor to timely report violations in the access, use and disclosure of PHI or timely report a security incident or timely make a notification of breach or notification of suspected breach per Sections. (See E.26 and Business Associate Agreement between the parties.)		The damage that may be assessed shall be one thousand dollars ($1,000.00) per affected member per occurrence.
5.	Failure by the Contactor to comply with timelines specified in Contract Section A.11. regarding replacement of Key personnel.		The damage that may be assessed shall be one thousand dollars ($1,000.00) per day beyond specified timelines.
6.	Failure by the Contractor to fully and timely cooperate with the State's request or to provide the requested deliverables pursuant to transition of services as required by Contract Section E.18.		The damage that may be assessed shall be one thousand dollars ($1,000.00) per occurrence.
7.	Failure by the Contractor to provide a timely Corrective Action Plan..		The damage that may be assessed shall be one thousand dollars ($1,000.00) per day beyond specified

8.	Failure to meet the approved implementation schedule, including integration testing verification or compliance with file layout specified in Attachment D.		The damage that may be assessed shall be one thousand dollars ($1,000.00) per occurrence.

ATTACHMENT C

Tennessee Eligibility Determination System (TEDS) Project

Interface Control Documents
TEDS-AVS
Asset Verification Interface

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1 Asset Verification Service (AVS)

This Interface Control Document (ICD) describes the relationship between the trading partner (the source system) and the Tennessee Eligibility Determination System (TEDS) (the target system).

This ICD specifies the interface requirements to be met by the participating systems and how those requirements will be implemented. It describes the concept of operations for the interface, defines the message structure and protocols that govern the interchange of data, and identifies the communication paths along which the data are expected to flow.

This Interface Control Document (ICD) documents and tracks the necessary information required to effectively define the TEDS system's interface as well as any rules for communicating with them in order to give the development team guidance on architecture of the system to be developed.

The intended audience of the TEDS Interface Control is all project stakeholders, including TennCare, TennCare IS, TEDS, TAS, IV&V, and the AVS Contractor.

1.1 Introduction

This document details the interface between the Tennessee Eligibility Determination System (TEDS) and the state's AVS agency for verifying if an existing individual in TEDS should have their benefits adjusted due to additional resource information.

Below are the system contacts:

Name	Department	Role	Email
Kim Hagan	TennCare	TEDS Director	Kimberly.Hagan@TN.gov
Scott Hiett	TennCare IS	TennCare IS Director	Scott.Hiett@TN.gov

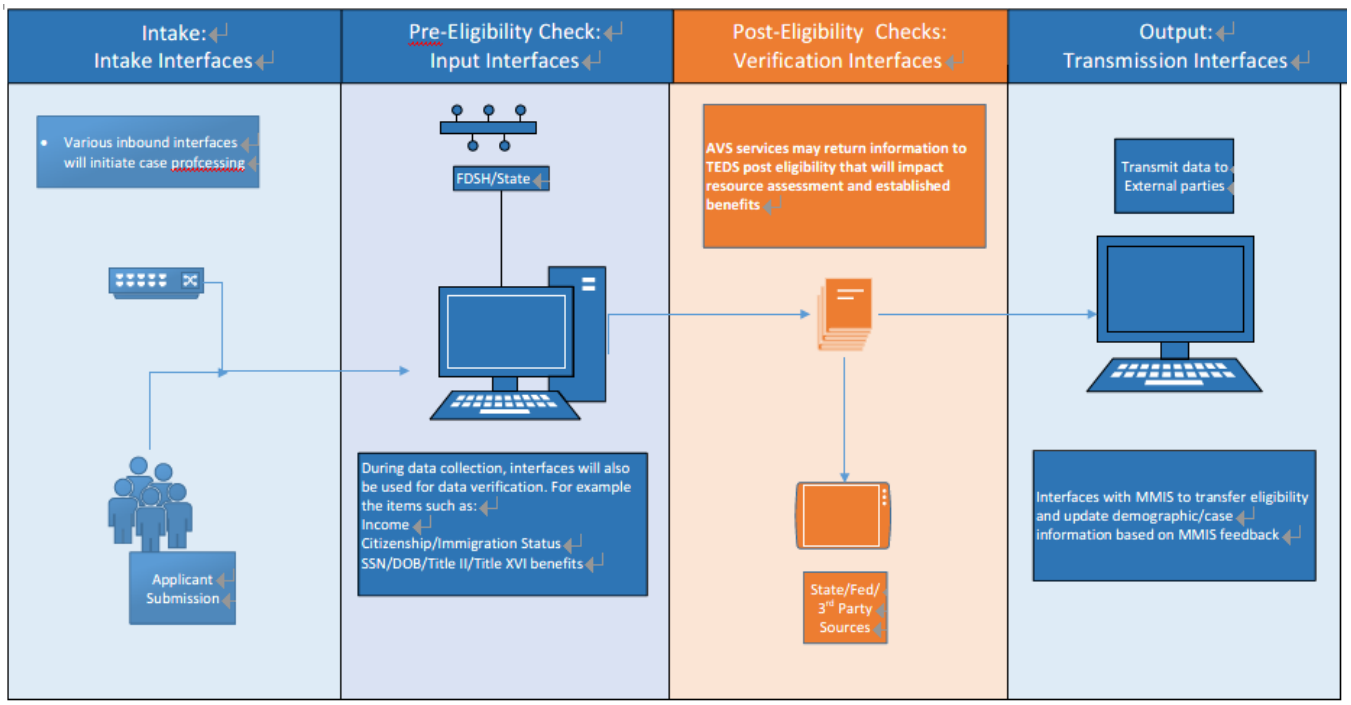
1.2 Purpose and Rationale

The Asset Verification Service is provided by the trading partner in order to verify the assets (both disclosed and undisclosed) of an applicant, in order to confirm that the state's Medicaid budget is allocated to those truly eligible for the program.

The AVS interface is a web service between AVS and TEDS. When a worker is completing an assessment for benefits that require a resource check (any COE that requires a resource check), they must call AVS from the Non-MAGI driver flow to see if the member has any countable resources, which could affect their eligibility. The Asset Verification Service will be accessible through TEDS.

1.3 Overview

TEDS will interface with the trading partner to verify the asset information of existing individuals or individuals applying for Aged, Blind and Disabled or Long-Term Care categories. The Asset Verification Service will provide verification for assets attested by an applicant as well as locate undisclosed assets of an existing individual or a new applicant. The figure below demonstrates the roles that the AVS interface plays in referencing information for TEDS' eligibility determinations:



1.4 Addressed Requirements/Business Rules

All requirement mappings to Design widgets will be found in the Requirements Tractability Matrix (RTM).

1.5 Scope

The purpose of this section is to describe the interface interactions and activities required for the following AVS:

- **Intake**: Member applies for a COE that requires resource validation. The AVS web service will be used to validate resources and prompt workers to investigate as appropriate
- **Change**: Member updates their attested resources to an unverified value. Web service is called to validate resources and prompt workers to investigate as appropriate

1.5.1 Constraints/Dependencies

Please refer to the Interface Standards document for common constraints and dependencies.

1.6 Interface Summary

The table below provides key summary information related to the interface as identified during requirements:

Category	Details
Trading Partner	TBD
Interface	Asset Verification System
Entity	TBD
Interface Mode	Real time

Interface Protocol	SOAP
Directionality from TEDS	Bi-directional between TEDS and the AVS
SSL (Secure Socket Layer)	N/A

Category	Details
Certificates	<Not yet received>
Frequency	Real time
Stakeholders	TEDS, Trading Partner, TennCare, TennCare IS
Transmission Media	XML
Is File Split Needed?	No
Is File Merge Needed?	No
Average Number of Records	1
File Message Record Size	Unknown
Asynchronous/Synchronous	Synchronous

1.7 Interface Business Background and Summary

The subsections below give high level functional details specific to this interface.

1.7.1 Functional Background

The AVS interface is a bidirectional interface between TEDS and the AVS. A service call will originate from TEDS to AVS, and AVS will send a response to TEDS when the information is available. Both service calls will prompt a real-time acknowledgement from the receiving system. TEDS will use this information during change and update flows to either prevent a member from getting eligibility for benefits that require a resource check or to ensure that resources are appropriately considered in eligibility determinations for benefits that require a resource check.

1.7.2 High Level Business Process Summary

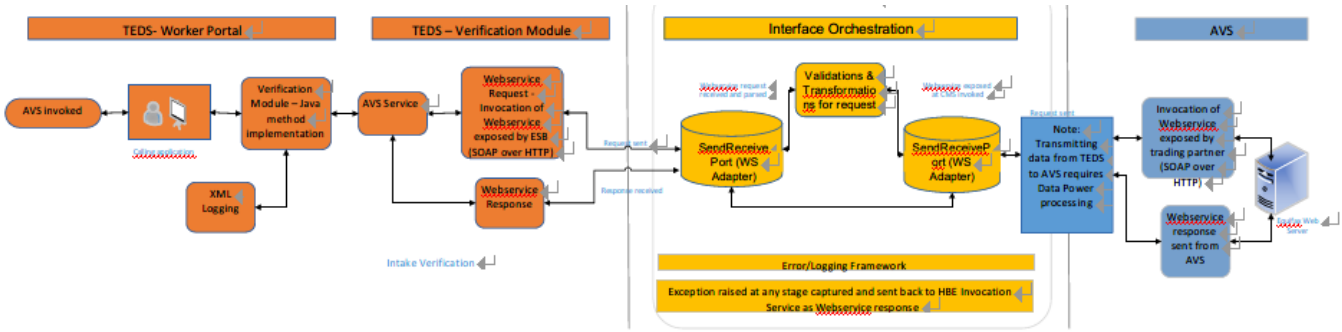
This section will summarize the high level business process attributes as it relates to the proposed interface:

Item	Details
Description	The AVS interface is a bidirectional interface between TEDS and the AVS. A service call will originate from TEDS to AVS, and AVS will send a response to TEDS when the information is available. Both service calls will prompt a real-time acknowledgement from the receiving system. TEDS will use this information during intake, change, and update flows to either prevent a member from getting eligibility for benefits that require a resource check or to ensure that resources are appropriately considered in eligibility determinations for benefits that require a resource check.
Trigger Event(s)	Either member is found eligible for benefits that require a resource check or member is pending for financial account verification
Result	AVS either verifies resources or provides additional resources
Business Process Step(s)	1) TEDS sends a request to the trading partner 2) The trading partner sends an acknowledgement to TEDS 3) The trading partner sends a response to TEDS 4) TEDS sends an acknowledgement to the trading partner
Shared Data	PII information
Predecessor	TEDS invokes real time call to AVS for member generates and sends file
Successor	Either resources are verified or unverified, and eligibility is run as appropriate

Failure(s)	If a record fails for an error, it should show in the error report
Performance Measure(s)	Required data elements and received verification codes pass between entities.

1.7.3 Data Transfer and Transaction Details

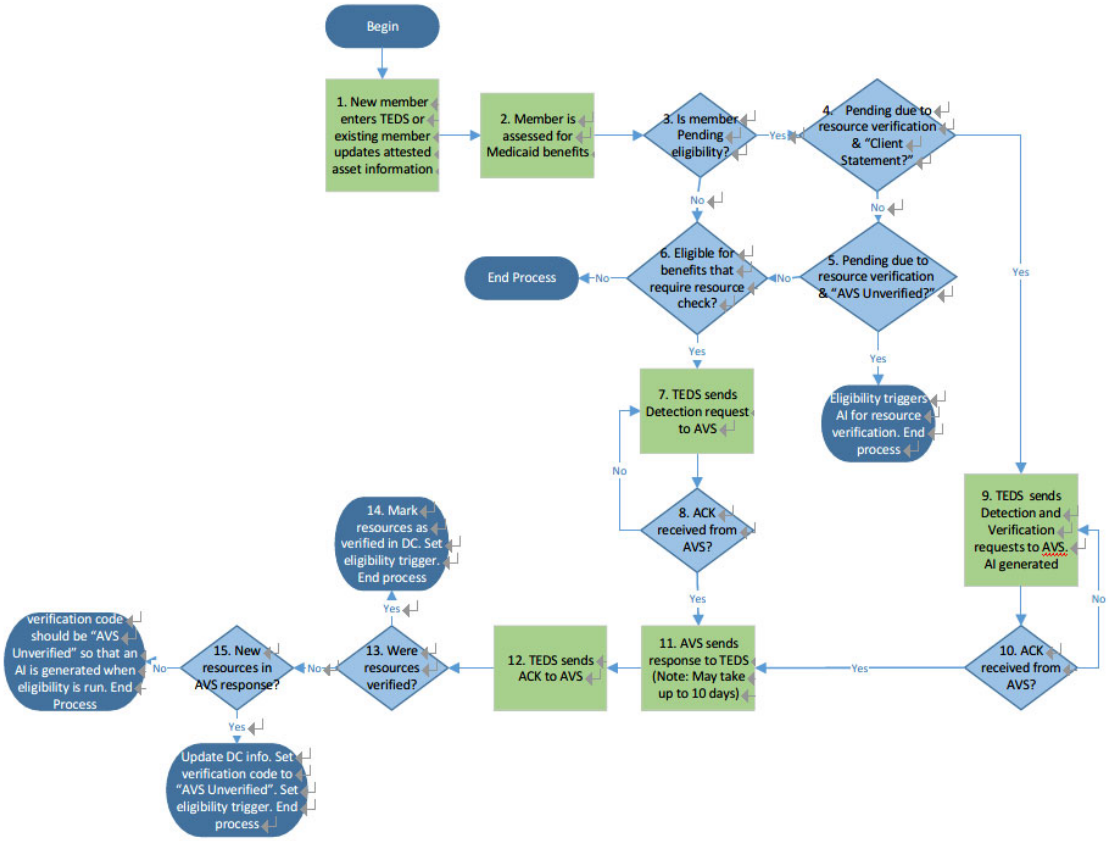
A transactional message exchange pattern requiring real-time or near-real time (synchronous) responses supports the transfer of data between the TEDS and AVS. The steps following the image describe the sequence of events.



1. The TEDS Worker Portal System will serve as the calling application when the Intake Verification service is invoked as part of the verification process
2. Applicant data will be sent from the calling application to the Verification Module via Java method implementation
3. Applicant data will be sent to AVS via a Webservice Request that is invoked by ESB, and the request is sent to the SendReceivePort in the ESB layer
4. Validations and transformations for the request are carried out
5. Data moves to the SendReceivePort. Data is transmitted to AVS (after going through Data Power processing)
6. The Webservice is exposed by interface partner and invoked
7. Data is received at the AVS Web Service and a Webservice response is sent from AVS
8. Data is transmitted through Data Power
9. Data is received at the SendReceivePort within the ESB layer and the Webservice response is received in the TEDS Verification Module
10. The Webservice response is sent to TEDS
11. Java method framework is used and the data is moved to XML Logging

1.7.4 Detailed Logic Flow

The process flow below shows an overview in the processing logic for the TEDS system retrieving a response from the trading partner:



Processing Logic Flow Steps:

1. New member enters TEDS or existing member updates information for attested assets
2. During eligibility run, member is assessed for Medicaid benefits
3. Is member Pending eligibility?
    a. If yes, proceed to step 4
    b. If no, proceed to step 6
4. Is member Pending eligibility due to financial verification in resources screen and their verification code is "Client Statement" or "Requires Additional Information"?
    a. If no, proceed to step 5
    b. If yes, proceed to step 9
5. Is member Pending eligibility due to resource verification in resources screen and their verification code is "AVS Unverified?"
    a. If yes, eligibility will trigger an AI for resource verification. End process
    b. If no, proceed to step 6
6. Is member eligible for benefits that require a resource check?
    a. If yes, proceed to step 7
    b. If no, no further action. End process
7. TEDS sends Detection request to AVS
8. Is acknowledgement received from AVS synchronously?
    a. If no, service call is invoked again. Revert to step 7

        i. Note: Service call may be re-invoked up to three times before an error is thrown
    b. If yes, continue to step 11
9. TEDS sends Detection and Verification requests to AVS and an AI is generated for member to verify resources
10. Is acknowledgement received from AVS synchronously?
    a. If no, service call is invoked again. Revert to step 9
        i. Note: Service call may be re-invoked up to three times before an error is thrown
    b. If yes, continue to step 11
11. AVS sends response to TEDS
    a. Note: This is an asynchronous response (can take up to 10 business days)
12. TEDS sends a synchronous acknowledgement to AVS
13. TEDS will compare accounts returned from AVS to the resources attested to in TEDS (Table name: DC_EA_INCOME_RESOURCE). Were resources verified in the response from AVS?
    a. If yes, proceed to step 14
    b. If no, proceed to step 15
14. Mark resources as verified in DC Table name: DC_LIQUID _RESOURCE, Field: RESOURCE_VF_CD). Set **<AVSElig01>** trigger to run eligibility. End process
15. Were new resources identified in the AVS response?
    a. If yes, update information in DC to include new resource information returned from AVS (DC_LIQUID_RESOURCE; Field: Liquid_Resource_Available). Set **<AVSElig02>** trigger to run eligibility and set verification code to "AVS Unverified." Once eligibility is run, the rules will trigger an AI to verify the additional resource. End process
    b. If no, AND both a verification and a detection request were sent, then verification code should be "AVS Unverified"." Else, if only a verification request was sent, mark resources as "unverified". End Process

1.7.5 Communication Methods

This interface transfers files to the interface partners utilizing SOAP on a real-time basis. For the monthly update for bank reference tables, an SFTP process will be used to receive the bank file.

1.7.6 Job Description

Job Rules:

- If an AI is returned and verifies a member's resources, then the response from AVS will not trigger another eligibility run
- If AVS returns account information in the verification response where the account does not exactly match the attested account, the interface will determine:
    - Is the resource attested (Table name: DC_LIQUID_RESOURCE; Field: BANK_ACCOUNT_NUM) to the only resource of the individual
    - Is the attested resource and the electronically returned resource less than the allowable resource limit
        i. Use the defined resource limits given by rules to perform this check

(there are different resource limits depending on the number of individuals and the programs applied for)

- If a and b above are satisfied, then the verification code will be "Verified by AVS"

- TEDS will either treat the resource as either Verified or Unverified. If the existing resource is verified and additional resources are unverified, the case will overall be treated as an unverified case
- TEDS will store only the following records from the Bank file
  - First occurrence of distinct INST_ID's from AVS Bank file with state code 'TN'
  - If there is no record for a particular INST_ID in AVS Bank file with state code 'TN', TEDS will store the first occurrence for that INST_ID in the AVS Bank file, irrespective of State Code (The trading partner search is driven primarily by FI ID, irrespective of the location ID. Hence TEDS to store the first occurrence of the FI ID in the bank file share by The trading partner)
  - The records stored based on above logic will be available for the worker to view in the FI Look up screen
  - Every month when a new file is picked from MFT, the records from the previous month will be end dated. For a given month, only the records received in that month will be available for the worker to choose the Financial Institution ID.
- After the file is loaded the following records will be logged in the FW_BATCH_SUMMARY table.
  - Total Number of records processed from AVS Bank File
  - Total Number of errors while processing AVS Bank File
  - Batch Run Date/Time
  - The monthly batch for the bank file will have the job name: IN-RCAVS-MLY

Renewal Logic:

- All ABD and Non-MAGI renewals are done manually.
- If during the manual assessment a person is pended due to resource assessment OR they gain eligibility in a program that request resource checks, AVS services will be called in the same fashion as 1.7.4

1.7.7 Triggering Mechanism

There are different triggering types for the AVS file. The categories of change that result in a trigger will occur due to one of the following:

Change Category	Triggering Source	Triggering Action	Triggering Logic	Trigger Code
Run eligibility	AVS response service	AVS returns verified account information	If no other Pending <AVSElig01> triggers are set for an individual, this trigger will be set	<AVSElig01>

Run eligibility	AVS response service	AVS returns new account information that is updated in TEDS	If no other Pending <AVSElig02> triggers are set for an individual, this trigger will be set to run eligibility	<AVSElig02>

1.7.8 Task Details

There are no tasks for this interface.

1.7.9 File Locations

All XMLs will be kept in the XML log table, which is called the **WEBSERVICE_TRACE** table.
For the monthly batch Inbound File:
All files sent from AVS on a monthly basis to TEDS are stored in the Inbound Interface File location. The file path will be as follows:

1. tncare/TEDS2/prod/interfaces/AVS/in
2. File names will follow the format "InRcvAVSMonthly_MMDDYYYYHHmmssSSS.ext"

Once the sender picks up the file, a copy will be kept locally in the archival file before transmitting locally to the target location. This will allow for retransmissions and will maintain a data archival. Archived Files follow the below naming convention:

1. tncare/TEDS2/prod/interfaces/AVS/in/Archive
2. "InRcvAVSMonthlyArchive_MMDDYYYYHHmmssSSS.ext"

When files have failed during the SFTP process for any reason, the sender should store the file in an error file location for analysis or retransmission. Failed Files follow the below naming convention:

1. tncare/TEDS2/prod/interfaces/AVS/in/Error
2. "InRcvAVSMonthlyError_MMDDYYYYHHmmssSSS.ext"

1.7.10 Technical and Security Details

Refer to the Interface Standards for Technical and Security Details.

1.7.11 Database Impacts

The table below describes database impacts of the AVS inbound file. Further details regarding the data usage can be found in the ***Message Formatting, Mapping, and Data Types*** section:

Category	Table Name:	Description of Content:
Read Write	IN_AVS_STG	This staging table will hold information sent to TEDS via the AVS inbound file
Read Write	IE_APP_ONLINE.IN_BATCH_ERR	The batch will write exceptions that come out of
Read Write	DC_Resources	Asset information will be updated by the AVS Information

1.7.12 Data Maintenance

Refer to the Interface Standards for data maintenance standards.

1.7.13 Message Formatting, Mapping, and Data Types

Refer to spreadsheet on link below for required data mappings:

http://tn.gov/assets/entities/tenncare/attachments/ATTACHMENTETEDSInterfaceControlDocume ntAVSLayout.xlsx

1.7.14 Interface Processing Time Requirements

This section will cover requirements for formatting and communicating as data is created.

File Name:	Frequency	File Drop Time (at SFTP Server):
InRcvAVSMonthly_MMDDYYYYHHmmssSSS.ex	Monthly	TBD

1.7.15 Exception Handling and Risk Mitigation

All exceptions determined during interface processing will go through project defined escalation
path. Stakeholders will be involved early and updated on exception progress.

Field level validations and their corresponding actions are found in the mapping spreadsheet.

Exceptions and their proposed mitigation strategies associated with the AVS file can be found below:

No.	Exception	Mitigation Strategy
1	Web service fails due to technical reason	1. Notify AVS and TennCare IS of the errors. 2. Raise a code defect and resolve in a timely manner

All exceptions produced from batch processing will be written into the table below:

TABLE IE_APP_ONLINE.IN_BATCH_ERR

Column Name	Type	Length
ERR_SEQ_NUM	NUMBER	
EXTRACT_FILE_NAME	VARCHAR2	50
RECORD_TYP_CD	VARCHAR2	3
RECORD_CD	VARCHAR2	30

CREATE_USER_ID	VARCHAR2	50
CREATE_DT	DATE	50
KEY_VALUE	VARCHAR2	200
ERR_FIELD_NAME	VARCHAR2	4000
ERR_FIELD_VALUE	VARCHAR2	4000
ERR_DESCRIPTION	VARCHAR2	4000
ERROR_TYPE	CHAR	1

Web service errors will be logged in the following tables:

- FW_WS_ERROR_DETAILS
- FW_WS_TRANSACTION_STATUS

CONTRACT ATTACHMENT D

HIPAA Business Associate Agreement

THIS HIPAA BUSINESS ASSOCIATE AGREEMENT ("Agreement") is between The State of Tennessee, Division of TennCare ("TennCare" or "Covered Entity"), located at 310 Great Circle Road, Nashville, TN 37228 and _____

_____

("Business Associate"), located at_____

_____, including all office locations and other business locations at which Business Associate data may be used or maintained. Covered Entity and Business Associate may be referred to herein individually as "Party" or collectively as "Parties."

1 BACKGROUND

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

2 LIST OF STATE CONTRACTS AFFECTED BY THIS HIPAA BUSINESS ASSOCIATE AGREEMENT:

_____

_____

In the course of performing services under the State Contract(s), Business Associate may come into contact with, use, or disclose Protected Health Information ("PHI"). Said State Contract(s) is/are hereby incorporated by reference and shall be considered part of this Agreement as if the State Contract(s) was/were fully included herein.

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

In the case of any conflict, discrepancy, or ambiguity, between this Agreement and the State Contract(s), this Agreement shall govern as relating to the conflict, discrepancy, or ambiguity only. Absent any conflict, discrepancy, or ambiguity between this Agreement and the State Contract(s), the State Contract governs.

1. DEFINITIONS

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

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

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

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

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

2. OBLIGATIONS AND ACTIVITIES OF BUSINESS ASSOCIATE (PRIVACY RULE)

2.1 Compliance with the Privacy Rule. Business Associate shall fully comply with the requirements under the Privacy Rule applicable to "business associates," as that term is defined in the Privacy Rule, and not use or further disclose PHI other than as permitted or required by this Agreement, the State Contract(s), or as required by law.

2.2 HIPAA and HITECH Compliance. HITECH and its implementing regulations impose requirements on business associates with respect to privacy, security, and Breach notification. Business Associate hereby acknowledges and agrees that it is functioning as a Business Associate of Covered Entity as obligated by this Agreement and the State Contract(s). Business Associate further acknowledges that it shall comply with any applicable provisions of HIPAA and HITECH. Business Associate and 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. Even if a provision of HIPAA or HITECH is not specifically set forth in this Agreement, all applicable provisions of HIPAA and HITECH are incorporated into this Agreement in their entirety.

2.3 Business Management. Business Associate may use and disclose PHI for the proper management

and administration of Business Associate or to carry out the legal responsibilities of Business Associate. Business Associate may provide data aggregation services relating to the Health Care Operations of TennCare, or as required by law. Business Associate is expressly prohibited from using or disclosing PHI other than as permitted by this Agreement, any associated State Contract(s), or as otherwise required by law, and is prohibited from uses or disclosures of PHI that would not be permitted if done by Covered Entity.

2.4 Privacy Safeguards and Policies. Business Associate shall use appropriate safeguards to prevent use or disclosure of PHI other than as provided for by the State Contract(s), this Agreement, or as required by law. This includes the implementation of Administrative, Physical, and Technical Safeguards to appropriately protect Covered Entity's PHI against any reasonably anticipated threats or hazards utilizing the technology commercially available to Business Associate (See also Agreement Section 3.2). Business Associate shall maintain, and provide to TennCare when requested, appropriate documentation of Business Associate's compliance with the Privacy Rule, except when Business Associate is required by TennCare policies and procedures to provide compliance documents on an established timeframe without request from TennCare. Appropriate documentation of compliance with the Privacy Rule includes, but is not limited to, Business Associate's policies and procedures, records of training, records of breaches, and sanctions of members of its Workforce.

2.5 Privacy Provisions in Business Associate Contracts. Business Associate shall require any agent, including a subcontractor, to whom it provides PHI received from, maintained, created, or received by Business Associate on behalf of Covered Entity, or that carries out any duties for Business Associate involving the use, custody, disclosure, creation of, or access to, PHI or other confidential TennCare information, to enter into a written contract that is substantially similar to this Agreement with respect to all privacy provisions. Said substantially similar written contract shall not include less stringent terms or restrictions than this Agreement with Business Associate with respect to the privacy provisions, except for Agreement Section 4.4.2, which shall only apply to Business Associate notwithstanding the requirements in this Agreement Section 2.5.

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

2.7 Reporting of Violations and Reasonably Suspected Violations in Use and Disclosure of PHI. Business Associate shall require its employees, agents, and subcontractors to promptly report to Business Associate immediately upon becoming aware, or upon reasonable suspicion, of any use or disclosure or reasonably suspected use or disclosure of PHI in violation of, or otherwise not provided by, this Agreement. Business Associate shall make its report to Covered Entity immediately upon becoming aware of any use or disclosure or reasonably suspected use or disclosure of PHI not provided by this Agreement, and in no case shall the Business Associate take longer than forty-eight (48) hours to report the discovery to Covered Entity. Reports shall be submitted as provided for in Agreement Section 3.5.

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

2.8.1 Business Associate shall provide to Covered Entity notice of a Breach of Unsecured PHI or a suspected Breach of Unsecured PHI immediately upon becoming aware or upon reasonable suspicion of the Breach, and in no case later than forty-eight (48) hours after becoming aware or

upon reasonable suspicion. Notice shall be submitted as provided for in Agreement Section 3.5.

2.8.2 Business Associate shall cooperate with Covered Entity by timely providing the appropriate and necessary information to Covered Entity, as reasonably anticipated or otherwise requested by Covered Entity.

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

2.9 Access of Individual to PHI. In the event an Individual requests access to PHI and Business Associate's participation is necessary to comply with the request, Business Associate agrees to timely respond as further outlined below.

2.9.1 Requests Submitted to Covered Entity that Require Business Associate's Participation. Covered Entity shall forward to Business Associate in a timely manner any Individual's request for access to or a copy of the Individual's PHI, in any form the Individual chooses if the PHI is readily producible in that format.

2.9.2 Requests Submitted to Business Associate.

(a) If Business Associate receives PHI from Covered Entity in a Designated Record Set, Business Associate agrees to provide access to PHI in a Designated Record Set to Covered Entity to meet the requirements of 45 C.F.R. § 164.524.

(b) 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 Business Associate, Business Associate will provide the requested copy to the Individual as specified in 2.9.3(a). If Business Associate provides copies of PHI to the Individual, it may charge a reasonable fee for the copies as permitted by applicable regulations. Business Associate is permitted to send to an Individual or Individual's designee unencrypted emails including Electronic PHI if the Individual requests it, provided Business Associate has advised the Individual of the associated risk and the Individual still chooses to receive the message by unencrypted email.

(c) If Business Associate receives a request for PHI not in its possession and in the possession of Covered Entity or receives a request to exercise other Individual rights as set forth in the Privacy Rule, Business Associate shall promptly forward the request to Covered Entity. Business Associate shall then assist Covered Entity, as necessary, in responding to the request timely.

2.9.3 Timeframes for Response.

(a) The Parties understand that if either Party receives a request for access to or copies of PHI from an Individual that the Party may complete with only its own onsite information, the time for providing a response to the Individual shall be no more than thirty (30) days, or a timeframe otherwise in compliance with 45 C.F.R. § 164.524. Business Associate shall also notify Covered Entity upon completion of the request.

(b) If Covered Entity receives a request from an Individual for access to or copies of PHI, and requires information from Business Associate in addition to Covered Entity's onsite information to fulfill the request, Business Associate shall have no more than fifteen (15) days, from the date of Covered Entity's notice, to provide access or deliver such information to Covered Entity so that Covered Entity may timely respond to the Individual within the thirty (30) day requirement of 45 C.F.R. § 164.524.

(c) If the Party responsible for responding to the Individual's request for access to or copies of PHI is unable to complete the response to the request in the required timeframe, the responsible Party shall provide the Individual, or Individual's designee, with a written

statement of the reasons for the delay and the date by which the Party will complete its action on the request. The Party may extend the response one (1) time for no more than thirty (30) additional days.

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

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

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

(a) If Covered Entity directs Business Associate to provide an accounting of disclosures of the Individual's PHI directly to the Individual, Business Associate shall have sixty (60) days from the date of the Individual's request to provide access or deliver such information to the Individual or Individual's designee. Covered Entity shall provide notice to Business Associate in time to allow Business Associate a minimum of thirty (30) days to timely complete the Individual's request.

(b) If Covered Entity elects to provide the accounting to the Individual, Business Associate shall have thirty (30) days from the date of Covered Entity's notice requesting information for the Accounting to Covered Entity so that Covered Entity may timely respond to the Individual within the sixty (60) day period.

(c) If either Party is unable to complete the response to the request in the timeframes provided in 2.12(a) or 2.12(b), the Party to complete the response shall notify the Individual with a written statement of the reasons for the delay and the date by which the Party will complete its action on the request. The Parties may extend the response to Individual or Individual's designee one (1) time for no more than thirty (30) additional days.

(d) The accounting of disclosures shall include at least the following information:

(1) date of the disclosure;
(2) name of the third party to whom the PHI was disclosed,
(3) if known, the address of the third party;
(4) brief description of the disclosed information; and
(5) brief explanation of the purpose and basis for such disclosure.

(e) The Parties shall provide one (1) accounting in any twelve (12) months to the Individual or Individual's designee without charge. The Parties may charge a reasonable, cost-based fee, for each subsequent request for an accounting by or regarding the same Individual if Individual or Individual Designee is provided notice and the opportunity to modify the request. Such charges shall not exceed any applicable State statutes or rules.

2.13 Minimum Necessary. Business Associate shall use reasonable efforts to limit any use, disclosure, or request for use or disclosure, of PHI to the minimum amount necessary to accomplish the intended purpose of the use, disclosure, or request in accordance with the requirements of the Privacy Rule. Reasonable efforts may include, but are not limited to, application of recognized industry standards on data minimization and retention privacy controls.

2.13.1 Business Associate represents to Covered Entity that all Business Associate's 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 from Business Associate as the minimum necessary for the stated purpose.

2.13.3 Business Associate shall adequately and properly maintain all PHI received from, or created or received on behalf of, Covered Entity. Properly maintaining PHI shall include, but is not limited to, use of reasonable efforts to timely deidentify or destroy PHI Business Associate receives that is irrelevant or unnecessary for the purposes of this Agreement and any State Contract(s).

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

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

3. OBLIGATIONS AND ACTIVITIES OF BUSINESS ASSOCIATE (SECURITY RULE)

3.1 Compliance with Security Rule. Business Associate shall fully comply with the requirements of the Security Rule applicable to "Business Associates", as the term is defined in the Security Rule. In the case of any conflict, ambiguity, or discrepancies in language between this Agreement and the State Contract(s), this Agreement governs as to the applicable conflict, ambiguity, or discrepancies in language. If no conflict, ambiguity, or discrepancy in language exists, the State Contract governs.

3.2 Security Safeguards and Policies. Business Associates shall implement and maintain information security policies that comply with the HIPAA Security Rule. 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 Covered Entity as required by the Security Rule. This includes specifically, but is not limited to, the utilization of technology commercially available to Business Associate to protect Covered Entity's PHI against any reasonably anticipated threats or hazards. 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, entities, programs, or applications, and devices access its computing systems and information storage, and that only authorized transactions are allowed. Business Associate will maintain appropriate documentation of its compliance with the Security Rule.

3.3 Security Provisions in Business Associate Contracts. Business Associate shall ensure that any agent or subcontractor to whom Business Associate provides Electronic PHI received from, maintained, or

created for Covered Entity, or that carries out any duties for Business Associate involving the use, custody, disclosure, creation of, or access to PHI supplied by Covered Entity, shall execute a contract with Business Associate (or the appropriate equivalent if the agent is a government entity) that is substantially similar to this Agreement with no less stringent restrictions and conditions as the security provisions are in this Agreement, except for the provision in Section 4.4.2.

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

3.4.1 Business Associate identifies the following key contact person(s) for all matters relating to this Agreement:

_____
_____
_____
_____
_____
_____
_____

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

3.5 TennCare Contact for Privacy and Security Incident Notice. Notification for the purposes of Agreement Sections 2.7, 2.8 and 3.4 shall be made in writing immediately upon becoming aware, or upon reasonable suspicion, of the event. Written notice may be submitted via TennCare's privacy incident reporting form if accessible to Business Associate, email, certified mail, or overnight parcel to:

Division of TennCare **Attention**: Privacy Office
310 Great Circle Rd.
Nashville, Tennessee 37243
Phone: (866) 797-9469
Email: Privacy.Tenncare@tn.gov

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

3.7 Cooperation in Security Compliance. Business Associate shall fully cooperate in good faith to assist

Covered Entity in complying with the requirements of the Security Rule.

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

4. USES AND DISCLOSURES BY BUSINESS ASSOCIATE

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

4.2 Business Associate Uses of PHI. Except as otherwise limited in this Agreement, Business Associate may disclose PHI as required for the proper management and administration of Business Associate or to carry out the legal responsibilities of Business Associate, provided that the disclosures are required by law and are also permitted by this Agreement and the State Contract(s). Nothing in this Agreement Section 4.2 permits, or should be construed as permitting, the Business Associate to use PHI for Marketing or Commercial Use.

4.3 Third Party Disclosure Confidentiality. If Business Associate discloses any PHI to a third party for a purpose permitted under 4.2, Business Associate agrees that it 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 PHI except as required by law or for the purpose for which it was disclosed; and (b) notify Business Associate of any instances where third party becomes aware that the confidentiality, integrity, and/or availability of the PHI is Breached.

4.4 Prohibited Uses and Disclosures. Nothing in this Agreement shall authorize Business Associate to share, use or disclose PHI via any form or medium for the purposes outlined in Agreement Subsections 4.4.1 through 4.4.4.

4.4.1 Marketing and Commercial Use. Business Associate shall not share, use, or disclose PHI for the purposes of selling, Marketing, or any Commercial Use, or for any purpose construed by Covered Entity as the selling, Marketing, or Commercial Use of TennCare Enrollee personal or financial information with affiliates or otherwise, even if such sharing would be permitted by federal or state laws.

4.4.2 Offshore Disclosure. Business Associate shall not share, use, or disclose PHI with any third party beyond the boundaries and jurisdiction of the United States without express written authorization from Covered Entity.

4.4.3 Genetic Information for Underwriting Purposes. Business Associate shall not use or disclose PHI that is Genetic Information for underwriting purposes.

4.4.4 Other Uses and Disclosures Strictly Prohibited. Nothing in this Agreement shall permit Business Associate to share PHI with Business Associate's affiliates, contractors, subcontractors, or other

third parties, except for the purposes of the State Contract(s) identified in the "LIST OF STATE CONTRACTS AFFECTED BY THIS HIPAA BUSINESS ASSOCIATE AGREEMENT" on page one (1) of this Agreement.

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

4.6 Data Use Agreement - Use and Disclosure of Limited Data Set. Business Associate may use and disclose a Limited Data Set that Business Associate creates for Research, public health activity, or Health Care Operations, provided Business Associate complies with the obligations in Agreement Section 3.2 and this Agreement. Business Associate may not make such use and disclosure of the Limited Data Set after any cancellation, termination, expiration, or other conclusion of this Agreement.

4.7 Limitation on Permitted Uses and Disclosures. Business Associate will limit the uses and disclosures of the Limited Data Set to the following: Research, public health activity, or Health Care Operations, to the extent such activities are related to covered functions. Covered functions for purposes of this Agreement Section 4.7 shall include business planning and development, such as: conducting cost-management and planning-related analysis related to managing and operating Business Associate's functions; formulary development and administration; development and improvement of methods of payment or coverage policies; and customer service, including the provision of data analysis for policy holders, plan sponsors, or other customers to the extent such activities are related to covered functions. The listed covered functions shall only be permitted if PHI is not disclosed, and disclosure is not prohibited pursuant to any other provisions in this Agreement.

5. OBLIGATIONS OF COVERED ENTITY

5.1 Notice of Privacy Practices. Covered Entity shall provide Business Associate with the Covered Entity's notice of Privacy Practices in accordance with 45 C.F.R. § 164.520, as well as any changes to the notice of Privacy Practices. Notice may be provided via publication on TennCare's website.

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

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

5.4 Reciprocity for Requests Received by Business Associate. The Parties agree that Agreement Sections 5.2 through 5.3 are reciprocal, to the extent Business Associate is notified or receives an inquiry from any Individual within Covered Entity's covered population.

6. TERM AND TERMINATION

6.1 Term. This Agreement shall be effective on the date of the last signatory, or on the signature date

if all Parties sign on the same day, and shall terminate when all PHI, regardless of form, 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 the Parties mutually agree in writing that it is unfeasible to return or destroy PHI, Agreement Subsection 6.3.5 below applies.

6.2 Termination for Cause. This Agreement authorizes, and Business Associate acknowledges and agrees, Covered Entity shall have the right to terminate this Agreement and any State Contracts in the event Business Associate fails to comply with or violates a material provision of this Agreement and any provision of the Privacy and Security Rules. Nothing in Agreement Section 6.2 limits the State's ability to terminate the State Contract as permissible under the State Contract.

6.2.1 Upon Covered Entity's knowledge of a breach by Business Associate of the terms of this Agreement or any State Contract (s), Covered Entity shall either:

(a) Provide notice of breach and an opportunity for Business Associate to reasonably and promptly cure the breach or end the violation. If Business Associate does not cure the breach or end the violation within the reasonable time following notice, as specified by Covered Entity, Covered Entity shall terminate this BAA; or

(b) Immediately terminate this BAA if Business Associate has breached a material term of this BAA and cure is not possible.

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

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

6.3.2 Agreement Section 6.3 and its Subsections shall not prohibit the retention of a single separate, archived file of the PHI and other confidential TennCare information by Business Associate if the method of such archiving reasonably protects the continued privacy and security of such information and Business Associate obtains written approval at the time of archival from Covered Entity.

Otherwise, neither Business Associate nor its subcontractors and agents shall retain copies of TennCare Confidential Information including enrollee PHI, except as provided herein in Agreement Subsection 6.3.5.

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

of the conditions that make return or destruction unfeasible.

6.3.4 Except for Business Associate agreements in effect prior to April 21, 2005, for the renewal or amendment of those same agreements, or for other unavoidable circumstances, the Parties contemplate that PHI and other Confidential Information of Covered Entity shall not be merged or aggregated with data from sources unrelated to that agreement, or Business Associate's other business data, including for purposes of data backup and disaster recovery, until the Parties identify the means of return or destruction of the TennCare data or other Confidential Information of Covered Entity at the conclusion of any State Contract(s), or otherwise make an express alternate agreement consistent with the provisions of Agreement Section 6.3 and its Subsections.

6.3.5 Upon written mutual agreement of the Parties that the return or destruction of PHI or Confidential Information is unfeasible and upon express agreement as to the means of continued protection of the data, Business Associate shall extend the protections of this Agreement to such PHI and limit further uses and disclosures of such PHI to those purposes that make the return or destruction unfeasible, for so long as Business Associate maintains such PHI.

7. MISCELLANEOUS

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

7.2 Survival. The respective rights and obligations of Business Associate under applicable confidentiality provisions and Agreement Sections 4 and its Subsections, and 6.3 and its Subsections, shall survive the termination or expiration of this Agreement.

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

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

7.5 Notices and Communications. Except as specified in Agreement Section 3.5, all instructions, notices, consents, demands, or other communications required or contemplated by this Agreement shall be in writing and shall be delivered by electronic mail, hand, by facsimile transmission, by overnight courier service, or by first class mail, postage prepaid, addressed to the respective party at the appropriate facsimile number or address as set forth below, or to such other party, facsimile number, or address as may be hereafter specified by written notice. (For purposes of Agreement Section 7.6, effective notice to "Respective Party" is not dependent on whether the person named below remains employed by such Party). The Parties agree to use their best efforts to immediately notify the other Party of changes in address, telephone number, and fax numbers and to promptly supplement this Agreement as necessary with corrected information.

Notifications relative to Agreement Sections 2.7, 2.8 and, 3.4 of this Agreement need only be reported to the Privacy Office pursuant to Agreement Section 3.5.

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

All instructions, notices, consents, demands, or other communications shall be considered effectively given as follows: on the date of hand delivery; on the date specified for overnight courier service delivery; as of three (3) business days after the date of mailing by first class mail postage prepaid; 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; or via electronic submission as approved or as directed by TennCare.

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

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

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

7.9 Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Tennessee except to the extent that Tennessee law has been pre-empted by HIPAA and HITECH and without giving effect to principles of conflicts of law.

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

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

IN WITNESS WHEREOF, the Parties execute this Agreement to be valid and enforceable from the latest dated signature set out below or on the date of signatures if both Parties sign on the same date:

3 DIVISION OF TENNCARE

By: _____

_____

Stephen Smith, Director

Date: _____

_____

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

BUSINESS ASSOCIATE

By:

_____

Date:

_____

_____

_____

_____