



CONTRACT

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

Begin Date 7/1/2020	End Date 6/30/2026	Agency Tracking # 31786-00147	Edison Record ID
Contractor Legal Entity Name Optum			Edison Vendor ID 70866

Goods or Services Caption (one line only)
Health Savings Acct (HSA) and flexible spending (FSA)

Contractor <input checked="" type="checkbox"/> Contractor	CFDA #
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Funding — FY	State	Federal	Interdepartmental	Other	TOTAL Contract Amount
2021			\$120,000.00		\$120,000.00
2022			\$240,000.00		\$240,000.00
2023			\$250,000.00		\$250,000.00
2024			\$250,000.00		\$250,000.00
2025			\$260,000.00		\$260,000.00
2026			\$130,000.00		\$130,000.00
TOTAL:			\$1,250,000.00		\$1,250,000.00

Contractor Ownership Characteristics:

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

Woman Business Enterprise (WBE)

Tennessee Service Disabled Veteran Enterprise (SDVBE)

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

Other:

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

Competitive Selection RFP

Other

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

Veronica Coleman Ivh Digitally signed by Veronica Coleman Ivh
Date: 2020.06.15 15:18:57 -05'00'

Speed Chart (optional)	Account Code (optional) <i>CM</i>
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**CONTRACT
BETWEEN THE STATE OF TENNESSEE,
Finance & Administration, Division of Benefits Administration
AND
Optum**

This Contract, by and between the State of Tennessee, Finance & Administration, Division of Benefits Administration, hereinafter referred to as the "State" and OptumHealth Financial Services, Inc., hereinafter referred to as the "Contractor," is for the provision of health savings account (HSA) and flexible spending account (FSA) services, as further defined in the "SCOPE OF SERVICES."

The Contractor is For-Profit Corporation
Contractor Place of Incorporation or Organization: Delaware
Contractor Edison Registration ID # 70866

A. SCOPE OF SERVICES:

A.1. General

- a. The Contractor shall provide all service and deliverables as required, described, and detailed herein and shall meet all service and delivery timelines as specified by this Contract.
- b. The Contractor shall manage all aspects of HSA for state/higher education, local education and local government Members enrolled in a Plan sponsored CDHP. Such services shall include, but not be limited to, account administration services; account enrollment services such as development, production, and distribution of all account enrollment materials and online account enrollment processing; employer set-up; program communication and education to participating employees and employers; debit card processing; claims processing and reimbursement services in compliance with applicable Internal Revenue Code ("IRC"); online and telephone support; and management of investment options.
- c. The Contractor shall also manage all aspects of a flexible spending arrangement for state and higher education employees for eligible healthcare, DC-FSA and L-FSA spending accounts. Such services shall include, but not be limited to, claims substantiation and adjudication, Member communications, debit card processing, customer service, reporting and compliance support. Online enrollment services, provided and hosted by the Contractor, for Higher Education Members' FSAs will also be required.
- d. The Contractor shall work with the State to ensure that the Contractor satisfies applicable requirements of this Contract, including requirements in the State Plan, Local Education Plan, and Local Government Plan Documents (referred to as the "Plan Documents") which are located on the State's website <https://www.tn.gov/partnersforhealth/publications/publications.html> > Plan Documents, as well as all State and Federal Laws.
- e. Contractor may use the Member SSN as the Member identifier for all HSA and FSA Members. However, the State will also send on the enrollment file the Edison ID, which the Contractor must also populate in its systems as a secondary identifier. The Contractor shall, at the State's request, be able to populate the employee Edison ID along with the SSN on any reports delivered to the State.

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

- a. **Active Account:** A HSA account for a Member. The account must be completely and properly opened. Closed or transferred accounts are not considered active nor are accounts for members enrolled state group insurance non-CDHP options.

- b. **Affiliate:** A business organization or entity that, directly or indirectly, is owned or controlled by the Contractor, or owns or controls the Contractor, or is under common ownership or control with the Contractor.
- c. **Agency Benefits Coordinator (“ABC”):** An Agency Benefits Coordinator serves as the liaison between the Plan and members. There is at least one ABC in every employer agency/entity.
- d. **At-Risk Performance Payment:** Contractor’s payment based on KPI performance listed on the SLA Scorecard set forth in Contract Attachment D. The payment is calculated based on the SLA Scorecard quarterly score and percentage of the administrative fees at risk.
- e. **Average Speed of Answer (“ASA”):** The average waiting time for a caller before he/she is answered by a service representative.
- f. **Benefits Administration (“BA”):** The division of the Tennessee Department of Finance & Administration that administers the Public Sector Plans.
- g. **Business Days:** Traditional workdays, including Monday, Tuesday, Wednesday, Thursday, and Friday. State Government Holidays are excluded.
- h. **Compliance with Section 508:** To ensure accessibility among persons with a disability, the Contractor’s multimedia/video tools, website, social media content, and any other applicable Member content shall substantially comply with Section 508 of the Rehabilitation Act of 1973 (29 U.S.C. 794d) and implementing regulations at 36 CFR 1194 Parts A-D.
- i. **Consumer Driven Health Plan (“CDHP”):** A type of medical insurance or plan that typically has a higher deductible and lower monthly premiums. A CDHP may be offered with a HSA or health reimbursement arrangement (HRA). Also known as a HDHP.
- j. **DC-FSA:** A dependent care flexible spending account
- k. **EAP/BHO:** Employee Assistance Program/ Behavioral Health Organization.
- l. **Edison:** The State’s enterprise resource planning system, which supports human resources, payroll, insurance, contracting, procurement and other agency functions.
- m. **Flexible Spending Arrangement (“FSA”):** A health flexible spending arrangement (FSA) allows employees to be reimbursed for medical expenses. FSAs are usually funded through voluntary salary reduction agreements with employers. No employment or federal income taxes are deducted from employee contributions. The employer may also contribute.
- n. **FSA Participant:** The employee contributing funds to the FSA
- o. **Health Savings Account (“HSA”):** A tax-exempt trust or custodial account set up with a qualified HSA trustee to pay or reimburse certain medical expenses incurred.
- p. **In Writing:** Written communication between the Parties, which may be in the form of an official memo, or documents sent via postal mail, fax, or email communications.
- q. **Information System(s):** A combination of computing and telecommunications hardware and software that is used in: (a) the capture, storage, manipulation, movement, control, display, interchange and/or transmission of information, i.e., structured data (which may include digitized audio and video) and documents as well as non-digitized audio and video; and/or (b) the processing of information and non-digitized audio and video for the purposes of enabling and/or facilitating a business process or related transaction.

- r. **Key Performance Indicators (“KPI”)**: Performance indicators which are the metrics used to measure and evaluate Contractor’s performance against the desired outcomes. These indicators are used to determine Contractor’s At-Risk Performance Payment as set forth in Contract Section C and Contract Attachment D.
- s. **Limited Purpose FSA (“L-FSA”)**: A limited purpose flexible spending account which allows the accountholder to only spend funds on IRS-approved vision and/or dental expenses.
- t. **Local Education Agency (“LEA”)**: A local education agency pursuant to TCA 49-3-302.
- u. **Local Government Agency (“LGA”)**: A local government agency pursuant to TCA 8-27-207.
- v. **Member**: Employees and their dependents, retirees and their dependents and/or survivors, and individuals qualified under The Federal Consolidated Omnibus Budget Reconciliation Act (“COBRA”) and their dependents who are enrolled in one of the CDHP plan options or enrolled in one or more of the flexible benefit plans (FSA, L-FSA, or DC-FSA) sponsored by the State, Local Education, and Local Government Insurance Committees.
- w. **Pharmacy Benefit Manager (“PBM”)**: State’s Contractor which provides pharmacy benefit management services.
- x. **Plan Group**: One of three or more groups: the State Plan (comprised of the Central State as one employer as well as the University of Tennessee as another employer and the Tennessee Board of Regents which is comprised of many different campuses and employer groups), the Local Education Plan (many different school systems, or the Local Government Plan (many different city or county governments or quasi-governmental entities).
- y. **Plan Documents**: The legal publication that defines eligibility, enrollment, benefits and administrative rules of the Public Sector Plans and are posted on the BA website.
- z. **Protected Health Information (“PHI”)**: As defined in the HIPAA Privacy Rule, 45 CFR § 160.103.
- aa. **Provider**: An entity or individual (e.g., pharmacy, hospital, skilled nursing facility, home health agency, outpatient physical therapy, comprehensive outpatient rehabilitation facility, end-stage renal disease facility, hospice, physician, non-physician provider, laboratory, durable medical equipment supplier, etc.) that has an agreement with the Contractor to provide covered pharmaceutical, medical, or other health care services to Plan Members according to terms and rates within a specific network.
- bb. **Public Key Infrastructure (“PKI”)**: The framework and services that provide for the generation, production, distribution, control, accounting, and destruction of public key certificates. Components include the personnel, policies, processes, server platforms, software, and workstations used for the purpose of administering certificates and public-private key pairs, including the ability to issue, maintain, recover, and revoke public key certificates.
- cc. **Public Sector Plans (“Plan”)**: Refers to all benefit options sponsored by the State, Local Government, and Local Education Insurance Committees (e.g. health plan options, life insurance, other voluntary benefits). The Plan is available to eligible employees and dependents of participating State (Central State and Higher Education), Local Government, and Local Education agencies.
- dd. **Service Level Agreement (“SLA”) Scorecard**: Performance management scorecard that contains Contractor’s KPIs and desired outcomes in Contract Attachment D. The At-Risk Performance Payments will be based on the Contractor’s ability to meet the listed KPIs.

- ee. **Span of Control:** Information Technology and telecommunications capabilities that the Contractor itself operates or for which it is otherwise legally responsible according to the terms and conditions of this Contract. The span of control also includes Systems and telecommunications capabilities outsourced by the Contractor.
- ff. **Splash Page:** Dedicated and customized webpage for this Contract containing program information, specific to the Plan, which does not require a Member to log in.
- gg. **State, Local Government, and Local Education Insurance Committees:** Policy making bodies for the State, Local Government, and Local Education plans established under Tennessee Code Ann. 8-27-101, 8-27-207, and 8-27-301 respectively.

A.3. HSA Set-Up and Management

- a. The Contractor must establish and maintain the appropriate custodian banking arrangement, in compliance with applicable IRC, for the implementation of HSAs for use by each Member.
- b. The Contractor shall manage all Member account activities including, but not limited to, online account set-up/application processing, assistance with opening an account, providing educational information and toll-free and online customer assistance.
- c. The Contractor shall manage all employer account activities including, but not limited to, establishing and processing various data files, salary deduction notification, establishing a process to receive employer contributions, providing refunds, providing educational information and toll-free and online customer assistance.
- d. The Contractor shall receive and process weekly enrollment and semimonthly payroll deduction files from the State and only establish a HSA for those Members enrolling in a CDHP. At the State's request, the Contractor shall process enrollment files more or less frequently than weekly. See requirements in contract Section A.14.e.
- e. The Contractor shall work with the State to establish procedures for the opening, transferring and closing of HSAs; such procedures shall include a process to allow electronic enrollment, immediate funding of the HSA, online account set-up, a process to terminate and liquidate a HSA established for ineligible Members, and the ability to transfer funds to other accounts for Members leaving the Plan(s).
- f. The Contractor shall have a process to refuse or refund HSA contributions exceeding the annual maximum contribution amounts.
- g. The Contractor shall have a process in place to redistribute employer funds exceeding the annual maximum contribution directly to Members with an accompanying 1099-SA, if applicable.
- h. ~~The Contractor shall~~ provide to Members a slate of investment options for the program that is diverse and low cost. This would include domestic and international equity as well as fixed income investments and may include both passive and active investment strategies. The Contractor shall provide record keeping service and may also offer investment guidance and management to Members. The State shall have the right to select which custom slate of ~~investment offerings or funds~~ will be made available to all Members with an HSA under this contract. The Members that meet specified investment qualifications may select investments from the slate of offerings. The State Treasury department shall determine and approve the investment vehicles offered by the HSA administrator. Any conditions surrounding the investment opportunities shall be prior approved by the State and any material changes in the investment portfolio will be communicated to the State within thirty (30) days of the change.
- i. The Contractor shall deposit non-invested HSA funds into an FDIC-insured deposit account.

- j. The Contractor shall provide continuing program support services to participating employers. Employer personnel may require periodic assistance and training for deduction management, account enrollments, facilitating the filing of forms, etc.
- k. The Contractor shall receive and process financial transactions and reimbursement claims on a daily basis. Members must have 24-hour access to their funds. The Contractor shall provide Members with an up-to-date HSA balance 24 hours a day, seven days a week through its website described below in Section A.12., and provide a timely feed of such updated balances to other contractors as requested by the State.
 - l. The Contractor shall accept HSA contributions directly from the Member at any time and directly from the Member's employer at a frequency and in a format determined by each individual employer. At a minimum, unless otherwise directed by the state, the Contractor shall allow the following Member contribution methods: payroll deduction, one-time or recurring electronic funds transfer EFT contributions, personal check or money order, and mobile deposits. The Contractor shall follow the timeframes, if any, specified by the State for the establishment of a new HSA for Members.
- m. Employer contributions, if any, shall be decided annually by each participating employer and may be funded at any time during the Plan year by the employer. The Contractor shall work with the State and all participating employers to establish links to multiple payroll systems in support of employer account funding and payroll deduction functions. The Contractor shall receive and process multiple, payroll deduction files on a varying schedule (i.e. weekly, semi-monthly, bi-weekly, etc.) from other groups such as higher education, LEA or LGA as necessary. This shall include the development of mutually agreed upon files to support the receipt and allocation of pre-tax contributions (e.g. FTP files, ACH, other).
- n. The Contractor shall, at the State's request, credit Member HSA accounts for achieving specific wellness requirements, based on files received from the State or other State contractors to the extent that such credit would not cause the account to exceed the statutory annual contribution limit.
- o. The Contractor shall hold in the HSA all cash contributed and gains and losses attributable thereto for the exclusive purpose of administering the Member's HSA.
- p. The Contractor shall comply with the provisions restricting recoupment by employers to circumstances described in Internal Revenue Service ("IRS") Notice 2008-59, Q&A23-25 or any future guidance issued regarding the non-forfeitability of employer contributions to HSAs.
- q. The Contractor shall refund employers directly for any funds paid in error by the employer.
- r. The Contractor shall act upon the written directions of the CDHP Member, including settling investment transactions and making distributions from the HSA.
- s. The Contractor shall maintain applicable custodian records reflecting an inventory of the assets of each HSA, all activity transacted during the previous year and the market value of the assets of the HSA.
- t. The Contractor shall capture and maintain account beneficiary information. If no valid designation is on file then the Contractor shall follow their standard order of precedence.
- u. The Contractor shall accept rollovers and account transfers from other HSAs and Archer Medical Spending Accounts (MSA) and transfers of funds from Individual Retirement Accounts (IRA).
- v. The HSA shall have no minimum balance requirement to open or maintain the account and Member fees shall not vary based on the account balance. Fees related to overdrafts are

permissible and must comply with the fee schedule outlined in contract section C.3. Contractor may require that a Member have a minimum HSA deposit account balance of \$1,000 before any funds over that can be invested.

- w. The Contractor shall provide employees with enrollment confirmation notices within ten (10) Business days of successfully establishing their HSA account.
- x. The Contractor shall establish a reserve fund to hold employer contributions for Members that have not yet activated their account. The funds shall be returned to the employer within a timeframe established by the employer.
- y. The Contractor shall notify the State In Writing if there are changes in regulations or federal guidance which may require the State to amend the CDHP as necessary to remain qualified and comply with changes in applicable Federal, state, or local statutes, guidance or regulations.
- z. The Contractor shall offer all services contained in this contract to any employer or Member participating in the State sponsored CDHP.
- aa. The Contractor shall work to transition all eligible previously existing HSAs (for those who continue enrollment in the state sponsored CDHP) and their balances as of December 30, 2020 from the incumbent HSA Contractor (if applicable). All eligible HSAs shall be moved to the Contractor under this Contract and be available for Member use by January 1, 2021.
- bb. Contractor shall ensure that all aspects of HSA setup, ongoing management, communications, and other related tasks are in compliance at all times with IRS regulations and rules.
- cc. The Contractor shall assist employees who are no longer participating in a State sponsored CDHP to transition their HSA to an individual, not state funded, HSA.
- dd. If, at any time during the term of this Contract the Contractor and/or the State determine that one or more of the investment funds in the investment slate available to HSA Members should be replaced or removed, the Contractor shall bring recommendations (or notify) to the State In Writing regarding one or more replacement funds. If the change is approved by the state, the Contractor shall then mail a custom letter (State prior approved) to each Member impacted by the change and notifying them of the option(s) available to them. The Costs of mailing the Member letter shall be borne by the Contractor.
- ee. Following Contract termination, the Contractor shall complete the processing of all HSA reimbursement requests received by Contractor which were due and payable prior to the contract termination date.

A.4. FSA Set-Up and Management

- a. The Contractor shall hold all FSA funds received from the State, Members, or on behalf of a Member, as applicable, in an FDIC insured account established for such purposes at an eligible financial institution.
- b. At a minimum, the Contractor shall offer account holders the following FSA reimbursement methods: debit card, online bill pay, check reimbursement and direct deposit.
- c. The Contractor shall manage all Member account activities including, but not limited to, claims substantiation, claims payment, account creation and termination, Member account or claims assistance, providing educational information and toll-free and online customer assistance.
- d. The Contractor shall manage all employer account activities including, but not limited to, establishing and processing various enrollment and payroll deduction files, providing

educational information, terminating accounts established for ineligible Members, continuing program support services and toll-free and online assistance.

- e. The Contractor shall receive and process a weekly enrollment and semimonthly payroll deduction file from the State and Higher Education (if applicable, and the schedules may vary) and establish a FSA for those employees who have elected to participate. At the State's request, In Writing, the Contractor shall process enrollment and payroll files more or less frequently than weekly. See requirements in contract section A.14.e.
- f. The Contractor shall, at the State's request, In Writing, process FSA enrollments for higher education employees. Enrollment activities shall be online for Members. The Contractor shall transmit a file of enrolled Members and their contribution amounts to multiple Higher Education entities at a frequency determined by Higher Education. The Contractor shall provide all State and Higher Education employees with enrollment confirmation notices within ten (10) Business days of successfully establishing their FSA account.
- g. The Contractor shall maintain monthly automatic card adjudication rates at or above eighty-five percent (85%) for FSA transactions with MCC codes specific to health care providers and shall report rates on a quarterly basis.
- h. The Contractor shall handle all processes related to the substantiation and payment of claims in compliance with IRS rules and shall make the determination of the eligibility of the Member for benefits under the plan as well as the amounts due. The Contractor shall notify the employer in a timely manner of any improper payments that cannot be substantiated or recovered and shall deactivate the member debit card if claims remain unsubstantiated or if a member fails to reimburse the plan for improperly paid or unsubstantiated claims.
- i. The Contractor shall receive and process reimbursement claims on a daily basis and shall accept claims or substantiation online, via the Contractor's app, or via fax or mail.
- j. In the event a claim is determined to not be allowable, the Contractor shall notify the Member In Writing of such decision within fifteen (15) Business days of receipt of the claim, including the reason for the denial. The Member shall have the right to appeal such denial. The Contractor will evaluate the appeal within fifteen (15) Business days of receipt of the appeal and advise the Member of claims ultimately determined to not be allowable.
- k. In accordance with IRS rules, and as determined by the State, the Contractor shall have the capability to implement either a grace period for unused funds or allow a carryover of funds for the following plan year. The State and Higher Education institutions currently allow a carryover up to the IRS limit into the following year on FSA and L-FSAs, subject to IRS annual rules. Carryover shall be calculated as annual member contributions less claims payments paid on behalf of the member.
- l. The Contractor shall administer a general purpose health FSA and/or a **L-FSA**, as determined by the State and shall establish processes to coordinate HSA reimbursements with limited purpose FSA reimbursements (i.e. those who have both a **L-FSA** and a HSA shall have applicable vision or dental expenses pulled from their **L-FSA** prior to any use of the HSA funds).
- m. The Contractor shall implement controls to prevent HSA accountholders from establishing a general purpose FSA and must notify the employing agency immediately when an employee attempts to enroll in accounts that are at cross purposes and not allowed by the IRS.
- n. The Contractor shall perform routine non-discrimination testing of the flexible spending plan at least once annually to ensure that the plan is operating in a nondiscriminatory manner in compliance with IRC.
- o. The Contractor shall have a process in place to annually refund all unused funds to the State or Higher Education institutions following the plan year run-out period.

- p. The Contractor shall notify the State, In Writing, if there are changes in regulations or federal guidance which may require the State to amend the FSA plan as necessary to remain qualified and comply with changes in applicable Federal, state, or local statutes, guidance or regulations.
- q. The Contractor shall contact (via mail or electronically) participants enrolled in FSA Medical Reimbursement Accounts, L-FSAs and Dependent Care Accounts one month before the end of the plan year and one month before the end of the run-out period to notify them of their available balance and that if unclaimed these funds will be forfeited to the State or their applicable employer (Central State, University of Tennessee, Tennessee Board of Regents school or university) or other Locally Governed Institution/university.
- r. The Contractor shall manage and administer any COBRA requirements applicable to the accounts of FSA Members.
- s. If applicable, Contractor shall receive from the incumbent FSA Contractor any FSA or L-FSA funds that are eligible for carry over into the Member's 2021 FSA or L-FSA (up to the current plan and IRS limits) and continue processing claims that were incurred in 2020 for which the Member has until April 30, 2021, to file claims against. These funds must be transferred by January 1, 2021. The Contractor must also be prepared and able to process claims from DC-FSA enrollees who file claims with a 2020 date of service to the Contractor from January 1, 2021-April 30, 2021.
- t. Contractor shall ensure that all aspects of FSA, L-FSA, and DC-FSAs including setup, ongoing management, reporting and related tasks are in compliance with all IRS rules and regulations.
- u. At the State's request, the Contractor shall be able to calculate the carry forward amount in accordance with the state's plan document.
- v. At the state's request, the Contractor shall implement a limited/post-deductible FSA (one that does not pay or reimburse any medical expense incurred before the minimum annual deductible under section Internal Revenue Code 223(c)(2)(A)(i) is satisfied) to allow Members to pay dental and vision expenses immediately and all eligible medical expenses once a minimum deductible has been met. Payment for such accounts would be at the same rates as the L-FSA.
- w. Following Contract termination, the Contractor shall complete the processing of all FSA reimbursement requests received by Contractor which were due and payable prior to the contract termination date.

A.5. Member / Employer Support and Education

- a. The Contractor shall provide Member access to personal HSA and FSA account information 24-hours-a-day seven days a week via the website described below in Section A.12. as well as an Interactive Voice Response ("IVR") telephone system.
- b. The Contractor shall provide alternative means for Members who are not internet-capable to access the same level of information and services available to on-line Members.
- c. The Contractor shall send a representative to perform educational sessions and enrollment meetings at employer sites across the state, as necessary, to ensure understanding of the HSA and FSA products. Such trainings may include in-person or online webinar sessions. The Contractor shall attend, in person, meetings predicted to have 100 or more Members in attendance and shall provide copies of training materials for all in-person meetings, at no cost to the State.

- d. The Contractor shall provide tools to employers for purposes of testing the HSA Plan for comparable contributions for comparable participating employees under IRC Section 4980G and applicable regulations.
- e. The Contractor shall perform, following review and approval by the State, In Writing, an annual Member satisfaction survey. Any annual Member satisfaction survey done to satisfy the annual requirement must only be done on Members enrolled in HSA or FSA products sponsored by and managed by the State. Under no circumstances may the Contractor use survey results from their entire book of business; all survey results must be only on Members enrolled in a product managed through the State. The level of overall Member satisfaction, as measured annually through the Member satisfaction survey, shall be equal to or greater than eighty-five percent (85%) in the first year of the Contract, and shall be equal to or greater than ninety percent (90%) in all subsequent year(s) within the Term. The State reserves the right to review and mandate changes in the survey it feels are necessary to obtain valid, reliable, unbiased results. Those changes may include, but are not limited to, changes in the research design, units of analysis or observation, study dimension, sample size, sample frame, sample method, coding, or evaluation method. Based upon the results of the survey, the Contractor and the State will jointly develop an action plan to correct problems or deficiencies identified through this activity.

A.6. Implementation

- a. The Contractor shall be fully operational and capable of delivering all contracted services on the go-live dates specified in Contract Section A.19.
- b. All key Contractor project staff shall attend a project kick-off meeting at the State offices in Nashville, Tennessee, within the first thirty (30) days after the Contract Effective Date or after the notification of awarding of the contract to the vendor, as requested by the State. The Contractor shall cover the cost of staff travel and expenses. The Contractor shall prepare and develop the agenda for the kick-off meeting, subject to State approval.
- c. The Contractor shall provide a project implementation plan to the State no later than thirty (30) days after the Contract Effective Date. The plan shall be electronically maintained, daily, in a format accessible to the State. The plan shall comprehensively detail all aspects of implementation, which includes all tasks with deliverable dates necessary to satisfactorily implement contracted services no later than the applicable go-live date specified in Contract Section A.19 and a description of the Members on the implementation team and their roles with respect to each item/task/function. The plan shall include a detailed timeline description of all work to be performed both by the Contractor and the State. This plan shall require In Writing approval by the State. At a minimum, the implementation plan shall provide specific details on the following:
 - i. Identification and timing of significant responsibilities and tasks;
 - ii. Names and titles of key implementation staff;
 - iii. Identification and timing of the state's responsibilities;
 - iv. Data requirements (indicate type and format of data required) from the State and/or its contractors and participating employers;
 - v. Identification and timing for the testing, acceptance and certification of receipt of the State's enrollment information;
 - vi. Member communications;
 - vii. Schedule of in-person meetings and conference calls; and
 - viii. Staff assigned to attend and present (if required) at educational sessions.
- d. At the State's request, the Contractor shall provide for a comprehensive operational readiness review (pre implementation audit) by the State, and/or its authorized representative, within thirty (30) days prior to the applicable go-live date. Such review by the

State, and/or its authorized representative, may include, but not be limited to, an onsite review of the Contractor's operational readiness for all services required in this Contract. The review may also include desk reviews of documentation that includes but is not limited to:

- i. Policy and procedures manual;
 - ii. Call center scripts;
 - iii. Information Systems documentation; and
 - iv. The ability to provide and the process governing the preparation of any and all deliverables.
- e. At its discretion, the State may conduct an additional, pre-implementation review of the Contractor's progress towards fulfilling the Information Systems requirements. Such review by the State, and/or its authorized representative, may include both onsite and desk reviews, including but not limited to staff interviews, system demonstrations, systems testing, and document review.
- f. During onsite visits as part of a readiness review or a pre-implementation review the Contractor shall provide State staff and/or the State's designee with onsite workspace and access to a telephone, scanner, printer, copy machine, and internet connection.
- g. The Contractor shall participate in all readiness review activities conducted by State staff and/or the State's designee to ensure the Contractor's operational readiness for all services required in this contract. The State may provide the Contractor with a summary of findings including areas requiring corrective action. The Contractor shall ensure any findings identified by the State are resolved prior to the applicable go-live date.
- h. The Contractor shall conduct status meetings concerning project development, project implementation and Contractor performance at least twice a week during implementation and daily for the two weeks prior to and the first month following the go-live date, unless otherwise approved by the State. Such meetings shall be either by phone or onsite at the offices of the State, as determined by the State, and shall include the account manager and appropriate Contractor staff. Any costs incurred by the Contractor as a result of a meeting with the State shall be the responsibility of the Contractor.
- i. No later than forty-five (45) days post-go-live, the State shall perform an implementation performance assessment survey of the Contractor's performance to determine the State's satisfaction with the implementation process and Contractor. Results shall be shared with the Contractor including the identification of any deficiencies. The Contractor shall respond within fifteen (15) business days of receiving the results with a corrective action plan as necessary to remedy any identified deficiencies. In response to the corrective action plan, the Contractor shall comply with all recommendations/requirements agreed upon by the State within the timeframes agreed upon by the State.
- j. The State reserves the right to implement any one of or none of the services (HSA, healthcare FSA, L-FSA, or DC-FSA) provided in this contract in any year, with no minimum enrollments required in order to meet contracted rates provided by the Contractor as part of the procurement process.

A.7. Reporting

- a. The Contractor shall prepare and distribute all tax reporting with respect to HSA contributions and distributions as required by the IRC and applicable law or regulations (e.g. Forms 5498-SA and 1099-SA).
- b. At the State's request, the Contractor shall provide to the State all information necessary for Plan reporting as required by law. Such information shall exclude specific Member account information such as balances and payouts.

- c. In addition to the reports outlined in this contract, the Contractor shall provide the State and all other employer groups, as applicable, with all HSA and FSA reports included in the Contractor's standard reporting package.
- d. Each calendar quarter within thirty (30) calendar days of the end of the quarter, the Contractor shall provide the State with summary level information related to the HSA, broken down by State, Higher Education, LEA and LGA showing the amount of contributions split by employer/employee, how funds in the HSAs were spent (i.e. funds withdrawal, debit card use, or paid to Provider by the Contractor), how debit cards were used (i.e. pharmacy, medical doctor, lab, vision, dental, hospital, etc.), the number of employees who are investing funds along with the average investment balance, the number of employees eligible to participate in the investments but who are not doing so.
- e. The Contractor, as requested by the State or a participating employer, shall prepare and provide monthly and year-end aggregate summary reports for each participating employer setting forth information including, but not limited to, employer HSA contributions, employee payroll deduction amounts, and unused FSA fund amounts with sufficient detail to provide for the audit and control of deposits made and account reconciliation. Such reports shall be delivered electronically to the extent permitted by law and agreed upon by the participating employer.
- f. At the request of each employer, the Contractor shall produce and distribute a salary deduction data file of HSA and FSA salary deductions elected by their employees. The report shall be delivered in the format required by each employer to support entry into their payroll system.
- g. The Contractor shall maintain all records prepared by the Contractor relating to the services provided pursuant to this Contract for a period no less than six (6) years after the contract expiration date.
- h. The Contractor shall send quarterly HSA Member account and investment statements to Members. Such statements shall be sent electronically or via mail at the Member's request.
- i. Unless otherwise directed by the State, the Contractor shall submit a quarterly portfolio performance review report to the state no later than thirty (30) calendar days after the end of each calendar quarter. The report shall describe the financial performance and investment environment for the investment portfolio offered to HSA Members. The Contractor shall attend meetings with the State, as needed, telephonically or in-person to present the quarterly portfolio performance review report. The report shall summarize the investment returns, including fees, for all funds offered and sponsored – both the contractor's core investment funds as well as any funds that the State Treasury Department and/or BA may elect under the custom slate. Returns should be provided that display the most recent 3 months, 1 year, 3 years, and 5 years. Returns must be provided within ninety (90) days of the end of each calendar quarter.
- j. The Contractor shall provide the State with the following reports:
 - i. A monthly listing of State Members who have not activated their HSA;
 - ii. Aggregate Member HSA deposits and withdrawals, by Plan Group, annually;
 - iii. Average monthly HSA balances, by Plan Group;
 - iv. Annual investment summaries;
 - v. Total fees (as listed in Section C) assessed to Members by transaction type, category, annually;
 - vi. Number of opened, closed or transferred HSA accounts, annually;
 - vii. A quarterly report of aggregate HSA deposits, and payments,

- k. The Contractor shall submit reports in a mutually agreeable electronic format (e.g., Microsoft Word or Microsoft Excel), of the type, at the frequency, and containing the detail described in Contract Attachment C.
- l. Contractor shall not rely on the ability of any contractor-provided reporting portal or system for the State staff to pull their own reports to negate the responsibility of the Contractor to provide reports requested or required under this contract.
- m. The Contractor shall provide the State access to an ad-hoc reporting liaison to assist in the development of reports that cannot be generated using the Contractor's standard reporting package. The Contractor shall deliver such reports to the State within five (5) Business Days of the State's request. If requested by the State, In Writing, the Contractor shall deliver up to ten (10) reports annually deemed as "urgent" by the State within two (2) Business Days. All ad-hoc reports shall be provided at no additional cost to the State.
- n. The Contractor shall ensure that reports submitted by the Contractor to the State shall meet the following standards:
 - i. The Contractor shall verify the accuracy and completeness of data and other information in reports submitted.
 - ii. The Contractor shall ensure delivery of reports or other required data on or before scheduled due dates.
 - iii. Reports or other required data shall conform to the State's defined written standards.
 - iv. All required information shall be fully disclosed in a manner that is responsive and with no material omission.
 - v. The Contractor shall notify the State regarding any significant changes in its ability to collect information relative to required data or reports.
 - vi. The submission of late, inaccurate or otherwise incomplete reports shall be considered failure to report within the specified timeframe (see Contract Attachment C).
 - vii. State requirements regarding reports, report content and frequency of submission may change during the term of the Contract. The Contractor shall have at least forty-five (45) calendar days to comply with changes specified In Writing by the State.
- o. The Contractor shall provide, as often as requested by the State for Central State employees, reports for our Members who are in an overpayment status (i.e. who do not provide adequate claims substantiation to the Contractor after using his/her debit card and having been asked for claims substantiation). The report(s) are to be titled '*Debt Substantiation Reporting*'. The report(s) shall list all State employees who did not substantiate (after attempts by the Contractor) any applicable debit card transactions on their FSA or L-FSA. Such report shall contain detailed information that will allow State finance staff to follow the Contractor's math calculations and perform their own calculations to understand how the Contractor arrives at an amount. The report(s) shall be provided in Excel format and contain all data points in the template provided by the State. Contractor shall, upon State request, provide copies of all email and written notifications that the Contractor sends to our employees for expenses requiring documentation, as well as how many letters go out before a debit card is deactivated. For the University of Tennessee and Tennessee Board of Regents colleges and universities, Contractor may provide their standard annual debt substantiation report.
- p. Contractor shall provide to the State by December 15th of each year for the previous calendar year a final/reconciled debt substantiation report on Central State employees to the State via secure email using the report format provided by the State.
- q. The Contractor shall provide a report each year no later than July 30 for the Central State as a single employer to allow for reconciliation to the State's Comprehensive Annual Financial Report (CAFR). This report shall be titled '*Central State-CAFR reporting*' and the Contractor shall use the report format provided by the State.

- r. At the State's request, the Contractor shall complete the State's corrective action plan process to correct any identified contract deficiencies. The corrective action plan shall detail a step-by-step breakout of how and when the Contractor will remedy all identified issues.
- s. The Contractor shall notify the State, within three (3) business days of identification, about any situation that appears to negatively impact the administration or delivery of the program, plan, or benefits.
- t. The Contractor shall provide a FSA report each month that identifies Central State active employees without payroll deductions received that month. A template report of how the report shall be populated will be provided to the Contractor by the State.
- u. The Contractor shall provide a FSA report annually that identifies Central State active employees with total payroll deductions less than their annual elections. A template report of how the report shall be populated will be provided to the Contractor by the State.
- v. The Contractor is insurance company and holder as defined by Tenn. Code Ann. § 66-29-102 for purposes of unclaimed property arising from the performance of this Contract. The Contractor shall comply with all applicable escheat state laws and regulations including but not limited to Tenn. Code Ann. § 66-29-107. The Contractor shall provide copies of all escheat reports and supporting documentation to the Benefits Administration. The Contractor shall be responsible for compiling reports which meet National Association of Unclaimed Property Administrators (NAUPA) specifications and filing any required reports with the State through the ReportItTN.gov online portal.

A.8. Call Center

- a. The Contractor shall establish and operate a single integrated call center with a dedicated toll-free customer service number and dedicated e-mail address to respond to Member and employer inquiries, issues and complaints.
- b. The Contractor shall have sufficient staff to respond to inquiries, correspondence, complaints, and problems related to all aspects of the services required in this contract. The Contractor shall not answer technical questions regarding eligibility policy and shall refer these questions to the State. Contractor shall answer all questions regarding the HSA and FSA products and not refer these questions back to the State or any employer agency. The only questions that may be referred back to the State, University of Tennessee or a Tennessee Board of Regents college, school, or university are those related to eligibility.
- c. The Contractor's call center shall be open and staffed with trained personnel on or before the dates specified in Contract Section A.19.
- d. The Contractor's call center and designated Member services representatives shall be located in the continental United States.
- e. The Contractor may temporarily route calls to another available Contractor call center for occasions related to weather, training, or similar situations. The Contractor shall notify the State of any such instances prior to the switch, or as soon as practical.
- f. The Contractor's call center shall, at a minimum, accept calls Monday through Friday 7:00 a.m.-5:00 p.m. CST, except on official State holidays.
- g. The Contractor shall implement procedures for monitoring and ensuring the quality of services provided by its Member services representatives. Such procedures may include, but are not limited to, the following activities:
 - i. Auditing calls/correspondence for each Member services representative;
 - ii. Silent monitoring of calls;
 - iii. Recording calls for quality and training purposes;
 - iv. Skill refresher courses; and
 - v. Call coaching.

- h. The Contractor's call center shall be equipped to support and communicate with persons with a hearing or speech impairment via Telecommunications Relay Services (TRS) in compliance with the federal Americans with Disabilities Act.
- i. During normal business hours the Contractor's call center shall have at least one Member services representative on duty that is bilingual in English and Spanish. The Contractor shall provide oral interpretation services via a telephone interpretation service free of charge to callers with Limited English Proficiency.
- j. The Contractor shall provide the State's ABCs with a special number or access code that they can use to have immediate access to a Member services representative. The Contractor can satisfy this requirement by expediting calls to the front of the general queue – or it may provide designated staff to serve ABCs. The Contractor shall also set up, maintain, and regularly monitor a dedicated email address/box specifically for ABCs to use for communicating with the Contractor's account team. This email box is intended **only** for ABCs (not plan members).
- k. The Contractor's call center shall meet each of the following performance standards and shall report on these standards monthly:
 - i. Average Speed of Answer (ASA) of thirty (30) seconds. After answering the call the Contractor may only put callers on hold in order to (a) make outbound calls as necessary or (b) to research a caller's issue.
 - ii. First Call Resolution of 85% as measured by one or more of the following methods: a Member post-call phone or web survey; an end of call script where the customer service representative asks if the Member's issue has been resolved; a voice menu allowing the Member to indicate if this is the first call they've made to resolve their inquiry or problem; or another method prior approved by the state.
- l. The Contractor shall provide their standard book of business call center statistics to the State on a monthly basis.
- m. The Contractor's call center shall have call management systems and communications infrastructure that can manage the potential call volume and achieve the performance standards described in this Contract.
- n. The Contractor's call management systems shall be scalable and flexible so they can be adapted as needed, within negotiated timeframes where applicable, in response to program, benefit, or enrollment changes.
- o. The Contractor's call management systems shall provide greeting messaging when necessary. The Contractor may play messages for callers while they are on hold and shall play messages as directed by the State. The messages shall be approved by the State prior to the HSA and FSA go-live dates in Contract Section A.19. The Contractor shall not play advertising or informational messages for callers while they are on hold unless prior approved by the State (or the State directs the Contractor to play certain messages). Additionally, the Contractor's systems shall provide a message that notifies callers that calls are being recorded and may be monitored for quality control purposes.
- p. The Contractor's call management system shall record and index all calls such that the Contractor can easily retrieve recordings of individual calls. The Contractor shall be able to provide a full recording of each call upon the State's request and shall, at the State's request, allow the State, or its authorized representative to monitor recorded calls from a remote location.
- q. The Contractor's call management systems shall facilitate the processing of all calls received and assign incoming calls to available Member services representatives in an efficient manner. The system shall transfer calls to other telephone lines as necessary and appropriate, including transfers to external call centers.

- r. The Contractor may use an automated IVR system for managing inbound calls, provided that the caller always has the ability to leave the IVR system and wait in queue in order to speak directly with a live-voice Member services representative during normal business hours rather than continue through additional prompts. The Contractor's decision tree and menu shall be submitted to the State for review and approval prior to the HSA and FSA go-lives dates in Contract Section A.19.
- s. The Contractor shall inform callers of their likely wait times (based on real-time information, including call volume and Member services representative availability) as they enter the queue.
- t. The Contractor shall have the ability to make outbound calls without interrupting the ability of callers to continue to access the call center.
- u. The call management system shall enable the logging of all calls, including:
 - i. the caller's identifying information (e.g., employee ID);
 - ii. the call date and time;
 - iii. the reason for the call (using a coding scheme);
 - iv. the Member services representative that handled the call;
 - v. the length of call; and
 - vi. the resolution of the call (including a resolution reason code) and, if unresolved, the action taken and follow up steps required.
- v. The call management system shall maintain a history of correspondence and call transactions for performance management, quality management and audit purposes. This history shall contain the actual information, a date/time stamp that corresponds to when the transaction took place, the origin of the data management transaction (e.g., the State and/or one of its authorized representatives or the Member), and the Member services representative that processed the transaction. Related correspondence and calls shall be indexed and properly recorded such that they can be treated in reporting and analysis as part of a distinct transaction.
- w. The Contractor shall develop an interview guide (or scripts) to guide representatives/operators in their discussions with Members. The interview guide shall include but not be limited to the following:
 - i. Specific training and knowledge of the HSA, including specific employer funding amounts, Member balances, Member plan spend to date; and
 - ii. When to transfer calls to the BA call center, the State's Third Party Administrators ("TPA"), or another party.
- x. The Contractor shall track and provide to the State a quarterly summary of Member complaints and their resolution.
- y. Contractor shall ensure that customer service representatives are fully familiar with the State's benefit offerings and tailor their answers and responses to Members accordingly.
- z. The Contractor must notify Members, either by email or letter (depending on Member preference), the status of claims substantiation requests (i.e. whether the information the Member provided in response to a claims substantiation request from the Contractor was acceptable or not). The Contractor's notification must clearly explain if the Member provided substantiation was not acceptable, why it was not acceptable, and what the Member needs to provide. If it was acceptable, the Contractor must notify the Member with an approved notification.

A.9. Staffing

- a. The Contractor shall provide and maintain qualified staff. The Contractor shall ensure that all staff, including the Contractor's employees, independent contractors, consultants, and subcontractors performing services, has the experience and qualifications to perform the applicable services.
- b. The Contractor shall not use any person or organization that is on the U.S. Department of Health and Human Services' Office of Inspector General (OIG) exclusions list unless the Contractor receives prior, approval In Writing from the State.
- c. The Contractor shall ensure that all staff receives initial and ongoing training regarding all applicable requirements. The Contractor shall ensure that staff providing services are specifically oriented and trained regarding their functions, knowledgeable about the Contractor's operations relating to the State Plan, and knowledgeable about their functions.
- d. The Contractor shall have an ongoing designated, full-time account team that can provide daily operational support as well as strategic planning and analysis. All members of the account team shall have previous experience working with large employer groups and complex accounts.
- e. The account team shall be available for consultation with the State during the hours of 8:00 a.m. to 4:30 p.m. Central Time, Business Days, as required to fulfill the scope of services. The account manager shall also be available via phone and email throughout the workday as well as after hours, including weekends.
- f. For matters designated as urgent by the State (i.e. website malfunction, inability to deposit or withdraw from the HSA, etc.), the Contractor shall provide a response to the State within four (4) hours. Staff members from the respective business unit with final decision making authority shall provide responses.
- g. The account team shall include an information technology director/manager, who shall have overall responsibility for the information technology operations. This individual shall be responsible for coordinating with the State's IT staff and all participating employer IT staff.
- h. The Contractor shall designate a full time account manager as a member of the account team. The account manager shall be a member of the implementation team in order to ensure a seamless transition from implementation to ongoing operations. The account manager shall have the responsibility and authority to manage all contractual obligations for all products and shall respond promptly to changes or inquiries. This includes, but is not limited to, researching and resolving problems with employee enrollment, contributions, disbursements, other participant account issues, employer issues, and technical issues.
- i. Ongoing operational meetings shall be conducted on a State-specified schedule, but shall occur no less than weekly unless otherwise directed by the State. At its discretion, the State may allow the Contractor to participate in such meetings by teleconference.
- j. Unless otherwise approved by the State, the account manager shall meet with the State in person, at a minimum, annually and more often if required by the State. Any costs incurred by the Contractor as a result of a meeting with the State shall be the responsibility of the Contractor.
- k. The State shall perform an account satisfaction survey of the Contractor's performance annually during the contract period to determine the State's satisfaction with the ongoing account team and Contractor. Results shall be shared with the Contractor including the identification of any deficiencies. The Contractor shall respond within fifteen (15) Business Days of receiving the results with a corrective action plan as necessary to remedy any identified deficiencies.

- i. The Contractor agrees that the State may approve or disapprove of any staff and subcontractor assigned to this Contract prior to the proposed assignment. The State may also direct the Contractor to replace staff members and subcontractors providing core services as it deems necessary and appropriate. The decision of the State on these matters shall not be subject to appeal.
- m. Key personnel commitments made in the Contractor's proposal shall not be changed unless prior approved by the State In Writing which shall not be unreasonably withheld. The Contractor shall notify the State at least fifteen (15) Business Days in advance, or as soon as the information is available, of proposed personnel changes. The Contractor shall submit proposed personnel substitutions in sufficient detail regarding education and experience to the State to allow evaluation of the impact to services. The decision of the State on these matters shall not be subject to appeal.
- n. If any key position becomes vacant, the Contractor shall provide a replacement with commensurate experience and required professional credentials within sixty (60) calendar days of the vacancy unless the State grants an exception to this requirement In Writing.

A.10. Communications/Materials

- a. At the State's request, the Contractor shall develop a written marketing and communications plan. In addition, the Contractor shall update this plan on an annual basis to reflect any changes in marketing strategy and updated methods, tools or technology to engage with Members. The Contractor's marketing plan will reflect a thoughtful, proactive approach to encourage Member enrollment, drive engagement and utilization of applicable services and programs. Contractor is encouraged to relay what resources they have that will support marketing and communications. All plan updates shall be approved In Writing by the State.
 - i. At the State's request, the Contractor will provide a bi-annual analytics report of marketing and communications efforts that could include email, website or other communications statistics. The Contractor shall use the State's template or the Contractor's template with prior approval In Writing by the State.
- b. The Contractor shall, in consultation with the State, develop and disseminate Member information and communication materials. All material must have approval In Writing by the State prior to distribution. Contractor shall ensure that all Member materials and other communications meet any state or federal regulatory compliance (e.g., Civil Rights Compliance), if applicable. The Contractor shall develop all materials in conformance with the style, formatting and other related standards developed by the State and its marketing staff.
 - i. Materials could include, but are not limited to, debit cards, welcome packet, administrative forms, letters, emails, manuals, brochures, fliers, webinars, text messages, website copy, website images, mobile app and app content, social media content, PowerPoints, training materials, marketing materials specific to Plan or agency and videos.
 - ii. Marketing/segmenting: Contractor may offer or suggest marketing and communications based on segmentation of population (e.g., demographics, geography, etc.). Contractor may provide data to address paths and barriers to engagement.
 - iii. Personalization of materials and digital communications may be an option upon request.
 - iv. Contractor shall provide marketing and communications samples of how they introduce Plan options to Members and continually drive engagement and utilization of preferred services.
 - v. The Contractor shall use graphics to communicate key messages to populations with limited literacy, limited health plan literacy or limited English proficiency. The Contractor shall also prominently display the call center's telephone number in large, bolded typeface and hours of operation on all materials.

- vi. The Contractor shall provide text and graphics, if applicable, for the State's communication to Members.
 - vii. As part of its submission to the State, the Contractor with consultation with the State shall specify how the materials will be sent i.e., email, text, regular mail, other.
- c. In addition to other Member information and communications referenced in the contract, the Contractor shall assist the State, if requested, in the education and dissemination of information regarding the program. This assistance may include but not be limited to:
- i. Written information;
 - a. Audio/video and webinar presentations;
 - b. Member and agency outreach: With notification In Writing to the State, attendance at meetings, workshops, benefits fairs, marketing events and conferences (approximately 60-70 annually).
 - ii. Educating State staff, ABCs, Members and other persons on Contractor's administrative and benefits procedures. Specifically, when a new agency joins the Plan, Contractor may be asked to attend onsite enrollment and benefits educational events.
 - iii. Educating Members and ABCs could include targeted agency outreach and partnering with other state departments on outreach efforts across the state on benefit implementation, engagement and education.
 - iv. Any on-site visits to agencies, marketing or other state department co-marketing efforts covered shall require prior notification In Writing by the State. The State also reserves the right to request Contractor's attendance at specific events.
- d. Unless otherwise specified, the Contractor shall be responsible for all costs related to the design, development, printing, distribution, mailing (if applicable) and revision of all materials that are required to be produced under the terms of this contract.
- e. The Contractor shall use First Class Mail for all mailings, unless otherwise directed or unless otherwise approved by the State In-Writing. With prior approval, the State may approve bulk or alternative rates.
- f. The Contractor shall provide the State with draft versions of all communications materials and letters at least fourteen (14) Business Days prior to planned printing, assembly, and/or distribution (including web posting). The Contractor shall not distribute any materials until the State issues approval In Writing to the Contractor for the respective materials. The State has and retains the ability to edit and customize all communication pieces distributed by the Contractor, including the right to require that the State branding "ParTNers for Health" logo be included on any Member letters or correspondence. The Contractor shall ensure communications are specific to the Plan design and not simply a rebranding/repackaging of standard book-of-business materials or communications unless it is to remain in compliance with other regulatory requirements.
- g. The Contractor shall work in conjunction with the State's staff to ensure continuity of branding across all program and materials, mailings, emails, website, apps, social media and any other communications information, tools, communication methods, and resources. This branding shall include, but is not limited to, use of the ParTNers for Health logo, color scheme and applicable taglines. All uses of these branding elements shall be subject to prior approval In Writing by the State. All marketing and communications materials, including contact information for any Members, shall become property of the State.
- h. The Contractor shall have the exclusive responsibility to write, edit and arrange for clearance of materials (such as securing full time use of a stock photograph for perpetuity) for any and all marketing and communication materials.
- i. The Contractor shall distribute materials that are culturally sensitive and professional in content, appearance and design with prior approval In Writing by the State.

- j. The Contractor shall provide electronic templates of all finalized materials in a format that the State can easily alter, edit, revise and update.
- k. Unless otherwise prior approved In Writing by the State, the Contractor shall design all marketing and communication materials at a sixth (6.0) grade reading level or lower using the Flesch-Kincaid Index, or a comparable product. The Contractor shall evaluate materials using the entire text of the materials (except return addresses). When submitting draft materials to the State for approval, the Contractor shall provide a certification of the reading level of each piece of material.
- l. On an annual basis, at least two (2) months prior to the State's annual enrollment period, the Contractor shall provide to the State, and Higher Education as necessary, in electronic format, any enrollment material requested by the State that may be helpful to potential Members. Items may include, but are not limited to, a toll-free Member services number, website address, website and portal logon information, FSA enrollment instructions, a confidentiality statement, procedures for accessing services, informational fliers, and other pertinent updates, changes and/or materials, and HSA, FSA, L-FSA and DC-FSA brochures or fliers/pamphlets shared with Members online and/or via paper distribution at ABC events, etc..
- m. At any time and at the State's request, the Contractor shall notify Members, In Writing, of any benefit, Plan or program changes no less than thirty (30) Business Days prior to the implementation of the change.
- n. Unless otherwise directed by the State, the Contractor shall print and distribute any mass mailings developed by the State within fourteen (14) Business Days of receiving the language/copy from the State.
- o. Upon the State's request, the Contractor shall provide Member materials (e.g. fliers, brochures, etc.) to specified parties, e.g., ABCs, within fourteen (14) Business Days of the State's request to provide copies. The volume of Member materials to be printed shall be in sufficient quantities for distribution by the Contractor to the State's Members and ABCs, plus an extra quantity of materials, as requested by the State, for distribution to potential new Members, unless otherwise directed In Writing by the State.
- p. The Contractor shall ensure that up-to-date versions of all printed Member marketing and communication materials can be downloaded from the Splash Page. The Contractor shall provide an electronic copy of all marketing and communication materials at the State's request to the State for posting on the State's website.
- q. The Contractor shall update web-based versions of all materials as Plan changes are made and to correct errors. The Contractor shall update web-based versions at the request of the State, within five (5) Business Days. New Plan year information must be added no later than one (1) month prior to annual enrollment.
- r. Unless approved in advance and In Writing by the State, the Contractor shall not distribute any promotional materials or gifts to employees or Members, even if such gifts are of a de minimus value (e.g., magnets, pens, etc.).
- s. Postage and production costs incurred by the Contractor, which are the direct result of communications requested by the State for benefit Plan changes outside of annual enrollment, shall be treated as pass-through costs. Such costs shall be billed on a monthly basis to the State and shall include substantiating documentation, including a line-item description of the postage and production costs incurred by the Contractor. The State shall pay the postage, printing and production costs of such mailings pursuant to Contract Section C.3. However, if a mistake is the result of the Contractor's error and is not corrected prior to printing or distribution, the Contractor shall pay the postage, printing and production costs for these communications. The Contractor shall produce and distribute corrected versions of

- individual materials at the State's discretion within ten (10) Business Days of notification by the state to do-so.
- t. The Contractor shall mail at least one reminder letter to any Member who has not activated their HSA account thirty (30) Business Days after the Contractor's receipt of their enrollment. The letter shall include the information needed by the Member to complete the account set-up process.
 - u. The Contractor covenants that all materials distributed and prepared or produced by the Contractor shall be accurate in all material respects.
 - v. The Contractor shall, in consultation with and following written approval by the State, provide materials to Members and agency staff, customized for the state, that educate Members about how to open and use a HSA and the various flexible benefits accounts made available by the Contractor under this contract, as well as how to use the debit card, why substantiation may be needed, and how to substantiate including saving receipts, and submitting EOBs and itemized statements from Providers, etc. At the State's request, such materials shall include the ParTners for Health "look and feel".
 - w. Contractor shall in no way attempt to influence or steer FSA, L-FSA or HSA Members to a particular Provider, physician group, pharmacy, pharmacy chain, hospital or hospital system, laboratory or any other type of medical or pharmaceutical Provider. Contractor shall not communicate with Members and mention or offer discounts to any Provider who accepts FSA, L-FSA, or HSA payments without the prior approval from the State In-Writing.
 - x. Unless prior approved in writing by the State and in compliance with State and Federal law, the Contractor shall not use information gained through this Contract in marketing or advertising, publications, expanding non-State business relationships, or for any pecuniary gain.
 - y. The Contractor shall provide a single staff contact to lead all communications and outreach activities.

A.11. Welcome Packets/Debit Cards

- a. The Contractor shall provide and service debit cards that allow CDHP and FSA Members to pay for qualified medical expenses. The cost of creating and mailing the cards shall be borne by the Contractor. The initial debit card as well as at least one replacement card shall be provided free of charge to Members; additional replacement cards shall be provided according to the fee schedule outlined in contract section C.3.
- b. Unless otherwise directed by the State, the Contractor shall mail an initial welcome packet and debit card (as applicable) to all CDHP and FSA Members within ten (10) Business Days of receipt of the enrollment file from the State. The welcome packet shall include, but is not limited to, a welcome letter, overview of how to set up and access the HSA account, investment options, overview of how to activate the debit card, an overview of qualified medical expenses, the Contractor's website address, and website logon information. Debit cards may be included in the welcome packet or mailed separately.
- c. Ninety-seven percent (97%) of initial welcome packets and debit cards shall be produced and mailed within ten (10) Business Days of receipt of the enrollment file from the State.
- d. As a new Member(s) join the program, they shall receive a welcome packet and debit card (if applicable) within ten (10) Business Days of Member completion of the HSA and/or FSA enrollment/set-up process no later than ten (10) Business Days from receipt of a Member's request for a replacement or duplicate card.

- e. Ninety-seven percent (97%) of ongoing welcome packets and debit cards shall be produced and mailed within ten (10) Business Days of Member completion of the HSA and/or FSA enrollment/set-up process.
- f. The Contractor shall issue a single debit card for Members with both a HSA and a L-FSA that is coordinated and functional for either account.
- g. The Contractor shall establish a process that allows Members to request replacement or duplicate debit cards by phone, online and mobile app (if applicable) and/or other possible future methods or technology upon request.
- h. The Contractor's system(s) shall possess mailing address standardization functionality in accordance with U.S. Postal Service conventions.

A.12. Splash Page, Contractor Website, and Mobile Application

- a. The Contractor shall maintain a Splash Page dedicated to and customized to the State containing program information specific to the Plan, which does not require a Member to log in. The Splash Page must be mobile device/smart phone compatible. The design of the Splash Page, inclusive of the site map, page layout, color/font scheme and branding, static content and any documents which can be accessed via, or downloaded from, the Splash Page and must be prior approved In Writing by the State. The Contractor shall obtain prior approval In Writing from the State for any links from the site to an external website/portal or webpage.
- b. The Contractor shall link the Splash Page to the BA website, other State-contractor websites, microsites, content or other web or mobile device enabled video/multimedia tools apps, methods or technology as determined by the State that are useful or applicable for Members (State-approved tools from other approved contractors).
- c. The Splash Page shall at a minimum contain the following information or a link to the information:
 - i. Contractor customer service phone number and hours;
 - ii. Member tools and information (e.g. calculators, fliers, brochures, IRS resources, claims reimbursement forms, FAQs, etc.);
 - iii. Links to BA videos;
 - iv. Plan specific rules and policies (e.g. HSA seed funds available, carry-over provision vs. grace period, etc.)
 - v. Links to other State contractors' websites; and
 - vi. Other information as requested by the State.
- d. The Contractor shall have a website that offers a single point of access for HSA and FSA account information that is mobile device/smart phone compatible, or other methods that may apply. A link to the Member log-in portal shall be included on the Splash Page so Members can view Member-specific documents, and perform various account activities, including, but not limited to:
 - i. FSA and/or HSA transactions and other relevant account information and materials.
 - ii. A frequently asked questions (FAQs) section;
 - iii. Any applicable Member forms (e.g., claim reimbursement forms, etc.);
 - iv. Links to other State contractors' websites;
 - v. Real time check of account balance, contributions, withdrawals and investments;
 - vi. Update personal information;
 - vii. Pay medical expenses online;
 - viii. Review lists of eligible expenses (separated by FSA, L-FSA, DC-FSA & HSA as applicable);
 - ix. Account tools and calculators;
 - x. Order additional debit cards;
 - xi. Transfer funds in and out of the HSA to and from other bank accounts or investment accounts;

- xii. Make a one-time or recurring contribution to the HSA (current or prior year);
 - xiii. Set up or change investment options;
 - xiv. Select automatic transfers to and from investments;
 - xv. View online tax documents and statements;
 - xvi. Contact information, including mail and email addresses and Member services telephone numbers for the Contractor;
 - xvii. Links to state and federal FSA and HSA tax rules; and
 - xviii. Additional tools and resources helpful to the Member as they become available with prior approval In Writing from the State.
- e. The Splash Page and Contractor website shall be fully operational with the exception of Member data/ PHI on or before the dates specified in Contract Section A.19. The Contractor shall submit the text and screenshots of the Splash Page and provide log-in credentials for the Contractor's website for this program to the State for review and approval at least one (1) month prior to the dates specified in Contract Section A.19. Contractor shall obtain prior approval In Writing from the State for any links from the site to a non-governmental website or webpage.
- f. The Contractor shall grant the State access to the customized developed Splash Page for review and approval no later than the date specified in Contract Section A.19.
- g. Contractor must maintain this website which shall be available twenty-four (24) hours a day, three hundred sixty-five (365) days a year except for maintenance windows.
- h. The Splash Page shall have the capability to host streamed content (both audio and video) including video/multimedia tools as determined by the State if useful and applicable to Members.
- i. Unless otherwise approved by the State, the Contractor shall update content and/or documents posted to the Splash Page or website/portal within five (5) Business Days of the State's prior approval of changes to said content and/or documents.
- j. The Contractor shall ensure that all up-to-date versions of all printed materials can be downloaded from the Splash Page or accessible via a mobile device, or other method, if applicable.
- k. The Contractor shall provide all information pertinent to each new Plan year on the Splash Page and website by the date specified in Contract Section A.19.
- l. The Contractor shall host the Splash Page and website on a non-governmental server, which shall be located within the United States. The contractor shall have adequate server capacity and infrastructure to support the likely volume of traffic from Members without disruption or delay.
- m. The Contractor shall obtain and cover the cost of the domain name for the Contractor's Splash Page and website. The Splash Page and website URLs must be prior approved by the State In Writing.
- n. To ensure accessibility among persons with a disability, the Contractor's Splash Page and Contractor's own log-in portal and website shall be in Compliance with Section 508. If the Contractor posts any video content it shall include closed captioning option and/or include text scripting to comply with Section 508 for these products.
- o. The Contractor may include a mobile application for use by Members with prior approval In Writing by the State. The Contractor must agree to and adhere to all security measures as it relates to Member data. The Contractor must provide a one hundred percent (100%) secure (requires a unique member name and password that the plan participant creates) web-based application that requires only a web-browser and an Internet connection.

- p. At the State's request, the Contractor's mobile application(s) shall be linked with other web applications to allow for seamless data linkage (this may include, but is not limited to, single sign-on) of Member information including the ability for Members to, as applicable, access HSA and FSA transactions, upload claims and substantiating documentation (through a mobile device), or link to other technology or information that is helpful to the Member. The Contractor must work with any and all State contractors on data updates and shall send and/or receive files as needed.
- q. Contractor agrees that the State shall have the authority to request any revisions to the Contractor's online Terms and Conditions or Online Service Agreement at any time and that the State shall be provided with a copy of any Terms and Conditions that a Member must consent to in order to be provided with online account access. If Contractor revises the online Terms and Conditions or Online Service Agreement, Contractor agrees to provide the State with a copy of the proposed changes at least sixty (60) Business Days prior to the new effective date, and will allow the State to make revisions.
- r. The Contractor shall ensure that the website/portal meets all of the capacity, availability, performance and security requirements outlined in this contract.
- s. The Contractor shall:
 - i. Have security measures in place that ensure that all data records are transported, stored and accessed in a secure manner. All data, other than HSA account information, is property of the State of Tennessee. The system must meet or exceed the State's information security requirements for access control, authentication, storage, data destruction, system maintenance and patching and must be compliant with best practices for secure application development as defined in ISO/IEC 27000 series.
 - ii. Utilize best practice authentication methods to prevent access from unauthorized individuals and entities.
 - iii. Provide a system that has the ability to sustain 99.9 percent continuous uptime.
 - iv. Provide a 100 percent secure web-based application that requires only a web-browser and an internet connection to use with the addition of an Adobe Acrobat web-browser plug-in.
 - v. Maintain nightly data backups of all data.
 - vi. Provide adequate server processing capacity to keep user response times within normal latency boundaries.
 - vii. Develop a user access security approval process and manage the approval of user access and permissions.
- t. The State shall have ownership, right, title, and interest in all data stored and generated, both historical and current. The State will allow Contractor access to any data necessary to comply with its obligations under State and Federal law, including record keeping requirements and Members' right to records relating to their accounts.

A.13. Coordination and Collaboration

- a. At the State's request, the Contractor shall coordinate with other State contractors, including but not limited to, the TPA and the wellness contractor, as necessary to ensure that Members and BA staff receive appropriate services, training and information and to ensure a consistent message and content on the CDHP/HSA and FSA plan options. This coordination shall include, but is not limited to, making referrals, providing and receiving Member information, and attending and participating in meetings.
- b. As requested by the State, the Contractor shall work with other State contractors to receive claims data that can be used to improve auto-substantiation rates. Files shall be in a mutually agreeable format from those contractors and at a frequency to be determined by the State. Examples of such Contractors the FSA-HSA Contractor may be asked to receive files from include, but are not limited to, TPAs, PBM, dental, and vision contractors. Any and all costs associated with receiving such claims files from other State contractors shall be borne by the

HSA/FSA Contractor. The Contractor shall receive the claims data in the file formats provided by the contractors. If the information in the contractor files does not provide what the Contractor needs, Contractor shall establish steps in order to make the data usable by setting up a crosswalk or other table using all known information or information that the Contractor can gather.

- c. The Contractor shall participate in meetings and/or conference calls with other contractors as requested by the State to improve coordination of services to Members.
- d. At the State's request, the Contractor shall attend any State-sponsored vendor summits with representatives from the State, and its related contractors. The purpose of the vendor summit is to identify issues, develop solutions, share information, leverage resources, and discuss and develop policies and procedures as necessary to ensure collaboration among contractors and the State.
- e. As requested by the State, qualified members of the Contractor's staff shall participate in monthly conference calls with ABCs and other State staff in order to answer ABC questions and provide assistance when and where needed. In addition, during the fall enrollment period (typically during the month of October), the Contractor shall participate in weekly conference calls with the State and ABCs in order to answer questions about the HSA and/or FSA products offered under this contract, and assist ABCs as needed.
- f. At the State's request, the Contractor shall have representatives attend on-site educational sessions at State offices, Higher Education offices or campuses, or elsewhere to assist employees with FSA or HSA questions or issues. All costs associated with lodging, food expenses and travel shall be borne by the Contractor.

A.14. Data Integration and Technical Requirements

- a. The Contractor shall maintain an electronic data interface with the State's Edison System for the purpose of processing State Member enrollment information. The Contractor shall be responsible for providing and installing the necessary hardware and software. When the Contractor requires the exchange of PHI with the state, the State requires the use of second level authentication. This is accomplished using the State's standard software product, which supports Public Key Infrastructure (PKI). The Contractor shall design a solution, in coordination with the State, to connect to the State's Secure File Transfer Protocol (SFTP) server using a combination of the password and the authentication certificate. The initial sign-on and transmission testing will use a password. Certificate testing may also be performed during the test cycle. Subsequent production sign-on will be done using the authentication certificate. The Contractor will then download the file and decrypt the file in its secure environment. The State uses public key encryption with Advanced Encryption Standard (AES) to encrypt PHI. If the State adopts a different or additional encryption standard or tool in the future, the Contractor shall, with adequate notice, cooperate with the State to maintain the security of protected information according to all applicable state and federal standards.
- b. Notwithstanding the requirement to maintain enrollment data, the Contractor shall not perform ~~changes to enrollment data~~ without the State's approval. This prohibition shall include, but not necessarily be limited to: initiation, termination, and/or changes of coverage.
- c. Unless otherwise directed by the State, at least one (1) month prior to the applicable go-live date, the Contractor shall complete testing of the transmission, receipt, and loading of the ~~enrollment and payroll files~~ from the State. The State shall deliver a test file no later than sixty (60) days prior to go-live. Testing of files from other participating employers shall be on a timeframe agreed upon by the Contractor and the employer.
- d. Unless otherwise directed by the State, at least two (2) weeks prior to the applicable go-live date, the Contractor shall load, test, verify and make available online for use the State's eligibility/enrollment information. The Contractor shall certify, in writing, to the State that the Contractor understands and can fully accept and utilize the mutually agreed upon

eligibility/enrollment and payroll files as provided by the State. Loading and verifying files from other participating employers shall be on a timeframe agreed upon by the Contractor and the employer.

- e. The Contractor shall maintain, in its systems, in-force enrollment records of all individuals covered by a Plan sponsored CDHP and FSA.
 - i. To ensure that the State's enrollment records remain accurate and complete, the Contractor shall, unless otherwise directed by the State, retrieve, via a secure medium weekly enrollment files from the State.
 - ii. The Contractor shall complete and submit to the State a Weekly File Transmission Statistics Report within five (5) Business Days of receipt of the Weekly Enrollment Update. The Contractor shall submit this report via email to designated State staff. (See Contract Attachment C.)
 - iii. The Contractor and/or its subcontractors, shall electronically process one hundred percent (100%) of electronically transmitted enrollment updates, including the resolution of any errors identified during processing, within four (4) Business Days of receipt of the weekly file. The State and the Contractor shall work to develop a process for responding to invalid or non-processed records.
 - iv. The Contractor and/or its subcontractors shall resolve all enrollment discrepancies as identified by the State or Contractor within two (2) Business Days of identification.
 - v. State Enrollment Data Match: Upon request by the State, not to exceed four (4) times annually, the Contractor shall submit to the State, in a secure manner, its full file of State Members, by which the State may conduct a data match against the State's Edison database. The Contractor must submit the data within ten (10) Business Days of the State's request. The purpose of this data match will be to determine the extent to which the Contractor is maintaining its database of Members. The State will communicate results of this match to the Contractor, including any Contractor requirements, and associated timeframes, for resolving the discrepancies identified by the data match.
 - vi. After each file load from the State (regular ongoing file as well as any unique 'one off' file that may be sent by the State), Contractor shall prepare a list of errors for all HSA Members plus any Central State employee Members and share via a secure email to State designated staff, along with a description of said errors and what the Contractor needs from the State to correct the error. Contractor shall not rely on any Contractor owned website or portal for placing said error report. Rather, this list of errors must be shared with BA designated staff via secure email within seven (7) days of the loading of any applicable file.
- f. At the State's request, the Contractor shall provide transmittal of Member data via secure medium at a frequency determined by the State to any additional third parties including the State's TPA, wellness, EAP/BHO, PBM, dental, and vision contractors, and others as identified by the State.
- g. The Contractor's systems shall conform to future federal and state specific standards for data exchange by the standard's effective date.
- h. The Contractor shall partner with the State and partner agencies in the management of current and future data exchange formats and methods and in the development and implementation planning of future data exchange methods not specific to HIPAA or other federal effort.
- i. Within sixty (60) days of notice of termination of this Contract, the Contractor shall transfer to the State all required data and records necessary to administer the plan(s)/program(s),

subject to State and Federal confidentiality requirements. The transfer shall be made electronically via secure medium, in a file format to be determined based on the mutual agreement between the State and the Contractor. Upon completion of the transfer of required data and records and any retention requirements mandated by law, the Contractor shall sanitize (wipe) all storage and shred any paper documents that contain confidential member information when all retention requirements have been met.

A.15. Information Systems

- a. The Contractor's Systems shall have the capability of adapting to any future changes necessary as a result of modifications to the design of the Plans or this Contract and its requirements. The Contractor's Systems shall be scalable and flexible so they can be adapted as needed, within negotiated timeframes.
- b. The Contractor shall ensure that its electronic data processing (EDP) and electronic data interchange (EDI) environments (both hardware and software), data security, and internal controls meet all applicable Federal and State standards, including the Health Insurance Portability and Accountability Act of 1996 (HIPAA) and the Health Information Technology for Economic and Clinical Health (HITECH) Act. Said standards shall include but not be limited to the requirements specified under HIPAA for each of the following but only to the extent such requirement is applicable to the services the Contractor provides under this contract:
 - i. Electronic Transactions and Code Sets
 - ii. Privacy
 - iii. Security
 - iv. National Provider Identifier
 - v. National Employer Identifier
 - vi. National Individual Identifier
 - vii. Claims attachments
 - viii. National Health Plan Identifier
 - ix. Enforcement
- c. All Contractor systems shall maintain linkages and "parent-child" relationships between initial and related subsequent interactions/transactions/events/activities. Additionally, when the Contractor houses indexed images of documents used by members, employers and subcontractors to transact with the Contractor, the Contractor shall ensure that these documents maintain logical relationships to certain key data such as member identification and employer or subcontractor identification numbers. The Contractor shall also ensure that records associated with a common event, transaction or customer service issue have a common index that will facilitate search, retrieval and analysis of related activities, e.g., interactions with a particular member about the same matter/problem/issue.
- d. Upon the State's request, the Contractor shall be able to generate a listing of all members and employers that were sent a particular document, the date and time that the document was generated, and the date and time that it was sent to particular members or employers or groups thereof. The Contractor shall also be able to generate a sample of said document.
- e. Retention and Accessibility of Information
 - i. The Contractor shall maintain and provide, one (1) month prior to the HSA operational go-live date, a comprehensive information retention plan that is in compliance with state and federal requirements.
 - ii. The Contractor shall maintain information on-line for a minimum of three (3) years, based on the last date of update activity, and update detailed and summary history data monthly for up to three (3) years to reflect adjustments.

- iii. The Contractor shall provide forty-eight (48) hour turnaround or better on requests for access to information that is between three (3) years and five (5) years old, and seventy-two (72) hour turnaround or better on requests for access to information in machine readable form that is older than five (5) years.
- iv. If an audit or administrative, civil or criminal investigation or prosecution is in progress or audit findings or administrative, civil or criminal investigations or prosecutions are unresolved, information shall be kept in electronic form until all tasks or proceedings are completed.
- f. All information, with the exception of Member HSA information, whether data or documents, and reports that contain or make references to said information, involving or arising out of this Contract is owned by the State. The Contractor is expressly prohibited from sharing or publishing State information and reports or releasing such information to external entities, Affiliates, parent company, or subsidiaries without the prior written consent of the State.
- g. Prior to implementing any major modification to or replacement of the Contractor's core Information Systems functionality and/or associated operating environment, the Contractor shall notify the State in writing of the change or modification within a reasonable amount of time (commensurate with the nature and effect of the change or modification) if the change or modification: (a) would affect the Contractor's ability to perform one or more of its obligations under this Contract; (b) would be visible to State system users, members and Providers; (c) might have the effect of putting the Contractor in noncompliance with the provisions or substantive intent of the Plan Documents and/or this Contract; or (d) would materially reduce the benefits payable or services provided to the average member. If so directed by the State, the Contractor shall discuss the proposed change with the State/its designee prior to implementing the change. Subsequent to this discussion, the State may require the Contractor to demonstrate the readiness of the impacted systems prior to the effective date of the actual modification or replacement.

A.16. System and Information Security and Access Management Requirements

- a. The Contractor's systems shall employ an access management function that restricts access to varying hierarchical levels of system functionality and information. The access management function shall:
 - i. Restrict access to information on a "least privilege" basis, e.g., users permitted inquiry privileges only will not be permitted to modify information;
 - ii. Restrict access to specific system functions and information based on an individual user profile, including inquiry only capabilities and the ability to create, change or delete certain data (global access to all functions shall be restricted to specified staff jointly agreed to by the State and the Contractor);
 - iii. Restrict unsuccessful attempts to access system functions to three (3) continuous unsuccessful attempts, with a system function that automatically prevents further access attempts and records these occurrences; and.
 - iv. Ensure that authentication credentials are not passed in clear text or otherwise displayed or presented, and also be encrypted at rest.
- b. The Contractor shall make system information available to duly authorized representatives of the State and other state and federal agencies to evaluate, through inspections or other means, the quality, appropriateness and timeliness of services performed.
- c. The Contractor shall provide access to any system utilized in determining substantiation of claims or reimbursement of claims to duly authorized representatives of the State.
- d. The Contractor's Systems shall contain controls to maintain information integrity. These controls shall be in place at all appropriate points of processing. The controls shall be tested

- in periodic and spot audits following a methodology mutually agreed upon by the Contractor and the State.
- e. Audit trails shall be incorporated into all systems to allow information on source data files and documents to be traced through the processing stages to the point where the information is finally recorded. The audit trails shall:
 - i. Contain a unique log-on or terminal ID, the date, and time of any create/modify/delete action and, if applicable, the ID of the system job that effected the action;
 - ii. Have the date and identification "stamp" displayed on any on-line inquiry;
 - iii. Have the ability to trace data from the final place of recording back to its source data file and/or document;
 - iv. Be supported by listings, transaction reports, update reports, transaction logs, or error logs; and
 - v. Facilitate batch audits as well as auditing of individual records.
 - f. The Contractor's systems shall have inherent functionality that prevents the alteration of finalized records.
 - g. The Contractor shall provide for the physical safeguarding of its data processing facilities and the systems and information housed therein. The Contractor shall provide the State with access to data facilities upon request.
 - h. The Contractor shall restrict perimeter access to equipment sites, processing areas, and storage areas through a card key or other comparable system, as well as provide accountability control to record access attempts, including attempts of unauthorized access.
 - i. The Contractor shall include physical security features designed to safeguard processor site(s) through required provision of fire retardant capabilities, as well as smoke and electrical alarms, monitored by security personnel.
 - j. The Contractor shall put in place procedures, measures and technical security to prohibit unauthorized access to the regions of the data communications network inside of the Contractor's Span of Control.
 - k. Unless the State prior-approves In Writing the Contractor's use of alternate mitigating controls, the Contractor shall use Federal Information Processing Standard (FIPS) 140-2 compliant technologies to encrypt all PHI, PII, and other confidential information in motion or rest, including back-up media.
 - l. The Contractor shall commission a security risk assessment at least annually and communicate the results to the State as part of an information security plan. The first report shall be provided one (1) month prior to the HSA operational go-live date and annually thereafter. The risk assessment shall also be made available to appropriate state and federal agencies. At a minimum the assessment shall contain the following: identification of loss risk events/~~vulnerabilities~~; analysis of the probability of loss risk and frequency of events; estimation of the impact of said events; identification and discussion of options for mitigating identified risks; cost-benefit analysis of options; recommended options and action plan for their implementation. The assessment shall be conducted in accordance with the following: requirements for administrative, physical, and technical safeguards to protect health data (45 CFR ~~§164.304 - 318~~); rules for conducting risk analysis and risk management activities (45 CFR §164.308); requirements for security awareness training (45 CFR §164.308(a)(5)); requirements for entities to have security incident identification, response, mitigation and documentation procedures (45 CFR §164.308(a)(6)).
 - m. To maintain the privacy of PHI, the Contractor shall enable Transport Layer Security (TLS) on the mail server used for daily communications between the Contractor and the State, other

employers, ABCs. TLS shall be enabled as of the contract go-live date and shall remain in effect throughout the term of the contract.

A.17. Fraud and Abuse

- a. The Contractor shall implement procedures to prevent and detect fraud or abuse and shall perform fraud investigations involving Plan Members, in consultation with the State.
- b. In the event the Contractor discovers evidence that an unusual transaction has occurred that merits further investigation, the Contractor shall simultaneously inform the BA and the Division of State Audit, in the Office of the Comptroller of the Treasury. The State will review the information and inform the Contractor whether it wishes the Contractor to:
 - i. Discontinue further investigation if there is insufficient justification; or
 - ii. Continue the investigation and report back to the BA and the Division of State Audit; or
 - iii. Continue the investigation with the assistance of the Division of State Audit; or
 - iv. Discontinue the investigation and turn the Contractor's findings over to the Division of State Audit for its investigation.
- c. The Contractor shall submit to the State, at least two (2) months prior to the HSA and FSA go-live date, a copy of the documents describing its fraud and abuse program. The State reserves the right to review the documents and require changes, where appropriate.

A.18. Audits Authority and Quality Assurance Reviews

- a. At any reasonable time the State and/or its authorized representative shall have the right to examine, audit and review the Contractor services and pricing related to the services being provided by the Contractor to ensure compliance with all applicable requirements. For the purpose of this requirement, the term, "Contractor," shall include its parent organization, Affiliates, subsidiaries, subcontractors, and Providers.
- b. The Contractor shall provide access, at any time during the term of this contract and for five (5) years after final contract payment (longer if required by law), to the State and/or its authorized representative to examine, audit and review Contractor services, systems for processing claim payments, payments, and pricing pursuant to this Contract. The State reserves the right to request that documentation be provided for review at the authorized representative's location, the State's location, or at the Contractor's corporate site.
- c. The Contractor shall, at its own cost, provide the State and/or its authorized representative with prompt and complete access to any data, documents, access to systems, and other information necessary to ensure Contractor compliance with all requirements of this Contract.
- d. The Contractor shall provide reasonable cooperation with requests for information, which includes, but is not limited to, the timing of the audit or quality assurance review, deliverables, data/information requests and the Contractor's response time to the State's questions during and after the process. The Contractor shall also provide a response to all "findings" received. Such response shall occur within thirty (30) days, or at a later date if mutually determined with the State to be more reasonable based on the number and type of findings.
- e. The State shall not be responsible for time or any costs incurred by the Contractor in association with an audit or quality assurance review including, but not limited to, the costs associated with providing data, reports, documentation, systems access, or space.
- f. If the outcome of the audit or quality assurance review results in an amount due to the State, then the State will work with the Contractor to negotiate terms of repayment. In the absence of such agreement, the State will deduct the total amount due from the monthly account maintenance fees due to the Contractor pursuant to Section C.3. If the Contractor disagrees

with a finding resulting in a payment to the State, the State will review the Contractor's comments, but if the State retains the original audit findings the Contractor will be responsible for any payment to the State.

- g. The Contractor shall refer all media and legislative inquiries to BA, which will have the sole and exclusive responsibility to respond to all such queries. However, the Contractor shall respond directly to audit requests from the Comptroller, to audit requests from divisions within the Department of Finance & Administration, and to subpoenas; in all such instances, the Contractor shall copy BA on all correspondence.

A.19. Due Dates for Project Deliverables/Milestones

Deliverables/Milestones:	Contract Reference(s):	Deliverable Due Dates:
HSA Account Set-Up and Management		
1. Weekly enrollment files	A.3.d.	Weekly enrollment after HSA go-live, unless otherwise directed by the State.
2. Employer funding and payroll deduction files	A.3.m.	Various frequencies as determined by participating employers
3. Enrollment confirmation	A.3.w.	Within ten (10) Business days of HSA establishment
FSA Account Set-Up and Management		
4. Weekly enrollment files	A.4.e.	Weekly enrollment after FSA account go-live, unless otherwise directed by the State
5. Payroll deduction files	A.4.e.	Various frequencies as determined by participating employers
6. Enrollment and deduction file transmission	A.4.f	As determined by the State/Higher Education
7. Enrollment confirmation	A.4.f.	Within ten (10) Business days of FSA establishment
8. Card adjudication rate report	A.4.g.	Quarterly
9. Non-allowable claims notification	A.4.j.	Within fifteen (15) Business days of claims receipt
10. Appeals processing	A.4.j.	Within fifteen (15) Business days of appeals receipt
11. Non-discrimination testing	A.4.n.	Annually
12. Refund unused funds	A.4.o.	Annually
13. Member notice of available balance	A.4.q.	One month before end of plan year and one (1) month before end of run-out period

Deliverables/Milestones:	Contract Reference(s):	Deliverable Due Dates:
Member/Employer Support and Education		
14. Member satisfaction survey and follow up action plan	A.5.e.	Annually
Implementation		
15. HSA Account go-live	A.6.a.	January 1, 2021
16. FSA Account go-live	A.6.a.	January 1, 2021
17. Kick-off meeting	A.6.b.	Within thirty (30) days of the contract Effective Date
18. Implementation plan	A.6.c.	Within thirty (30) days of the contract Effective Date
19. Operational readiness review	A.6.d.	Within thirty (30) days prior to each go-live
20. Resolution of operational readiness findings	A.6.g.	Prior to the applicable go-live
21. Implementation status meetings	A.6.h.	Twice a week during implementation; Daily for the two (2) weeks prior to, and the first month following, each go-live
22. Implementation performance assessment	A.6.i.	Within fifteen (15) Business days of receiving results
Reporting		
23. Standard HSA/FSA reporting	A.7.c	As available from Contractor
24. Employer summary reports	A.7.e.	Monthly and annually
25. Salary deduction file	A.7.f.	As required by each employer
26. Account and investment statements	A.7.h	Quarterly
27. Portfolio performance review	A.7.i.	Quarterly
28. Account reports	A.7.j.	As required in the contract
29. Ad-hoc reports	A.7.m.	Within five (5) Business Days of request; Urgent reports within two (2) Business Days
Call Center		
30. Call center open	A.8.c.	September 1, 2020
31. Call center performance standards	A.8.k.	Monthly
32. Call center statistics	A.8.l.	Monthly
33. Approval of messages	A.8.o.	Prior to HSA and FSA go-live and as updated
34. Submission of decision tree and menu for approval	A.8.r.	Prior to HSA and FSA go-live and as updated

Deliverables/Milestones:	Contract Reference(s):	Deliverable Due Dates:
35. Member complaints	A.8.x.	Quarterly
Staffing		
36. Ongoing operational meetings	A.9.i.	Weekly
37. In-person meeting	A.9.j.	Annually
38. Account team survey results	A.9.k.	Within fifteen (15) days of receiving the results
Communications/Materials		
39. Marketing and communications plan	A.10.a.	At the state's request
40. Drafts of materials	A.10.f.	Fourteen (14) Business Days prior to printing, assembly, and/or distribution
41. Enrollment materials	A.10.l.	Annually, two (2) months prior to annual enrollment
42. Notification of plan changes	A.10.m.	Thirty (30) Business Days prior to the changes
43. Mass mailings	A.10.n.	Within fourteen (14) Business Days of receiving language/copy
44. Web updates	A.10.q.	Updates within five (5) Business Days; New information one (1) month prior to annual enrollment
45. Corrected versions	A.10.s.	Within ten (10) Business Days of notification by the state
46. HSA activation letter	A.10.t.	Thirty (30) Business Days after receipt of enrollment
Welcome Packets and Debit Cards		
47. Initial welcome packets and debit cards	A.11.b.	Ten (10) Business Days after receipt of state enrollment file
48. Ongoing welcome packets and debit cards	A.11.d.	Within ten (10) Business Days of member completion of the HSA and/or FSA enrollment/set-up process
Splash Page, Contractor Website, and Mobile Application		
49. Splash Page go-live	A.12.e.	September 1, 2020
50. Website go-live	A.12.e.	September 15, 2020
51. Splash Page design submission	A.12.e	August 1, 2020
52. Website log-in credentials	A.12.e.	August 15, 2020
53. Splash Page access	A.12.f.	August 1, 2020

Deliverables/Milestones:		Contract Reference(s):	Deliverable Due Dates:
54.	Splash Page and Website updates	A.12.i.	Within five (5) Business Days of the State's approval
55.	New plan year information posted	A.12.k	Annually on September 1 after go-live
56.	Notice of changes to online terms and conditions	A.12.q.	Sixty (60) Business Days prior to the new effective date
Coordination and Collaboration			
57.	ABC Calls	A.13.e.	Weekly during annual enrollment and monthly otherwise
58.	On-site educational sessions	A.13.f.	At the state's request
Data Integration & Technical Requirements			
59.	Completion of enrollment & payroll file testing	A.14.c.	One (1) month prior to HSA and FSA go-live
60.	Edison interface/eligibility & payroll file acceptance	A.14.d.	Two (2) weeks prior to HSA and FSA go-live
61.	Enrollment files	A.14.e.i.	Weekly
62.	File transmission statistics report	A.14.e.ii.	Within five (5) Business Days of receipt of weekly enrollment update
63.	Enrollment updates	A.14.e.iii.	Within four (4) Business Days of receipt of weekly file
64.	Enrollment discrepancies	A.14.e.iv.	Within two (2) Business Days of identification
65.	State Enrollment Data Match	A.14.e.v.	Up to four (4) times annually, as requested by the State
66.	Vendor files	A.14.f.	Up to daily
67.	Claims data transmission to third parties	A.14.f.	As directed by the State
68.	Transfer of data and records	A.14.i.	Within sixty (60) days of contract termination
Information Systems			
69.	Information Retention Plan	A.15.e.i.	One (1) month prior to HSA operational go-live
System Availability, Business Continuity and Disaster Recovery (BC-DR)			
70.	Business Continuity/Disaster Recovery (BC-DR) Summary Results Report	E.8.	One (1) month prior to HSA operational go-live and annually thereafter
71.	BC-DR corrective action plan	E.8.	Within ten (10) Business Days of the state's request

Deliverables/Milestones:	Contract Reference(s):	Deliverable Due Dates:
72. Duplicate Records	E.8.	On or before contract termination date
System and Information Security and Access Management Requirements		
73. Information integrity methodology and testing	A.16.d.	Periodically throughout the contract term
74. Information Security Plan	A.16.l.	One (1) month prior to go-live and annually thereafter
75. Transport Layer Security	A.16.m.	September 15, 2020
Fraud and Abuse		
76. Fraud and abuse program summary	A.17.c.	Two (2) months prior to HSA and FSA go-live
Audits		
77. Respond to findings	A.18.d	Within thirty (30) days of notification

A.20. Warranty. Contractor represents and warrants that the term of the warranty ("Warranty Period") shall be the greater of the Term of this Contract or any other warranty 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.21. Inspection and Acceptance. The State shall have the right to inspect all goods or services provided by Contractor under this Contract. If, upon inspection, the State determines that the goods or services are Defective, the State shall notify Contractor, and Contractor shall re-deliver the goods or provide the services at no additional cost to the State. If after a period of thirty (30) days following delivery of goods or performance of services the State does not provide a notice of any Defects, the goods or services shall be deemed to have been accepted by the State.

B. TERM OF CONTRACT:

This Contract shall be effective on July 1, 2020 ("Effective Date") and extend for a period of seventy-two (72) months after the Effective Date ("Term"). The State shall have no obligation for goods or services provided by the Contractor prior to the Effective Date.

C. PAYMENT TERMS AND CONDITIONS:

- C.1. Maximum Liability. In no event shall the maximum liability of the State under this Contract exceed One Million Two Hundred Fifty Thousand (\$1,250,000.00) (“Maximum Liability”). This Contract does not grant the Contractor any exclusive rights. The State does not guarantee that it will buy any minimum quantity of goods or services under this Contract. Subject to the terms and conditions of this Contract, the Contractor will only be paid for goods or services provided under this Contract after a purchase order is issued to Contractor by the State or as otherwise specified by this Contract.

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

- C.3. Payment Methodology. The Contractor shall be compensated based on the payment methodology for goods or services authorized by the State in a total amount as set forth in Section C.1.
 - a. The Contractor’s compensation shall be contingent upon the satisfactory provision of goods or services as set forth in Section A.

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

<u>Total Number of Participants:</u>	<u>1/1/21 – 12/31/21</u>	<u>1/1/22 – 12/31/22</u>	<u>1/1/23 – 12/31/23</u>	<u>1/1/24 – 12/31/24</u>	<u>1/1/25 – 12/31/25</u>
<u>Monthly HSA Account Maintenance Fee*</u>					
Below 5,000	\$0.00 /per active acct per Month	\$0.00 /per active acct per Month	\$0.00 /per active acct per Month	\$0.00 /per active acct per Month	\$0.00 /per active acct per Month
5,000 – 9,999	\$0.75 /per active acct per Month	\$0.75 /per active acct per Month	\$0.75 /per active acct per Month	\$0.75 /per active acct per Month	\$0.75 /per active acct per Month
10,000 – 19,999	\$0.00 /per active acct per Month	\$0.00 /per active acct per Month	\$0.00 /per active acct per Month	\$0.00 /per active acct per Month	\$0.00 /per active acct per Month
20,000 – 29,999	\$0.00 /per active acct per Month	\$0.00 /per active acct per Month	\$0.00 /per active acct per Month	\$0.00 /per active acct per Month	\$0.00 /per active acct per Month
30,000 – 49,999	\$0.00 /per active acct per Month	\$0.00 /per active acct per Month	\$0.00 /per active acct per Month	\$0.00 /per active acct per Month	\$0.00 /per active acct per Month
50,000 and Above	\$0.00 /per active acct per Month	\$0.00 /per active acct per Month	\$0.00 /per active acct per Month	\$0.00 /per active acct per Month	\$0.00 /per active acct per Month

Monthly General Purpose FSA Administration Fee and/or Dependent care FSA Administration Fee per Participant**					
Cost Item Description <u>Total Number of Participants:</u>	1/1/21 – 12/31/21	1/1/22 – 12/31/22	1/1/23 – 12/31/23	1/1/24 – 12/31/24	1/1/25 – 12/31/25
Below 3,000	\$1.50 / per participant per Month	\$1.50 / per participant per Month	\$1.50 / per participant per Month	\$1.50 / per participant per Month	\$1.50 / per participant per Month
3,000 – 4,999	\$1.75 / per participant per Month	\$1.75 / per participant per Month	\$1.75 / per participant per Month	\$1.75 / per participant per Month	\$1.75 / per participant per Month
5,000 – 7,499	\$2.70 / per participant per Month	\$2.70 / per participant per Month	\$2.70 / per participant per Month	\$2.70 / per participant per Month	\$2.70 / per participant per Month
7,500 – 9,999	\$2.70 / per participant per Month	\$2.70 / per participant per Month	\$2.70 / per participant per Month	\$2.70 / per participant per Month	\$2.70 / per participant per Month
10,000 – 14,999	\$2.50 / per participant per Month	\$2.50 / per participant per Month	\$2.50 / per participant per Month	\$2.50 / per participant per Month	\$2.50 / per participant per Month
15,000 and above	\$0.00 / per participant per Month	\$0.00 / per participant per Month	\$0.00 / per participant per Month	\$0.00 / per participant per Month	\$0.00 / per participant per Month
Monthly limited purpose FSA (L-FSA) Administration Fee per Participant**					
Cost Item Description <u>Total Number of Participants:</u>	1/1/21 – 12/31/21	1/1/22 – 12/31/22	1/1/23 – 12/31/23	1/1/24 – 12/31/24	1/1/25 – 12/31/25
Below 3,000	\$1.50 / per participant per Month	\$1.50 / per participant per Month	\$1.50 / per participant per Month	\$1.50 / per participant per Month	\$1.50 / per participant per Month
3,000 – 4,999	\$0.00 / per participant per Month	\$0.00 / per participant per Month	\$0.00 / per participant per Month	\$0.00 / per participant per Month	\$0.00 / per participant per Month
5,000 – 7,499	\$0.00 / per participant per Month	\$0.00 / per participant per Month	\$0.00 / per participant per Month	\$0.00 / per participant per Month	\$0.00 / per participant per Month
7,500 – 9,999	\$0.00 / per participant per Month	\$0.00 / per participant per Month	\$0.00 / per participant per Month	\$0.00 / per participant per Month	\$0.00 / per participant per Month
10,000 – 14,999	\$0.00 / per participant per Month	\$0.00 / per participant per Month	\$0.00 / per participant per Month	\$0.00 / per participant per Month	\$0.00 / per participant per Month

15,000 and above	\$0.00 / per participant per Month	\$0.00 / per participant per Month	\$0.00 / per participant per Month	\$0.00 / per participant per Month	\$0.00 / per participant per Month
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*January enrollment will be used to determine the HSA enrollment-based account maintenance fee level annually, and the fee level set in January of each year shall remain constant for the remainder of the calendar year. The product of the monthly fee and the number of open and active HSA accounts will generate the Contractor's total payment. The State will only pay a HSA Account Maintenance fee for a month in which the plan member is actively enrolled in a HSA. The State will not pay for HSAs in the process of being set up, still in the Customer Identification Process (CIP) or for which funds are not eligible to be deposited. The State will also not pay for members who are no longer enrolled in the State-sponsored CDHP. The State of Tennessee will pay the HSA monthly administrative fee for all members (State, Local Education, and Local Government) who have an active and open HSA each month and who are enrolled in the CDHP.

**January enrollment will be used to determine the FSA/DC-FSA enrollment-based fee level and the L-FSA enrollment-based fee level annually. The fee level set in January of each year shall remain constant for the remainder of the calendar year. The product of the monthly fees and the number of participants will generate the Contractor's total payment. For plan members enrolled in both a general purpose FSA and dependent care FSA, the State will not pay an administration fee each month for both accounts; the state will only pay one fee. For members enrolled in both an L-FSA and DC-FSA, the State will only pay one administration fee, but shall pay the higher of the two fees if they vary.

<u>Custom Slate of Investments</u>	1/1/21 – 12/31/21	1/1/22 – 12/31/22	1/1/23 – 12/31/23	1/1/24 – 12/31/24	1/1/25 – 12/31/25
One time set up fee, payable in year 1 of the contract	\$0.00	intentionally left blank	intentionally left blank	intentionally left blank	intentionally left blank
Total Monthly fee (regardless of HSA enrollment)	\$0.00 per month	\$0.00 per month	\$0.00 per month	\$0.00 per month	\$0.00 per month

Account Fees	HSA and FSA Fees*				
	1/1/21 – 12/31/21	1/1/22 – 12/31/22	1/1/23 – 12/31/23	1/1/24 – 12/31/24	1/1/25 – 12/31/25
Additional Debit Card Replacement (first replacement card free)	\$0.00 / Card	\$0.00 / Card	\$0.00 / Card	\$0.00 / Card	\$0.00 / Card
HSA Only Fees*					
Non-Sufficient Funds	\$0.00 / Instance	\$0.00 / Instance	\$0.00 / Instance	\$0.00 / Instance	\$0.00 / Instance
Stop Payment	\$0.00 / Instance	\$0.00 / Instance	\$0.00 / Instance	\$0.00 / Instance	\$0.00 / Instance

Overdrafts	\$0.00 / Instance	\$0.00 / Instance	\$0.00 / Instance	\$0.00 / Instance	\$0.00 / Instance
Document Copies (duplicate statements, etc.)	\$0.00 / Instance	\$0.00 / Instance	\$0.00 / Instance	\$0.00 / Instance	\$0.00 / Instance
ATM Fees: In-network	\$2.50 / Transaction	\$2.50 / Transaction	\$2.50 / Transaction	\$2.50 / Transaction	\$2.50 / Transaction
ATM Fees: Out-of-network	\$2.50 / Transaction	\$2.50 / Transaction	\$2.50 / Transaction	\$2.50 / Transaction	\$2.50 / Transaction
Account Closing (excludes accounts closed due to contract expiration or termination)	\$0.00 / Instance	\$0.00 / Instance	\$0.00 / Instance	\$0.00 / Instance	\$0.00 / Instance
Wire Transfer (excludes wire transfers resulting from contract expiration or termination)	\$0.00 / Instance	\$0.00 / Instance	\$0.00 / Instance	\$0.00 / Instance	\$0.00 / Instance
* Fees to be billed to, and paid by, members with an active HSA, FSA, L-FSA, and/or DC-FSA account.					

- c. If Member materials containing an error were approved by the State In Writing and the error was detected after the materials were mailed, the State will reimburse the Contractor the production and postage cost of mailing the corrected version pursuant to Contract Section C.3.e.
- d. For mailings in addition to those identified in the contract, the State shall reimburse the Contractor for the following, selected actual costs in the performance of this Contract upon Contractor providing documentation of actual costs incurred.
- (1) Postage. The State shall reimburse the Contractor for the actual cost of postage for mailing materials produced under the terms of this Contract and as directed and authorized by the State.
 - (2) Printing/Production. The State shall reimburse the Contractor an amount equal to the actual cost of document printing/production as required and authorized by the State and as detailed by the Contract Scope of Services as referred to in A.10.

Notwithstanding the foregoing, the State retains the option to authorize the Contractor to deliver a product to be printed. The State also retains the option to approve and accept the product but not use the Contractor to print the material. In those situations, the State shall have the discretion to use other printing and production services at its disposal.

C.4 **At-Risk Performance Payments and SLA Scorecard**

- a. The Parties shall conduct a scorecard assessment (Contract Attachment D), beginning after the go-live date, on a quarterly basis (every three months) during the Term.
- b. Based on the SLA Scorecard, Contractor shall send the State an At-Risk Performance Payment (if applicable) quarterly (every three months) during the Term in accordance with

Contract Attachment D. This payment is due within forty-five (45) calendar days of the quarterly SLA scorecard assessment.

- C.5. Travel Compensation. The Contractor shall not be compensated or reimbursed for travel time, travel expenses, meals, or lodging.
- C.6. Invoice Requirements. The Contractor shall invoice the State only for goods delivered and accepted by the State or services satisfactorily provided at the amounts stipulated in Section C.3., above. Contractor shall submit invoices and necessary supporting documentation, no more frequently than once a month, and no later than thirty (30) days after goods or services have been provided to the following address:

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

- a. Each invoice, on Contractor's letterhead, shall clearly and accurately detail all of the following information (calculations must be extended and totaled correctly):
- (1) Invoice number (assigned by the Contractor);
 - (2) Invoice date;
 - (3) Contract number (assigned by the State);
 - (4) Customer account name: Department of Finance & Administration, Division of Benefits Administration
 - (5) Customer account number (assigned by the Contractor to the above-referenced Customer);
 - (6) Contractor name;
 - (7) Contractor Tennessee Edison registration ID number;
 - (8) Contractor contact for invoice questions (name, phone, or email);
 - (9) Contractor remittance address;
 - (10) 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.7. 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.8. 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.9. 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.10. Prerequisite Documentation. The Contractor shall not invoice the State under this Contract until the State has received the following, properly completed documentation.
- a. The Contractor shall complete, sign, and present to the State the "Authorization Agreement for Automatic Deposit Form" provided by the State. By doing so, the Contractor acknowledges and agrees that, once this form is received by the State, payments to the Contractor, under this or any other contract the Contractor has with the State of Tennessee, may be made by ACH; and
 - b. The Contractor shall complete, sign, and return to the State the State-provided W-9 form. The taxpayer identification number on the W-9 form must be the same as the Contractor's Federal Employer Identification Number or Social Security Number referenced in the Contractor's Edison registration information.

D. MANDATORY TERMS AND CONDITIONS:

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

The State:

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

The Contractor:

Randy Pope | Director, Client Management
OptumHealth Financial Services, Inc.
11000 Optum Circle,
Eden Prairie, Minnesota 55344
randy.pope@Optum.com
Telephone: 952-324-4316

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

- D.3. Modification and Amendment. This Contract may be modified only by a written amendment signed by all Parties and approved by all applicable State officials.
- D.4. Subject to Funds Availability. The Contract is subject to the appropriation and availability of State or federal funds. In the event that the funds are not appropriated or are otherwise unavailable, the State reserves the right to terminate this Contract upon written notice to the Contractor. The State's exercise of its right to terminate this Contract shall not constitute a breach of Contract by the State. Upon receipt of the written notice, the Contractor shall cease all work associated with the Contract. If the State terminates this Contract due to lack of funds availability, the Contractor shall be entitled to compensation for all conforming goods requested and accepted by the State and for all satisfactory and authorized services completed as of the termination date. Should the State exercise its right to terminate this Contract due to unavailability of funds, the Contractor shall have no right to recover from the State any actual, general, special, incidental, consequential, or any other damages of any description or amount.
- D.5. Termination for Convenience. The State may terminate this Contract for convenience without cause for any reason. The State's election to terminate this Contract for convenience shall be effective upon the date specified and shall not be deemed a breach of contract by the State. 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 good or service that has not been provided, nor shall the Contractor be relieved of any liability to the State for any damages or claims arising under this Contract.
- D.6. Termination for Cause. If the Contractor fails to properly perform its obligations under this Contract, or if the Contractor materially violates any terms of this Contract ("Breach Condition"), the State shall provide written notice to Contractor specifying the Breach Condition. If within thirty (30) days of notice, the Contractor has not cured the Breach Condition, the State may terminate the Contract and withhold payments in excess of compensation for completed services or provided goods. Notwithstanding the above, the Contractor shall not be relieved of liability to the State for damages sustained by virtue of any breach of this Contract by the Contractor and the State may seek other remedies allowed at law or in equity for breach of this Contract.
- D.7. Assignment and Subcontracting. The Contractor shall not assign this Contract or enter into a subcontract for any of the goods or services provided under this Contract without the prior written approval of the State, which shall not be unreasonably withheld. Notwithstanding any use of the approved subcontractors, the Contractor shall be the prime contractor and responsible for compliance with all terms and conditions of this Contract. The State reserves the right to request additional information or impose additional terms and conditions before approving an assignment of this Contract in whole or in part or the use of subcontractors in fulfilling the Contractor's obligations under this Contract.
- D.8. Conflicts of Interest. The Contractor warrants that no part of the Contractor's compensation shall be paid directly or indirectly to an employee or official of the State of Tennessee as wages, compensation, or gifts in exchange for acting as an officer, agent, employee, subcontractor, or consultant to the Contractor in connection with any work contemplated or performed under this Contract.

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

- D.9. Nondiscrimination. The Contractor hereby agrees, warrants, and assures that no person shall be excluded from participation in, be denied benefits of, or be otherwise subjected to discrimination in the performance of this Contract or in the employment practices of the Contractor on the grounds of handicap or disability, age, race, creed, color, religion, sex, national origin, or any other classification protected by federal or state law. The Contractor shall, upon request, show proof of nondiscrimination and shall post in conspicuous places, available to all employees and applicants, notices of nondiscrimination.
- D.10. Prohibition of Illegal Immigrants. The requirements of Tenn. Code Ann. § 12-3-309 addressing the use of illegal immigrants in the performance of any contract to supply goods or services to the state of Tennessee, shall be a material provision of this Contract, a breach of which shall be grounds for monetary and other penalties, up to and including termination of this Contract.
- a. The Contractor agrees that the Contractor shall not knowingly utilize the services of an illegal immigrant in the performance of this Contract and shall not knowingly utilize the services of any subcontractor who will utilize the services of an illegal immigrant in the performance of this Contract. The Contractor shall reaffirm this attestation, in writing, by submitting to the State a completed and signed copy of the document at Contract Attachment A, semi-annually during the Term. If the Contractor is a party to more than one contract with the State, the Contractor may submit one attestation that applies to all contracts with the State. All Contractor attestations shall be maintained by the Contractor and made available to State officials upon request.
 - b. Prior to the use of any subcontractor in the performance of this Contract, and semi-annually thereafter, during the Term, the Contractor shall obtain and retain a current, written attestation that the subcontractor shall not knowingly utilize the services of an illegal immigrant to perform work under this Contract and shall not knowingly utilize the services of any subcontractor who will utilize the services of an illegal immigrant to perform work under this Contract. Attestations obtained from subcontractors shall be maintained by the Contractor and made available to State officials upon request.
 - c. The Contractor shall maintain records for all personnel used in the performance of this Contract. Contractor's records shall be subject to review and random inspection at any reasonable time upon reasonable notice by the State.
 - d. The Contractor understands and agrees that failure to comply with this section will be subject to the sanctions of Tenn. Code Ann. § 12-3-309 for acts or omissions occurring after its effective date.
 - e. For purposes of this Contract, "illegal immigrant" shall be defined as any person who is not: (i) a United States citizen; (ii) a Lawful Permanent Resident; (iii) a person whose physical presence in the United States is authorized; (iv) allowed by the federal Department of Homeland Security and who, under federal immigration laws or regulations, is authorized to be employed in the U.S.; or (v) is otherwise authorized to provide services under the Contract.
- D.11. Records. The Contractor shall maintain documentation for all charges under this Contract. The books, records, and documents of the Contractor, for work performed or money received under this Contract, shall be maintained for a period of five (5) full years from the date of the final payment and shall be subject to audit at any reasonable time and upon reasonable notice by the State, the Comptroller of the Treasury, or their duly appointed representatives. The financial statements shall be prepared in accordance with generally accepted accounting principles.

- D.12. Monitoring. The Contractor's activities conducted and records maintained pursuant to this Contract shall be subject to monitoring and evaluation by the State, the Comptroller of the Treasury, or their duly appointed representatives.
- D.13. Progress Reports. The Contractor shall submit brief, periodic, progress reports to the State as requested.
- D.14. Strict Performance. Failure by any Party to this Contract to require, in any one or more cases, the strict performance of any of the terms, covenants, conditions, or provisions of this Contract shall not be construed as a waiver or relinquishment of any term, covenant, condition, or provision. No term or condition of this Contract shall be held to be waived, modified, or deleted except by a written amendment signed by the Parties.
- D.15. Independent Contractor. The Parties shall not act as employees, partners, joint venturers, or associates of one another. The Parties are independent contracting entities. Nothing in this Contract shall be construed to create an employer/employee relationship or to allow either Party to exercise control or direction over the manner or method by which the other transacts its business affairs or provides its usual services. The employees or agents of one Party are not employees or agents of the other Party.
- D.16. Patient Protection and Affordable Care Act. The Contractor agrees that it will be responsible for compliance with the Patient Protection and Affordable Care Act ("PPACA") with respect to itself and its employees, including any obligation to report health insurance coverage, provide health insurance coverage, or pay any financial assessment, tax, or penalty for not providing health insurance. The Contractor shall indemnify the State and hold it harmless from any costs to the State arising from Contractor's failure to fulfill its PPACA responsibilities for itself or its employees.
- D.17. Limitation of State's Liability. The State shall have no liability except as specifically provided in this Contract. In no event will the State be liable to the Contractor or any other party for any lost revenues, lost profits, loss of business, decrease in the value of any securities or cash position, time, goodwill, or any indirect, special, incidental, punitive, exemplary or consequential damages of any nature, whether based on warranty, contract, statute, regulation, tort (including but not limited to negligence), or any other legal theory that may arise under this Contract or otherwise. The State's total liability under this Contract (including any exhibits, schedules, amendments or other attachments to the Contract) or otherwise shall under no circumstances exceed the Maximum Liability. This limitation of liability is cumulative and not per incident.
- D.18. Limitation of Contractor's Liability. In accordance with Tenn. Code Ann. § 12-3-701, the Contractor's liability for all claims arising under this Contract shall be limited to an amount equal to two (2) times the Maximum Liability amount detailed in Section C.1. and as may be amended, PROVIDED THAT in no event shall this Section limit the liability of the Contractor for: (i) intellectual property or any Contractor indemnity obligations for infringement for third-party intellectual property rights; (ii) any claims covered by any specific provision in the Contract providing for liquidated damages; or (iii) any claims for intentional torts, criminal acts, fraudulent conduct, or acts or omissions that result in personal injuries or death. For clarity, except as otherwise expressly set forth in this Section, Contractor's indemnification obligations and other remedies available under this Contract are subject to the limitations on liability set forth in this Section.
- D.19. Hold Harmless. The Contractor agrees to indemnify and hold harmless the State of Tennessee ~~as well as~~ its officers, agents, and employees from and against any and all claims, liabilities, losses, and causes of action which may arise, accrue, or result to any person, firm, corporation, or other entity which may be injured or damaged as a result of acts, omissions, or negligence on the part of the Contractor, its employees, or any person acting for or on its or their behalf relating to this Contract. The Contractor further agrees it shall be liable for the reasonable cost of attorneys' fees, court costs, expert witness fees, and other litigation expenses for the State to enforce the terms of this Contract.

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

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

- a. Contractor warrants to the State that it is familiar with the requirements of the Privacy Rules, and will comply with all applicable requirements in the course of this Contract.
- b. Contractor warrants that it will cooperate with the State, including cooperation and coordination with State privacy officials and other compliance officers required by the Privacy Rules, in the course of performance of the Contract so that both parties will be in compliance with the Privacy Rules.
- c. The State and the Contractor will sign documents, including but not limited to business associate agreements, as required by the Privacy Rules and that are reasonably necessary to keep the State and Contractor in compliance with the Privacy Rules. This provision shall not apply if information received or delivered by the parties under this Contract is NOT "protected health information" as defined by the Privacy Rules, or if the Privacy Rules permit the parties to receive or deliver the information without entering into a business associate agreement or signing another document.
- d. The Contractor will indemnify the State and hold it harmless for any violation by the Contractor or its subcontractors of the Privacy Rules. This includes the costs of responding to a breach of protected health information, the costs of responding to a government enforcement action related to the breach, and any fines, penalties, or damages paid by the State because of the violation.
- e. The Contractor shall not sell Public Sector Plan Member information or use Member information unless it is aggregated blinded data, which is not identifiable on a Member basis. The State must approve, In Writing, the use of and sale of any of our member or plan data, even if being used in an aggregated, blinded data format.
- f. The Contractor shall not use Public Sector Plan Member identified or non-aggregated information for advertising, marketing, promotion or any activity intended to influence sales or market share of any product or service except when permitted by the State, such as advertisements of the Program for enrollment purposes.
- g. The Contractor shall have full financial responsibility for any penalties, fines, or other payments imposed or required as a result of the Contractor's non-compliance with or violation of HIPAA or HITECH requirements, and the Contractor shall indemnify the State with respect to any such penalties, fines, or payments, including the cost of credit protection. At the request of the State, the Contractor shall offer credit protection for those times in which a Member's PHI is accidentally or inappropriately disclosed.

D.21. Tennessee Consolidated Retirement System. Subject to statutory exceptions contained in Tenn. Code Ann. §§ 8-36-801, *et seq.*, the law governing the Tennessee Consolidated Retirement System ("TCRS"), provides that if a retired member of TCRS, or of any superseded system administered by TCRS, or of any local retirement fund established under Tenn. Code Ann. §§ 8-35-101, *et seq.*, accepts State employment, the member's retirement allowance is suspended during the period of the employment. Accordingly and notwithstanding any provision of this Contract to the contrary, the Contractor agrees that if it is later determined that the true nature of

the working relationship between the Contractor and the State under this Contract is that of "employee/employer" and not that of an independent contractor, the Contractor, if a retired member of TCRS, may be required to repay to TCRS the amount of retirement benefits the Contractor received from TCRS during the Term.

- D.22. Tennessee Department of Revenue Registration. The Contractor shall comply with all applicable registration requirements contained in Tenn. Code Ann. §§ 67-6-601 – 608. Compliance with applicable registration requirements is a material requirement of this Contract.
- D.23. Debarment and Suspension. The Contractor certifies, to the best of its knowledge and belief, that it, its current and future principals, its current and future subcontractors and their principals:
- a. are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any federal or state department or agency;
 - b. have not within a three (3) year period preceding this Contract been convicted of, or had a civil judgment rendered against them from commission of fraud, or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, state, or local) transaction or grant under a public transaction; violation of federal or state antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification, or destruction of records, making false statements, or receiving stolen property;
 - c. are not presently indicted or otherwise criminally or civilly charged by a government entity (federal, state, or local) with commission of any of the offenses detailed in section b. of this certification; and
 - d. have not within a three (3) year period preceding this Contract had one or more public transactions (federal, state, or local) terminated for cause or default.

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

- D.24. Force Majeure. "Force Majeure Event" means fire, flood, earthquake, elements of nature or acts of God, wars, riots, civil disorders, rebellions or revolutions, acts of terrorism or any other similar cause beyond the reasonable control of the Party except to the extent that the non-performing Party is at fault in failing to prevent or causing the default or delay, and provided that the default or delay cannot reasonably be circumvented by the non-performing Party through the use of alternate sources, workaround plans or other means. A strike, lockout or labor dispute shall not excuse either Party from its obligations under this Contract. Except as set forth in this Section, any failure or delay by a Party in the performance of its obligations under this Contract arising from a Force Majeure Event is not a default under this Contract or grounds for termination. The non-performing Party will be excused from performing those obligations directly affected by the Force Majeure Event, and only for as long as the Force Majeure Event continues, provided that the Party continues to use diligent, good faith efforts to resume performance without delay. The occurrence of a Force Majeure Event affecting Contractor's representatives, suppliers, subcontractors, customers or business apart from this Contract is not a Force Majeure Event under this Contract. Contractor will promptly notify the State of any delay caused by a Force Majeure Event (to be confirmed in a written notice to the State within one (1) day of the inception of the delay) that a Force Majeure Event has occurred, and will describe in reasonable detail the nature of the Force Majeure Event. If any Force Majeure Event results in a delay in Contractor's performance longer than forty-eight (48) hours, the State may, upon notice to Contractor: (a) cease payment of the fees 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 g., below), which includes:
 - i. Contract Attachment A Attestation Re Personnel Used in Contract Performance;
 - ii. Contract Attachment B Liquidated Damages;
 - iii. Contract Attachment C Reporting Requirements;
 - iv. Contract Attachment D Service Level Agreement Scorecard; and
 - v. Contract Attachment E HIPAA Business Associate Agreement;
 - c. any clarifications of or addenda to the Contractor's proposal seeking this Contract;
 - d. the State solicitation, as may be amended, requesting responses in competition for this Contract;
 - e. any technical specifications provided to proposers during the procurement process to award this Contract;
 - f. the Contractor's response seeking this Contract; and
 - g. any Contractor rules or policies contained in insurance policy filings by the Contractor with State regulators.
- D.31. Iran Divestment Act. The requirements of Tenn. Code Ann. § 12-12-101, *et seq.*, addressing contracting with persons as defined at Tenn. Code Ann. §12-12-103(5) that engage in investment activities in Iran, shall be a material provision of this Contract. The Contractor certifies, under

penalty of perjury, that to the best of its knowledge and belief that it is not on the list created pursuant to Tenn. Code Ann. § 12-12-106.

- D.32. **Insurance.** Contractor shall maintain insurance coverage as specified in this Section. The State reserves the right to amend or require additional insurance coverage, coverage amounts, and endorsements required under this Contract. Contractor's failure to maintain or submit evidence of insurance coverage, as required, is a material breach of this Contract. If Contractor loses insurance coverage, fails to renew coverage, or for any reason becomes uninsured during the Term, Contractor shall immediately notify the State. All insurance companies providing coverage must be: (a) 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, certified copies of all ~~required~~ **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. Professional Liability Insurance

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

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

- 4) 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.
- 5) 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. Contractor shall take all necessary steps to safeguard the confidentiality of such material or information in conformance with applicable state and federal law.

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

E. SPECIAL TERMS AND CONDITIONS:

- E.1. Conflicting Terms and Conditions. Should any of these special terms and conditions conflict with any other terms and conditions of this Contract, the special terms and conditions shall be subordinate to the Contract's other terms and conditions.
- E.2. 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.3. 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.4. 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.5. Contractor Commitment to Diversity. The Contractor shall comply with and make reasonable business efforts to exceed the commitment to diversity represented by the Contractor's response to RFP-31786-00147 (RFP Attachment 6.2, Section B.15) and resulting in this Contract.

The Contractor shall assist the State in monitoring the Contractor's performance of this commitment by providing, as requested, a quarterly report of participation in the performance of this Contract by small business enterprises and businesses owned by minorities, women, and Tennessee service-disabled veterans. Such reports shall be provided to the state of Tennessee Governor's Office of Diversity Business Enterprise in the required form and substance.

- E.6. Liquidated Damages. If the Contractor fails to perform in accordance with any term or provision of this contract, only provides partial performance of any term or provision of the Contract, violates any warranty, or any act prohibited or restricted by the Contract occurs, ("Liquidated Damages Event"), the State may assess damages on Contractor ("Liquidated Damages"). The State shall notify the Contractor of amounts to be assessed as Liquidated Damages. The Parties agree that due to the complicated nature of the Contractor's obligations under this Contract it would be difficult to specifically designate a monetary amount for Contractor's failure to fulfill its obligations regarding the Liquidated Damages Event as these amounts are likely to be uncertain and not easily proven. Contractor has carefully reviewed the Liquidated Damages contained in Attachment B and agrees that these amounts represent a reasonable relationship between the amount and what might reasonably be expected in the event of a Liquidated Damages Event, and are a reasonable estimate of the damages that would occur from a Liquidated Damages Event. The Parties agree that the Liquidated Damages represent solely the damages and injuries sustained by the State in losing the benefit of the bargain with Contractor and do not include any injury or damage sustained by a third party. The Contractor agrees that the Liquidated Damages are in addition to any amounts Contractor may owe the State pursuant to the indemnity provision or any other sections of this Contract.

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

- E. 7. Personally Identifiable Information. While performing its obligations under this Contract, Contractor may have access to Personally Identifiable Information held by the State ("PII"). For the purposes of this Contract, "PII" includes "Nonpublic Personal Information" as that term is defined in Title V of the Gramm-Leach-Bliley Act of 1999 or any successor federal statute, and the rules and regulations thereunder, all as may be amended or supplemented from time to time ("GLBA") and personally identifiable information and other data protected under any other applicable laws, rule or regulation of any jurisdiction relating to disclosure or use of personal information ("Privacy Laws"). Contractor agrees it shall not do or omit to do anything which would cause the State to be in breach of any Privacy Laws. Contractor shall, and shall cause its employees, agents and representatives to: (i) keep PII confidential and may use and disclose PII only as necessary to carry out those specific aspects of the purpose for which the PII was disclosed to Contractor and in accordance with this Contract, GLBA and Privacy Laws; and (ii) implement and maintain appropriate technical and organizational measures regarding information security to: (A) ensure the security and confidentiality of PII; (B) protect against any threats or hazards to the security or integrity of PII; and (C) prevent unauthorized access to or use of PII. Contractor shall immediately notify State: (1) of any disclosure or use of any PII by Contractor or any of its employees, agents and representatives in breach of this Contract; and (2) of any disclosure of any PII to Contractor or its employees, agents and representatives where the purpose of such disclosure is not known to Contractor or its employees, agents and representatives. The State reserves the right to review Contractor's policies and procedures used to maintain the security and confidentiality of PII and Contractor shall, and cause its employees, agents and representatives to, comply with all reasonable requests or directions from the State to enable the State to verify and/or procure that Contractor is in full compliance with its obligations under this Contract in relation to PII. Upon termination or expiration of the Contract or at the State's direction at any time in its sole discretion, whichever is earlier, Contractor shall immediately return to the State any and all PII which it has received under this Contract and shall destroy all records of such PII.

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

- E. 8. Contractor Hosted Services and 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 validated encryption technologies.

- (3) Contractor must enter into a Business Associate Agreement (BAA) with the State. See Contract Attachment E.
- (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. The Contractor shall maintain a duplicate set of all records relating to this Contract in electronic medium, usable by the State and the Contractor for the purpose of Disaster recovery. Such duplicate records are to be stored at a secure fire, flood, and theft- protected facility located away from the storage location of the originals. The Contractor shall update duplicate records, at a minimum, on a daily basis and shall retain said records for a period of sixty (60) days from the date of creation.
- (6) In accordance with the timeframe for audits listed in Contract Section D.11 and in consultation with the State, the Contractor shall destroy all Confidential State Data it holds (including any copies such as backups) in accordance with the current version of National Institute of Standards and Technology ("NIST") Special Publication 800-88. The Contractor shall provide a written confirmation of destruction to the State within ten (10) business days after destruction.

b. Minimum Requirements

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

c. Comptroller Audit Requirements

Upon reasonable notice and at any reasonable time, the Contractor and Subcontractor(s) agree to allow the State, the Comptroller of the Treasury, or their duly appointed representatives to perform information technology control audits of the Contractor and all Subcontractors used by the Contractor.

Contractor will maintain and cause its Subcontractors to maintain a complete audit trail of all transactions and activities in connection with this Contract. Contractor will provide to the State, the Comptroller of the Treasury, or their duly appointed representatives access to Contractor and Subcontractor(s) personnel for the purpose of performing the information technology control audit.

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

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

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

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

- d. **Business Continuity Requirements.** The Contractor shall maintain set(s) of documents, instructions, and procedures which enable the Contractor to respond to accidents, disasters, emergencies, or threats without any stoppage or hindrance in its key operations ("Business Continuity Requirements"). Business Continuity Requirements shall include:
- (1) Regardless of the architecture of its systems, the Contractor shall develop and be continually ready to invoke a business continuity and Disaster recovery ("BC-DR") plan. The BC-DR plan shall encompass all Information Systems supporting this Contract. At a minimum the Contractor's BC-DR plan shall address and provide the results for the following scenarios:
 - i. Central and/or satellite data processing, telecommunications, print and mailing facilities and functions therein, hardware and software are destroyed or damaged;
 - ii. System interruption or failure resulting from network, operating hardware, software, communications infrastructure or operational errors that compromise the integrity of transactions that are active in a live system at the time of the outage;
 - iii. System interruption or failure resulting from network, operating hardware, software, communications infrastructure or operational errors that compromise the integrity of data maintained in a live or archival system; and
 - iv. System interruption or failure resulting from network, operating hardware, software, communications infrastructure or operational errors that does not compromise the integrity of transactions or data maintained in a live or archival system but does prevent access to the system.

- (2) "Disaster Recovery Capabilities" refer to the actions the Contractor takes to meet the Recovery Point and Recovery Time Objectives defined below. Disaster Recovery Capabilities shall meet the following objectives:
- i. Recovery Point Objective ("RPO"). The RPO is defined as the maximum targeted period in which data might be lost from an IT service due to a major incident: one (1) hour.
 - ii. Recovery Time Objective ("RTO"). The RTO is defined as the targeted duration of time and a service level within which a business process must be restored after a Disaster (or disruption) in order to avoid unacceptable consequences associated with a break in business continuity: Seventy-two (72) hours.
- (3) The Contractor shall perform at least one Disaster Recovery Test every three hundred sixty-five (365) days. A "Disaster Recovery Test" shall mean the process of verifying the success of the restoration procedures that are executed after a critical IT failure or disruption occurs. The Disaster Recovery Test shall use actual State Data Sets that mirror production data, and success shall be defined as the Contractor verifying that the Contractor can meet the State's RPO and RTO requirements. A "Data Set" is defined as a collection of related sets of information that is composed of separate elements but can be manipulated as a unit by a computer. The Contractor shall provide written confirmation to the State after each Disaster Recover Test that its Disaster Recovery Capabilities meet the RPO and RTO requirements. The Contractor shall submit a written summary of its annual BC-DR test results to the State (see item #1 in Contract Attachment C).
- e. The Contractor and any Subcontractor used by the Contractor to host State data, including data center vendors, shall be subject to an annual engagement by a CPA firm in accordance with the standards of the American Institute of Certified Public Accountants ("AICPA") for a System and Organization Controls for service organizations ("SOC") 2 Type II audit. The State shall approve the SOC audit control objectives. The Contractor shall provide the State with the Contractor's and Subcontractor's annual audit report within 30 days from when the CPA firm provides the audit report to the Contractor or Subcontractor and in addition to periodic bridge reports as requested by the State, see Contract Attachment C. The Contractor shall submit corrective action plans to the State for any issues included in the audit report within 30 days after the CPA firm provides the audit report to the Contractor and Subcontractor.
 - f. 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.
 - g. No additional funding shall be allocated for these audits as they are included in the Maximum Liability of this Contract.
 - h. Upon State request, the Contractor shall provide a copy of all Confidential State Data it holds. The Contractor shall provide such data on media and in a format determined by the State. The Contractor shall maintain a duplicate set of all records relating to this Contract in electronic medium, usable by the State and the Contractor for the purpose of

Disaster recovery. Such duplicate records are to be stored at a secure fire, flood, and theft-protected facility located away from the storage location of the originals. The Contractor shall update duplicate records, at a minimum, on a daily basis and shall retain said records for a period of sixty (60) days from the date of creation.

- E.9. 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. 10. 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.11. Survival. The terms, provisions, representations, and warranties contained in this Contract which by their sense and context are intended to survive the performance and termination of this Contract, shall so survive the completion of performance and termination of this Contract.

IN WITNESS WHEREOF,

OPTUMHEALTH FINANCIAL SERVICES, INC.:

DocuSigned by:
Mark Johns
FD46EDCF0AF34F3...

6/11/2020

CONTRACTOR SIGNATURE

DATE

Mark Johns Business Segment CFO

PRINTED NAME AND TITLE OF CONTRACTOR SIGNATORY (above)

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

Digitally signed by Howard H. Eley
DN: cn=Howard H. Eley, o=Department of Finance and Administration,
ou=Department of Finance and Administration, email=buddy.lea@tn.gov,
c=US

Howard H. Eley, CHAIRMAN


DATE

ATTACHMENT A

ATTESTATION RE PERSONNEL USED IN CONTRACT PERFORMANCE

SUBJECT CONTRACT NUMBER:	
CONTRACTOR LEGAL ENTITY NAME:	
FEDERAL EMPLOYER IDENTIFICATION NUMBER: (or Social Security 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.

DocuSigned by:

FD46EDCF0AF34F3...

CONTRACTOR SIGNATURE

NOTICE: This attestation MUST be signed by an individual empowered to contractually bind the Contractor. If said individual is not the chief executive or president, this document shall attach evidence showing the individual's authority to contractually bind the Contractor.

Mark Johns Business Segment CFO

PRINTED NAME AND TITLE OF SIGNATORY

6/11/2020

DATE OF ATTESTATION

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

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

The Parties agree that the Liquidated Damages represent solely the anticipated damages and injuries sustained by the State in losing the benefit of the bargain with Contractor and do not include any injury or damage sustained by a third party.

Payment of Liquidated Damages: It is agreed by the State and the Contractor that any liquidated damages assessed by the State shall be due and payable to the State within forty-five (45) calendar days after Contractor receipt of the Invoice containing an assessment of Liquidated Damages. If payment is not made by the due date, the Liquidated Damages amount may be withheld from future payments by the State without further notice.

PERFORMANCE GUARANTEES	
1. HSA Go-Live	
Guarantee	All fully established HSAs shall take effect (i.e., "go-live") and be available for member use on the HSA account go-live date specified in Contract Section A.19.
Assessment	Five thousand dollars (\$5,000) for every day beyond the deadline that accounts are not fully operational.
Justification	Program go-live is an imperative performance guarantee listed in the Contract. If there is a delay in this, the State is unable to provide HSA benefits to our Members. This assessment and amount takes into account the State's increased staff time for Member inquiries, resolution of additional Member issues, and increased legislative inquiries.
Measurement	Measured, reported, reconciled and paid no later than three (3) months after the HSA account go-live date.
2. FSA Go-Live	
Guarantee	All FSAs shall take effect (i.e., "go-live") and be available for member use on the FSA account go-live date specified in Contract Section A.19.
Assessment	Five thousand dollars (\$5,000) for every day beyond the deadline that accounts are not fully operational.
Justification	Program go-live is an imperative performance guarantee listed in the Contract. If there is a delay in this, the State is unable to provide FSA benefits to our Members. This assessment and amount takes into account the State's increased staff time for Member inquiries, resolution of additional Member issues, and increased legislative inquiries.
Measurement	Measured, reported, reconciled and paid no later than three (3) months after the FSA account go-live date.
3. Implementation	
Guarantee	The Contractor shall comply with all tasks, deliverables, and milestones included in the project implementation plan, as required in Contract Section A.6, necessary to install the program by the go-live date.

Assessment	One thousand dollars (\$1,000) for each Business Day for each deliverable and/or milestone beyond the deadline up to, and including, the go-live date specified in Contract Section A.19
Justification	Implementation is a critical portion of the new contract to ensure all aspects of the HSA and FSA programs are enacted accurately and timely in order for services to be delivered accurately and timely to members. This assessment calculates the potential impact of missed or inaccurate implementation milestones.
Measurement	Assessed, reported and reconciled no later three (3) months after HSA and FSA go-live.
4. Operational Readiness	
Guarantee	The Contractor shall resolve all findings identified by the State during its operational readiness review, as required in Contract Section A.6.d. prior to the applicable go-live date.
Assessment	Five hundred dollars (\$500) per finding if the issue is not resolved prior to the applicable go-live date.
Justification	Operational readiness review requires the Contractor and the State to investigate and navigate any potential issues, deadlines, and milestones leading up to go-live and operations.
Measurement	Measured, reported reconciled and paid no later than three (3) months after the applicable go-live date.
5. Electronically Transmitted Data	
Guarantee	Contractor's processing of data from the Edison system shall be fully operational two (2) weeks prior to the HSA and FSA go-live date.
Assessment	One thousand dollars (\$1,000) per day, for every day beyond the deadline that the interface is not fully operational.
Justification	Processing of Edison system electronic data is required for Member contributions into HSA and FSA accounts and without this data transfer working properly Members do not have the ability to fund their accounts.
Measurement	Measured and reported beginning the day after the HSA and FSA go-live date and continuing – as necessary – until the interface is fully operational. (Reconciled and paid upon final recognition of operational status.)
6. Call Center and Other Systems Operational	
Guarantee	The Contractor's call center and other systems shall be fully operational no later than one (1) week prior to the HSA and FSA go-live dates go- in Contract Section A.19.
Assessment	One thousand dollars (\$1,000) for every day beyond the deadline that the call center or other system is not operational.
Justification	Call center functions are a core service that must be operational by the contracted deadlines in order to serve members.
Measurement	Measured, reported, reconciled and paid no later than three (3) months after the HSA and FSA account go-live dates.
7. Website	
Guarantee	The Contractor's website shall be available on the internet and fully operational, with the exception of Member data/PHI on or before the date specified in Contract Section A.19.

Assessment	Five hundred dollars (\$500) per day that the guarantee is not met.
Justification	Website functionality is a core service that must be operational by the contracted deadline in order to serve members.
Measurement	Measured, reported, reconciled and paid no later than three (3) months after the website go-live date.
8. Privacy and Security of PHI Impacting 1 to 499 Members	
Guarantee	<p>In accordance with Contract Section D.20 and Contract Attachment E, the Contractor shall not violate the Privacy and Security Rules (45 CFR Parts 160 and 164) promulgated by the United States Department of Health and Human Services pursuant to the Health Insurance Portability and Accountability Act of 1996 (HIPAA), Public Law 104-191 as amended by Public Law 111-5, Division A, Title XIII (the HITECH Act).</p> <p>Pursuant to 45 CFR 164.402, breach is defined as the acquisition, access, use, or disclosure of protected health information in a manner not permitted under subpart E of the Privacy Rule which compromises the security or privacy of the PHI.</p>
Assessment	<p>Four Thousand Eight Hundred dollars (\$4,800) per violation until resolved.</p> <p>This assessment is based on the previous experience BA has had in responding to similar incidents impacting less than five hundred (500) Members which includes the following predicted costs to BA:</p> <ol style="list-style-type: none"> 1. HIPAA Compliance Officer time including investigating the breach, monitoring the HIPAA privacy hotline and email address estimated at seventy-five (75) hours; 2. Director of Financial Management and Program Integrity time and work estimated at seven and half (7.5) hours; 3. Program Director associated with this contract time and work estimated at fifteen (15) hours; 4. Executive Director's time and work estimated at one (1) hour; 5. Department attorney time including legal review estimated at one (1) hour; and 6. Service Center staff time and work answering Member questions/concerns estimated at fifteen (15) hours.
Justification	The guarantee and assessment estimates the impact on the State including the unpredictability of the timing of a breach; specifics of the breach's scope; length of time of investigation completion; number of Member calls to the BA service center; and level of legislative inquiries.
Measurement	Measured, reported, reconciled and paid after each occurrence.
9. Privacy and Security of PHI Impacting 500 or More Members	
Guarantee	<p>In accordance with Contract Section D.20 and Contract Attachment E, the Contractor shall not violate the Privacy and Security Rules (45 CFR Parts 160 and 164) promulgated by the United States Department of Health and Human Services pursuant to the Health Insurance Portability and Accountability Act of 1996 (HIPAA), Public Law 104-191 as amended by Public Law 111-5, Division A, Title XIII (the HITECH Act).</p> <p>Pursuant to 45 CFR 164.402, breach is defined as the acquisition, access, use, or disclosure of protected health information in a manner not permitted under subpart E of the Privacy Rule which compromises the security or privacy of the PHI.</p>
Assessment	<p>Nineteen Thousand dollars (\$19,000) per incident basis violation until resolved</p> <p>This assessment is based on the previous experience BA has had in responding to similar incidents impacting five hundred (500) or more Members which includes the following predicted costs to BA:</p>

	<ol style="list-style-type: none"> 1. HIPAA Compliance Officer time including investigating the breach, monitoring the HIPAA privacy hotline and email address estimated at one hundred thirty(130) hours; 2. Director of Financial Management and Program Integrity time and work estimated at thirty (30) hours; 3. Program Director associated with this Contract time and work estimated at forty-five (45) hours; 4. Executive Director's time and work estimated at eighteen (18) hours; 5. Department attorney time including legal review estimated at thirty (30) hours; 6. Service Center staff time and work answering Member questions/concerns estimated at one-hundred (100) hours; 7. Public Information Officer ("PIO")'s time and work estimated at forty-five (45) hours; and 8. Communications Director's time and work estimated at thirty (30) hours.
Justification	<p>The guarantee and assessment estimates the impact on the State including the unpredictability of the timing of a breach; specifics of the breach's scope; length of time of investigation completion; number of Member calls to the BA service center; and level of legislative inquiries.</p> <p>A breach impacting five hundred (500) or more Members has additional required steps and procedures including notification to the Office of Civil Rights ("OCR") with the U.S. Department of Health & Human Services ("HSS"); Documentation to OCR for a required investigation; the drafting and mailing of Member notification letters; and a federally-required media release to media outlets across the State.</p>
Measurement	Measured, reported, reconciled and paid after each occurrence.
10. Initial Mailing of Welcome Packets and Debit Cards	
Guarantee	Ninety-seven percent (97%) of initial welcome packets and debit cards shall be produced and mailed within ten (10) Business Days of receipt of the enrollment file from the State.
Assessment	Five thousand dollars (\$5,000.00) for every day beyond the deadline that the initial welcome packets and debit cards have not been produced and mailed to Members.
Justification	Members with an FSA, L-FSA or HSA need a debit card at the beginning of the Plan year in order to access their benefits in the most efficient manner. Having the vast majority of debit cards and welcome packets distributed prior to the go-live date is critical for this reason. This assessment and amount takes into account the State's increased staff time for Member inquiries, resolution of additional Member issues, and increased legislative inquiries.
Measurement	Measured, reported, reconciled and paid after each occurrence.

CONTRACT ATTACHMENT C**REPORTING REQUIREMENTS**

As required by this Contract, the Contractor shall submit reports to the State. Reports shall be submitted via secure electronic medium, in a format approved or specified by the State, and shall be of the type and at the frequency indicated below. The State reserves the right to modify reporting requirements as deemed necessary. The State will provide the Contractor with at least sixty (60) days' notice prior to implementation of a report modification.

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

1. Weekly reports shall be submitted by Tuesday of the following week;
2. Monthly reports shall be submitted by the 15th of the following month;
3. Quarterly reports shall be submitted by the 20th of the following month;
4. Semi-Annual Reports shall be submitted by the 20th of the following month;
5. Annual reports shall be submitted within sixty (60) days after the end of the calendar year.

Reports shall include:

1. **Compliance Report**, submitted no later than 60 (sixty) days following the end of each calendar quarter showing for the previous quarter the Contractor's outcome for each of the measurements in Contract Attachment B and Contract Attachment D of this Contract, (each component to be submitted at the frequency indicated in Contract Attachments B and D), as well as any payment due for that quarter (if applicable). Submitted by secure email, which shall include:
 - a. Status report narrative
 - b. Performance guarantee compliance results
 - c. Supporting detail report for each performance measure
2. **Card Adjudication Rates**, submitted quarterly in compliance with contract section A.4.g.
3. **Summary Reports**, submitted monthly and annually in compliance with contract section A.7.e.
4. **Portfolio Performance Review Report**, submitted quarterly in compliance with contract section A.7.i.
5. **Account reports**, submitted as requested in compliance with contract section A.7.j.
6. **Ad-Hoc Reports**, submitted as requested in compliance with contract section A.7.m.
7. **Call Center Performance Standards**, submitted monthly in compliance with contract section A.8.k.
8. **Call Center Statistics**, submitted monthly in compliance with contract section A.8.l.
9. **Member Complaints**, submitted quarterly in compliance with contract section A.8.x.
10. **Weekly File Transmission Statistics Report**, submitted within five (5) Business Days of receipt of the Weekly Enrollment Update in compliance with contract section A.14.e.ii.
11. **BC-DR Reports**, submitted one month prior to HSA operational go-live and annually thereafter in compliance with contract Section E.8.
12. **Security Risk Assessment**, submitted one month prior to HSA operational go-live and annually thereafter in compliance with contract Section A.16.l.
13. **Fraud and Abuse Report**, submitted two (2) months prior to HSA and FSA go-live in compliance with contract Section A.17.c.
14. **SOC2 Type II report**, submitted within thirty (30) days of the Contract Effective Date, annually thereafter, and in addition to periodic bridge reports as requested by the State in compliance with Contract Section E.8.

15. **Central State FSA CAFR reports**, submitted annually no later than July 30 in compliance with contract Section A.7.q.
16. **Debt Substantiation report(s)**, submitted annually by December 15 for the previous calendar year on Central State employees to the State via secure email in compliance with contract Section A.7.p.
17. **FSA Active Employees Without Payroll Deductions**, submitted monthly for the previous month for Central State employees in compliance with Contract Section A.7.t.
18. **FSA Active Employee Annual Payroll Deductions Less Than Election**, submitted annually by January 31 for the previous calendar year for Central State employees in compliance with Contract Section A.7.u.
19. **Other Reports**, as specified in this Contract.

CONTRACT ATTACHMENT D**Service Level Agreement Scorecard**

Below is the SLA Scorecard and associated KPIs used to measure the Contractor's performance against the desired outcomes. KPIs shall be evaluated, scored, and reconciled quarterly via the SLA Scorecard with relevant documentation. Contractor must submit the SLA Scorecard each calendar quarter documenting the Contractor's outcome for each of the KPI for the previous quarter, in which services were delivered, as well as any At-Risk Performance Payment due (if applicable).

It is agreed by the State and the Contractor that any At-Risk Performance Payment assessed by the State shall be due and payable to the State within forty-five (45) calendar days after Contractor receipt of the Invoice containing an assessment of fees at risk. If payment is not made by the due date, the At-Risk Performance Payment amount may be withheld from future payments by the State without further notice.

Use the following for the quarterly calculations – the Contractor will fill in the Quarterly Score column for each individual KPI. If the individual KPI does not apply for the reported quarter, place 'n/a' in the Quarterly Score column. The total possible score will be adjusted accordingly. The State will calculate the Total Quarterly Score using the following formula: Quarterly Score divided by total possible quarterly score multiplied by 100%. The At Risk Performance Payment will be determined by this percentage (see table below).

KPI		Description	Performance Requirement	Contractor Performance	Score if Met	Quarterly Score
1.	Ongoing HSA set up	As required by Contract Section A.3.w, enrollment confirmation notices must be provided to employees within ten (10) days of successfully establishing their HSA	100%	99.5% or greater	10	
				98.0-99.4%	8	
				96.0-97.9%	6	
				Less than 96%	0	
2.	Ongoing FSA setup	As required by Contract Section A.4.f, enrollment confirmation notices must be provided to employees within ten (10) days of successfully establishing their FSA	100%	99.5% or greater	10	
				98.0-99.4%	8	
				96.0-97.9%	6	
				Less than 96%	0	
3.	Mailing of ongoing welcome packets and debit cards	Ninety-seven percent (97%) of ongoing welcome packets and debit cards shall be produced and mailed within ten (10) Business Days of member completion of the HSA and/or FSA enrollment/set-up process.	97%	97% or greater	10	
				95%-96.9%	6	
				Less than 95%	2	
4.	Card Adjudication Rates	At least eighty-five percent (85%) of all FSA debit card transactions with MCC codes specific to health care providers each month shall automatically adjudicate (require no manual intervention).	85%	85% or greater	10	
				83-84.9%	8	
				82-83.9%	6	
				Less than 82%	0	

KPI		Description	Performance Requirement	Contractor Performance	Score if Met	Quarterly Score
5.	Member online access	As required by Contract Section A.5, all members enrolled in a HSA or flexible benefits program managed by the Contractor under this contract shall have online access to HSA and FSA account information 24 hours-a-day, seven days a week	99.5%	99.5% or greater	10	
				98.0-99.4%	8	
				96.0-97.9%	6	
				Less than 96%	0	
6.	Member Satisfaction Survey	The level of overall member satisfaction, as measured annually through the member satisfaction survey, shall be equal to or greater than eighty-five percent (85%) in the first year of the Contract, and shall be equal to or greater than ninety percent (90%) in all subsequent year(s) within the contract term.	85% in first year	85% or greater	10	
				83-84.9%	8	
				81-82.9%	2	
				Less than 81%	0	
			90% in years 2-5	90% or greater	10	
				88-89.9%	8	
				86-87.9%	2	
				Less than 86%	0	
7.	Eligibility Posting	One hundred percent (100%) of electronically transmitted enrollment updates, including the resolution of any errors identified during processing, shall be processed within four (4) business days of receipt of the weekly file as required in Contract Section A.14.e.iii.	100%	100%	10	
				98-99.9%	8	
				96-97.9%	6	
				94-95.9%	0	
8.	Eligibility Discrepancies	Resolve all eligibility discrepancies (any difference of values between the State's database and the Contractor's database) as identified within two (2) business day of notification by the State or identification by the Contractor, as required in Contract Section A.14.e.iv.	100%	100%	10	
				98.0-99.9%	8	
				96.0-97.9%	6	
				Less than 96%	0	
9.	Reporting	The Contractor shall distribute to the State all reports required in the Contract within the time frame and in the format specified in the Contract.	100%	100%	10	
				98-99.9%	8	
				96-97.9%	6	
				94-95.9%	0	

KPI	Description	Performance Requirement	Contractor Performance	Score if Met	Quarterly Score
10.	Average Speed of Answer	The Contractor's call center shall maintain an average speed of answer of 30 seconds.	30 Sec. or less Avg.	10	
			31-35 Sec, Avg.	8	
			36-40 Sec Avg.	2	
			Greater than 40 Sec Avg.	0	
Total Quarterly Score					
Calculated Performance Payment (Quarterly Score divided by total possible quarterly score multiplied by 100%).					

Quarterly Score	At Risk Performance Payment
>=95%	0% of previous calendar quarter Administrative Fees paid by State to the Contractor (minus any monthly fee for custom investment slate, if applicable)
90.1-94.9%	1% of previous calendar quarter Administrative Fees paid by State to the Contractor (minus any monthly fee for custom investment slate, if applicable)
85-90%	2% of previous calendar quarter Administrative Fees paid by State to the Contractor (minus any monthly fee for custom investment slate, if applicable)
80-84.9%	2.5% of previous calendar quarter Administrative Fees paid by State to the Contractor (minus any monthly fee for custom investment slate, if applicable)
75-79.9%	3% of previous calendar quarter Administrative Fees paid by State to the Contractor (minus any monthly fee for custom investment slate, if applicable)
74.9% or below	3.5% of previous calendar quarter Administrative Fees paid by State to the Contractor (minus any monthly fee for custom investment slate, if applicable)

KPI	Description	Performance Requirement	At Risk Performance Payment
Unauthorized Usage of Information	Unless prior approved In Writing by the State, and in compliance with state and federal law, the Contractor shall not use information gained through this Contract, including but not limited to utilization and pricing information, in marketing or expanding non-State business relationships or for any pecuniary gain.	If Contractor uses data without prior State approval, In Writing.	\$25,000 per incident
Authorization of Member Communications	The Contactor shall not distribute any materials to Members prior approval by the State In Writing for the use of such materials.	If Contractor distributes materials without prior State approval, In Writing.	\$1,000 per incident

Timely Notification	Contractor shall notify the State, within three (3) Business Days of identification, about any situation that appears to negatively impact the administration or delivery of the program, plan, or benefits.	If Contractor fails to notify the State within three (3) Business Days	\$10,000 per incident
Call Center Responses	The Contractor shall have sufficient staff to respond to inquiries, correspondence, complaints, and problems related to all aspects of the services required in this contract.	If a Member contacts the State with an unresolved issue that they previously attempted to resolve with the Contractor.	\$1,000 per incident

CONTRACT ATTACHMENT E**HIPAA BUSINESS ASSOCIATE AGREEMENT
COMPLIANCE WITH PRIVACY AND SECURITY RULES**

THIS BUSINESS ASSOCIATE AGREEMENT (hereinafter "Agreement") is between **The State of Tennessee, Finance and Administration, Division of Benefits Administration** (hereinafter "Covered Entity") and **OptumHealth Financial Services, Inc.** (hereinafter "Business Associate"). Covered Entity and Business Associate may be referred to herein individually as "Party" or collectively as "Parties."

BACKGROUND

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

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

LIST OF AGREEMENTS AFFECTED BY THIS BUSINESS ASSOCIATE AGREEMENT:**Contract Name:****Execution Date:****Optum – HSA and FSA services****July 1, 2020**

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

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

DEFINITIONS

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

- 1.1 "Breach of the Security of the [Business Associate's Information] System" shall have the meaning set out in its definition at T.C.A. § 47-18-2107
- 1.2 "Business Associate" shall have the meaning set out in its definition at 45 C.F.R. § 160.103.
- 1.3 "Covered Entity" shall have the meaning set out in its definition at 45 C.F.R. § 160.103.
- 1.4 "Designated Record Set" shall have the meaning set out in its definition at 45 C.F.R. § 164.501.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

3 OBLIGATIONS AND ACTIVITIES OF BUSINESS ASSOCIATE (Security Rule)

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

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

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

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

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

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

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

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

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

With a copy to:

State of Tennessee
Benefits Administration
~~Contracting and Procurement Manager~~
312 Rosa L. Parks Avenue
1900 W.R.S. Tennessee Towers
Nashville, TN 37243-1102
Phone: (615) 532-4598
Facsimile: (615) 253-8556

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

OptumHealth Financial Services, Inc.
11000 Optum Circle,
Eden Prairie, Minnesota 55344
Attn: Privacy Counsel
Privacy@optum.com

Tami Eckstein
VP Innovation and Growth, Financial Services
2525 Lake Park Blvd
Salt Lake City, UT 84120, US
801-963-7162
Tami.Eckstein@optum.com

Mark W Johns
Director of Finance
OptumHealth Financial Services
952-205-6441
952-239-3572
mark.johns@optum.com

Linnie Stelk
Relationship Manager, Financial Services
952-687-4260
256-424-9110
linnie.stelk@optum.com

Paul A. Leary
Head of Health Benefit Accounts, Optum Financial Services (OFS)
1325 Boylston Street, 11th Floor
Boston MA 02215
781-716-5617
781-258-7407
paul.leary@optum.com

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

4. PERMITTED USES AND DISCLOSURES BY BUSINESS ASSOCIATE

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

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

4.3 Except as otherwise limited in this Agreement, Business Associate may disclose PHI for the proper management and administration of the Business Associate, provided that disclosures are Required By Law, or provided that, if Business Associate discloses any PHI to a third party for such a purpose, Business Associate shall enter into a written agreement with such third party requiring the third party to: (a) maintain

the confidentiality, integrity, and availability of PHI and not to use or further disclose such information except as Required By Law or for the purpose for which it was disclosed, and (b) notify Business Associate of any instances in which it becomes aware in which the confidentiality, integrity, and/or availability of the PHI is breached immediately upon becoming aware.

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

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

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

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

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

5. OBLIGATIONS OF COVERED ENTITY

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

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

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

6. PERMISSIBLE REQUESTS BY COVERED ENTITY

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

7. TERM AND TERMINATION

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

7.2 Termination for Cause.

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

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

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

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

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

7.3 Effect of Termination.

7.3.1. Except as provided in Section 7.3.2. below, upon termination of this Agreement, for any reason, Business Associate shall return or destroy all PHI received from Covered Entity, or created or received by Business Associate on behalf of, Covered Entity. This provision shall apply to PHI that is in the possession of subcontractors or agents of Business Associate. Business Associate shall retain no copies of the PHI.

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

8. MISCELLANEOUS

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

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

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

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

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

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

BUSINESS ASSOCIATE:
Randy Pope | Director, Client
Management
OptumHealth Financial Services, Inc.
Address: 11000 Optum Circle
Eden Prairie, Minnesota 55344
Phone: 952-324-4316
Email: randy.pope@Optum.com

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

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

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

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

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

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

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

IN WITNESS WHEREOF,

DocuSigned by:
Mark Johns
FD46EDCF0AF34F3

6/11/2020

OPTUMHEALTH FINANCIAL SERVICES, INC.

Date:

Howard H. Eley

Digitally signed by Howard H. Eley
DN: cn=Howard H. Eley, o=Department of Finance and
Administration, ou=Department of Finance and
Administration, email=buddy.ley@tn.gov, c=US
Date: 2020.06.16 10:54:34 -05'00'

Howard H. Eley, Commissioner of Finance & Administration

Date: