

CLOUD SOLUTIONS 2016-2026
Led by the State of **Utah**

Master Agreement #: AR2479

Contractor: **DELOITTE CONSULTING LLP**

Participating Entity: **STATE OF TENNESSEE**

Deloitte Consulting LLP ("Deloitte Consulting" or "Contractor") and the State of Utah, Division of Purchasing, are parties to that certain NASPO ValuePoint Master Agreement for Cloud Solutions, effective 9/9/2016. This Participating Addendum (this "Participating Addendum" or "Addendum" or "PA" or "Contract") to the Master Agreement is between Deloitte Consulting, as Contractor, and the State of Tennessee (the "Participating Entity" for purposes of this Addendum or the "State"). Contractor and State are each "Party" to the Contract and collectively "Parties" to the Contract. Capitalized terms used but not defined in this Participating Addendum shall have the meanings provided in the Master Agreement.

The following products or services are included in this contract portfolio:

- *All Deloitte offerings listed under the Master Agreement, excluding any Software as a Service offerings as defined and referenced in the Master Agreement, or any offerings that require the licensing of specific software programs pursuant to individual end user license agreements, which offerings are not in scope under this Contract except as contemplated under Special Terms and Conditions Section 12 (Extraneous Terms and Conditions).*

"Contract" means this Participating Addendum, including all referenced attachments and documents incorporated by reference, including but not limited to Contractor's ValuePoint Master Agreement #AR2479. All documents that comprise the Contract are set forth at Participating Addendum, Attachment A., "Standard Terms and Conditions", Section 25.

"Satisfactory" or similar terms, when used in this Contract, mean that the services and Deliverables were performed in accordance with the terms and conditions of this Contract.

Master Agreement Terms and Conditions:

1. **Scope:** This addendum covers **Cloud Solutions** led by the State of Utah for use by State agencies and other entities located in Tennessee authorized by that State's statutes to utilize State contracts with the prior approval of the State's Chief Procurement Officer.
2. **Participation:** This Participating Addendum may be used by all State agencies, institutions of higher education, political subdivisions and other entities authorized to use statewide contracts in the State of Tennessee. Issues of interpretation and eligibility for participation are solely within the authority of the State Chief Procurement Officer.

PARTICIPATING ADDENDUM**CLOUD SOLUTIONS 2016-2026**Led by the State of **Utah**

3. Access to Cloud Solutions Services Requires State CIO Approval: Unless otherwise stipulated in this Participating Addendum, specific services accessed through the NASPO ValuePoint cooperative Master Agreements for Cloud Solutions by State executive branch agencies are subject to the authority and prior approval of the State's Chief Information Officer. Orders under this Participating Addendum will not be effective, and Contractor shall not commence services thereunder, until they are approved and signed by Contractor, the Participating Entity and either the State's Chief Information Officer or the Deputy Chief Information Officer.

4. Primary Contacts: The primary contact individuals for this Participating Addendum are as follows (or their named successors):

Contractor: Deloitte Consulting LLP

Name:	Michael Connors
Address:	1033 Demonbreun St Suite 400, Nashville, TN 37203
Telephone:	773-818-3486
Fax:	512-480-1677
Email:	mconnors@deloitte.com

Participating Entity: State of Tennessee

Name:	Simeon Ayton
Address:	312 Rosa L. Parks Avenue, Nashville, TN 37243
Telephone:	615-532-0110
Fax:	615 741-0684
Email:	Simeon.ayton@tn.gov

5. PARTICIPATING ENTITY MODIFICATIONS OR ADDITIONS TO THE MASTER AGREEMENT

These modifications or additions apply only to actions and relationships within the Participating Entity. Participating Entity must check one of the boxes below.

☐ No changes to the terms and conditions of the Master Agreement are required.

☒ The following changes are modifying or supplementing the Master Agreement terms and conditions.

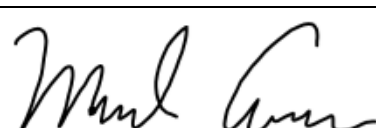
This Participating Addendum includes the supplemental Tennessee State specific terms and conditions attached as Attachment A and Participating Addendum, Attachment A, "Standard Terms and Conditions", Section 25, shall control in the event of a conflict between any of the documents comprising this Participating Addendum.

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6. Subcontractors: All contactors, dealers, and resellers authorized in Tennessee, as shown on the dedicated Contractor (cooperative contract) website, are approved to provide sales and service support to participants in the NASPO ValuePoint Master Agreement. The Contractor's dealer participation will be in accordance with the terms and conditions set forth in the Master Agreement.
7. Orders: Any Order placed by a Participating Entity or Purchasing Entity for a product or service available from the Master Agreement shall be deemed to be a sale under (and governed by the prices and other terms and conditions of) the Master Agreement and this Participating Addendum, unless the parties to the Order agree in writing that another contract or agreement applies to such order.
8. Licenses: To the extent any product or service provided by Deloitte Consulting to the Participating Entity or any Purchasing Entity hereunder constitutes inventory within the meaning of section 471 of the Internal Revenue Code, such service/product is provided/licensed to the Participating Entity or Purchasing Entity by Deloitte Consulting as agent for its product company subsidiary on the terms and conditions contained herein. In addition, the additional terms set forth in Attachment C to this Participating Addendum will apply to any Order where AWS hosting is included as part of the Services thereunder.

IN WITNESS WHEREOF, the parties have executed this Addendum as of the date of execution by both parties below.

Participating Entity: State of Tennessee	Contractor: Deloitte Consulting
Signature:	Signature: 
Name: Michael F. Perry	Name: Michael Connors
Title: Chief Procurement Officer	Title: Principal
Date: 05/11/2020	Date: 05/08/2020

[Additional signatures may be added if required by the Participating Entity]

For questions on executing a participating addendum, please contact:

NASPO ValuePoint

Cooperative Development Coordinator:	Shannon Berry
Telephone:	775-720-3404
Email:	sberry@naspovaluepoint.org

*Please email fully executed PDF copy of this document
to
PA@naspovaluepoint.org
to support documentation of participation and posting
in appropriate data bases.*

Attachment A

Supplemental Terms and Conditions



Standard Terms and Conditions

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.
2. **Modification and Amendment.** This Contract may be modified only by a written amendment signed by the State and Contractor.
3. **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 in accordance with the terms of the applicable Order 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.

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- 4. Termination for Convenience.** The State may terminate this Contract for convenience without cause and for any reason. The State shall give the Contractor at least thirty (30) days written notice before the termination date. The Contractor shall be entitled to compensation for all conforming goods delivered and accepted by the State and for Satisfactory, authorized services completed as of the termination date. In no event shall the State be liable to the Contractor for compensation for any goods neither requested nor accepted by the State or for any services neither requested by the State nor Satisfactorily performed by the Contractor in accordance with the terms of the applicable Order. In no event shall the State's exercise of its right to terminate this Contract for convenience relieve the Contractor of any liability to the State for any damages or claims arising under this Contract.
- 5. Termination for Cause.** If a Party ("Breaching Party") fails to properly perform its obligations under this Contract, or if a Party materially violates any terms of this Contract ("Breach Condition"), the other Party ("Non-breaching Party") may provide written notice to the Breaching Party specifying the Breach Condition. If within thirty (30) days of notice, the Breaching Party has not cured the Breach Condition, the Non-breaching Party may terminate the Contract. In the event the Non-breaching Party is the State, the State may withhold payments in excess of compensation for completed services or provided goods. The Breaching Party shall not be relieved of liability to the Non-breaching Party for damages sustained by virtue of any breach of this Contract, and the Non-breaching Party may seek other remedies allowed at law or in equity for breach of this Contract.
- 6. Assignment and Subcontracting.** The Contractor shall not assign this Contract or enter into a subcontract for any of the goods or services provided under this Contract without the prior written approval of the State. Notwithstanding any use of the approved subcontractors, the Contractor shall be the prime contractor and responsible for compliance with all terms and conditions of this Contract. The State reserves the right to request additional information or impose additional terms and conditions before approving an assignment of this Contract in whole or in part or the use of subcontractors in fulfilling the Contractor's obligations under this Contract.
- 7. 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.

- 8. 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 specified in Tenn. Code Ann. § 12-3-309 or otherwise available under this Contract, including termination of this Contract.
- a) The Contractor agrees that the Contractor shall not knowingly utilize the services of an illegal immigrant in the performance of this Contract and shall not knowingly utilize the services of any subcontractor who will utilize the services of an illegal immigrant in the performance of this Contract. The Contractor shall reaffirm this attestation, in writing, by submitting to the State a completed and signed copy of the document at Attachment B, 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.

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- 9. 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 records shall be prepared materially in compliance with generally accepted accounting principles and standard accounting procedures and practices consistently applied.”
- 10. 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.
- 11. Progress Reports.** The Contractor shall submit brief, periodic, progress reports to the State as requested.
- 12. 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.
- 13. 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. Notwithstanding anything else herein, the State’s total liability under this Contract (including without limitation any exhibits, schedules, amendments or other attachments to the Contract) or otherwise shall under no circumstances exceed the Estimated Liability. This limitation of liability is cumulative and not per incident.
- 14. Limitation of Contractor’s Liability.** In accordance with Tenn. Code Ann. § 12-3-701, the Contractor’s liability for all claims arising under or associated with this Contract, the Services or any specific Order shall be limited to an amount equal to the greater of (a) two times the total fees to be paid by the State for the applicable Order, as detailed therein and as may be amended, or (b) \$1,000,000. Except as set forth below, in no event will the Contractor be liable to the State 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

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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. 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; or (ii) 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.

15. Indemnification. Contractor's indemnification obligations shall be as set forth in Master Agreement Attachment A Section 13, however nothing in such section shall 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.

16. HIPAA Compliance. If an Order expressly specifies that, as part of the services provided thereunder, the Contractor will store, process or transmit protected health information ("PHI"), the obligations of the parties regarding such PHI will be as specified in Attachment F (Business Associate Agreement).

The Contractor will indemnify the State and hold it harmless for any violation by the Contractor or its subcontractors of the Privacy Rule (as defined in the Business Associate Agreement). 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. Notwithstanding the above, nothing in this Section 16 shall require the Contractor to indemnify the State for any such indemnity claims to the extent such claims arise from the State's own negligence or misconduct. As a condition to the foregoing indemnity obligations, the State shall provide the Contractor with prompt written notice of any claims for which indemnification is to be sought in this Section 16 and shall cooperate in all reasonable respects with the Contractor in connection with any such claims.

17. Safeguarding Federal Tax Information. Contractor agrees to comply with the terms of Attachment E (Safeguarding FTI). With respect to the AWS Platform, AWS and the IRS are working in good faith to develop a playbook that documents processes and procedures for inspections under Section III of Attachment E. The playbook will govern such inspections once it has been agreed to between AWS and the IRS. The State shall obtain all necessary approvals and consents from the IRS prior to executing any SOW involving federal tax information subject to Attachment E.

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- 18. 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.
- 19. 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.
- 20. 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.

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- 21. 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 services, 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.
- 22. 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.
- 23. 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.

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- 24. Headings.** Section headings of this Contract are for reference purposes only and shall not be construed as part of this Contract.
- 25. 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; and
 - b. this Contract with any attachments or exhibits, which includes attachment A, attachment B and attachment C.
- 26. 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.
- 27. 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. The State shall provide Contractor with a tax exemption certificate.
- 28. 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 by one Party to the other Party that is regarded as confidential under state or federal law or any other non-public material or information shall be regarded as "Confidential Information." Nothing in this Section shall permit a Party to disclose any Confidential Information, regardless of whether it has been disclosed or made available to the other Party due to intentional or negligent actions or inactions of a Party or third parties. Confidential Information shall not be disclosed except as required or permitted under state or federal law. Each Party shall take all necessary steps to safeguard the confidentiality of such material or information in conformance with applicable state and federal law. All obligations regarding Confidential Information are subject to the provisions of the Tennessee Public Records Act.

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

Special Terms and Conditions

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.
2. **Estimated Liability.** The total purchases of any goods or services under the Contract are not known. The State estimates the purchases during the Term shall be sixty-two million dollars (\$62,000,000) ("Estimated 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.
3. **Travel Compensation.** Compensation to the Contractor for travel, meals, or lodging shall be subject to amounts and limitations specified in the current "State Comprehensive Travel Regulations." The Contractor must include (in addition to other invoice requirements of this Contract) a complete itemization of requested travel compensation and appropriate documentation and receipts as required by the "State Comprehensive Travel Regulations."
4. **Invoice Requirements.** The Contractor shall invoice the State only for goods delivered and accepted by the State or services Satisfactorily provided in accordance with the terms of the applicable Order at the amounts stipulated in this contract. Contractor shall submit invoices and necessary supporting documentation, no more frequently than once a month, and no later than forty-five (45) days after goods or services have been provided to the "bill-to" address:

State Agency Billing Address, as set forth in the applicable Order

- 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: State Agency & Division Name;
 - (5) Customer account number (assigned by the Contractor to the above-referenced Customer);

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- (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 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) 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
- (2) Include shipping or delivery charges only as authorized in this Contract.

c. The State shall make payment in accordance with the applicable Order and the Prompt Pay Act of 1985. The timeframe for payment (or any discounts) begins only when the State is in receipt of an invoice that meets the minimum requirements listed herein.

5. **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.

6. **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.

7. **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

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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.

8. Intellectual Property Rights. For purposes of this Contract (i) "IP" means works of authorship, materials, information and other intellectual property; (ii) "Contractor IP" means all IP created prior to or independently of the performance of the Services, or created by Contractor or its subcontractors as a tool for their use in performing the Services, plus any modifications or enhancements thereto and derivative works based thereon; and (iii) "Deliverables" means all IP that Contractor or its subcontractors create for delivery to the Purchasing Entity as a result of the Services under an Order. Software Deliverables shall include the software source code. Upon full payment to Contractor under the applicable Order for the applicable Deliverable, Contractor hereby (i) assigns to the Purchasing Entity all rights in and to the Deliverables, other than any Contractor IP included therein; and (ii) grants to the Purchasing Entity a perpetual right to use, for the Purchasing Entity's internal business purposes, any Contractor IP included in the Deliverables in connection with its use of the Deliverables. Except for such license grant, Contractor or its licensors retain all rights in and to all Contractor IP. The rights granted in this Section do not apply to any IP that is licensed to the Purchasing Entity under a separate agreement.

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 of the Master Agreement but were not included in the original Contract. Such lines, items, or options, once agreed in accordance with the following process, 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 endeavor to respond with ten (10) business days 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;
 - (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 and all other terms in the MOU 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. Notwithstanding the foregoing, if any of the additional lines, items or options require additional or modified terms and conditions to this Contract, the Contractor will notify the State and such items must be added via an amendment and not via this MOU process.

10. Comptroller Audit Requirements

- a. 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.
- b. 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 when using State information systems and all applicable requirements, laws, regulations or policies.
- c. The audit may include interviews with technical and management personnel, physical inspection of controls, and review of paper or electronic documentation.
- d. 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.

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- e. Each party shall bear its own expenses incurred while conducting the information technology controls audit.
- f. The parties shall mutually agree on the terms, nature, scope and timing of any such audit provided for in this Section.
- g. For clarity, items 10(a) through 10(f) in this Section do not apply to the AWS. See Attachment C for how to obtain information about AWS's infrastructure and security controls and its SOC Reports.
- h. The Contractor must ensure that the infrastructure and security controls for any AWS software and services that the State procures as part of this PA were included in the scope of the SOC Reports referenced in Attachment C.

11. INTENTIONALLY OMITTED

- 12. Extraneous Terms and Conditions.** Contractor shall perform all of its obligations under this Contract under the terms of 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 available 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.

The Parties acknowledge and agree that the AWS Public Sector Access Policy (as defined in Attachment C), does not constitute extraneous terms and conditions prohibited by this Section and to the extent not in conflict with State law, applies to AWS Orders (as defined in Attachment C). Contractor remains solely responsible to the State for all services provided under this Contract, whether provided directly by Contractor or by AWS as a vendor of Contractor.

Furthermore, the Parties acknowledge that in connection with any AWS Order, the State will be permitted to procure third party software and related services through AWS. Any such purchases are subject to the specific terms and conditions, including license agreements, associated with such software and related services ("Third Party Terms"), which shall be agreed to directly between the State and the applicable third party. The State's use of such third party software and related services, and the vendor's obligations with respect thereto (e.g. warranty, support, performance/service level commitments), will be governed by the applicable Third Party Terms and the State and the third party vendors (and not Contractor) will be solely responsible for compliance with those terms. Third Party Terms shall not constitute extraneous terms and conditions prohibited by this Section.



13. General Security Requirements.

- a. "Confidential State Data" is defined as data deemed confidential by State or Federal statute or regulation. The following provisions shall only apply if an Order expressly says that they apply to such Order:
 - (1) 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.
 - (2) The Contractor shall either (1) be in accordance with at least one of the following security standards: (i) International Standards Organization ("ISO") 27001; (ii) Federal Risk and Authorization Management Program ("FedRAMP"); or (2) be subject to an annual engagement by a CPA firm in accordance with the standards of the American Institute of Certified Public Accountants ("AICPA") for a System and Organization Controls for service organizations ("SOC") Type II audit. The Contractor shall provide proof of current ISO certification or FedRAMP authorization for the Contractor and Subcontractor(s), or provide the State with the Contractor's and Subcontractor's annual SOC Type II audit report.

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

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

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For clarity, this section does not apply to the AWS Platform (as defined in Attachment C). See Attachment C for instructions on how to obtain a copy of AWS's SOC Reports.

- (3) The Contractor must annually perform Penetration Tests and Vulnerability Assessments against its Processing Environment. "Processing Environment" shall mean the combination of software and hardware infrastructure comprising the AWS Platform 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 but only in prior consultation and coordination with the Contractor, to perform Penetration Tests and Vulnerability Assessments on the Processing Environment. For clarity, the obligations under this paragraph are subject to (and any Penetration Tests and Vulnerability Assessments must be conducted in accordance with) the AWS policy found at <https://aws.amazon.com/security/penetration-testing/>, as it may be amended from time to time and/or made available on any successor or related site designated by AWS .
- (4) Upon State request, the Contractor shall provide a copy of all Confidential State Data it holds. The Contractor shall provide such data on media and in a format determined by the State

Except as provided in the subsequent paragraph, upon termination of this Contract for any reason, Contractor shall, if feasible, return or destroy all Confidential State Data received from the State, or created or received by Contractor on behalf of the State, pursuant to the Contract. This provision shall apply to Confidential State Data that is in the possession of subcontractors or agents of Contractor. Contractor shall retain no copies of the Confidential State Data.

In the event that Contractor determines that returning or destroying the Confidential State Data is not feasible (such as in the event that the retention

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of Confidential State Data is required for archival purposes to evidence the Services or prohibited by law), Contractor shall, upon the State's written request, provide to the State notification of the conditions that make return or destruction unfeasible. If return or destruction of Confidential State Data is unfeasible, Contractor shall extend the confidentiality protections of this Contract to such Confidential State Data and limit further uses and disclosures of such Confidential State Data to those purposes that make the return or destruction unfeasible, for so long as Contractor maintains such Confidential State Data.

With respect to Confidential State Data stored on a AWS Platform, AWS uses the techniques detailed in NIST 800-88 ("Guidelines for Media Sanitization") as part of the storage device decommissioning process.

- (5) The AWS Platform shall be Federal Risk and Authorization Management Program ("FedRAMP") compliant. FedRamp compliance assesses compliance at the individual service level and the AWS services that are FedRAMP compliant can be found on the "AWS Services in Scope by Compliance Program" located at <https://aws.amazon.com/compliance/services-in-scope/>. For more information on AWS FedRAMP compliance please see the AWS FedRAMP FAQs at <https://aws.amazon.com/compliance/fedramp/>.
- (6) Support the State in meeting the requirements of current version of Minimum Acceptable Risk Standards for Exchanges ("MARS-E") controls by:
 - a. Identifying all of the most current MARS-E security controls per CMS
 - b. Assessing the security controls against the solution and processing environment
 - c. Reviewing the security controls with the State to mutually agree to compliance against the controls
 - d. Providing support to The State with CMS review of MARS-E controls
 - e. Annually reviewing of MARS-E controls
- (7) Any requirements regarding Payment Card Industry ("PCI") data and compliance with the PCI DSS ("Data Security Standard"), maintained by the PCI Security Standards Council, will be as set forth in the applicable Order.



- (8) The Contractor, including those of all Subcontractors, must comply with the State's Enterprise Information Security Policies as amended periodically, to the extent applicable to Contractor in its performance of the professional services. 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>.

For clarity, this does not apply to the AWS Platform. See Attachment C for the security standards and controls applicable to the AWS Platform.

- (9) The Contractor agrees to maintain the Application so that it will run on a manufacturer-supported Operating System. Contractor agrees to maintain the Application so that it will run on an Operating System that is not in extended support, unless mutually agreed upon by the Parties. "Operating System" shall mean the software that supports a computer's basic functions, such as scheduling tasks, executing applications, and controlling peripherals.

- (10) 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.

- b. Business Continuity Requirements. To the extent an Order expressly says that this Section is applicable to such Order, 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 are as follows:

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



- i. Recovery Point Objective ("RPO"). The RPO is defined as the maximum targeted period in which data might be lost from an IT service due to a major incident. The applicable RPO will be defined in each Order.
- 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. The applicable RPO will be defined in each Order.:

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

14. 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.

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

16. 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

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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 by Contractor in breach of this Section 16 (“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 providing one year, no cost credit monitoring services for individuals whose PII was affected by the Unauthorized Disclosure. The Contractor shall bear the cost of notification to 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, but are subject to Standard Terms and Conditions, Section 14 Limitation of Contractor's Liability.

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17. Statewide Contract. This Contract establishes a source or sources of supply for all Tennessee State Agencies. "Tennessee State Agency" refers to the various departments, institutions, boards, commissions, and agencies of the executive branch of government of the State of Tennessee with exceptions as addressed in Tenn. Comp. R. & Regs. 0690-03-01-.01. The Contractor shall provide all goods or services and deliverables as required by this Contract to all Tennessee State Agencies. The Contractor shall make this Contract available to the following entities, who are authorized to and who may purchase off of this Statewide Contract ("Authorized Users"):

- a. all Tennessee State governmental entities (this includes the legislative branch; judicial branch; and, commissions and boards of the State outside of the executive branch of government);
- b. Tennessee local governmental agencies;
- c. members of the University of Tennessee or Tennessee Board of Regents systems;
- d. any private nonprofit institution of higher education chartered in Tennessee; and,
- e. any corporation which is exempted from taxation under 26 U.S.C. Section 501(c)(3), as amended, and which contracts with the Department of Mental Health and Substance Abuse to provide services to the public (Tenn. Code Ann. § 33-2-1001).

These Authorized Users may utilize this Contract by purchasing directly from the Contractor according to their own procurement policies and procedures. The State is not responsible or liable for the transactions between the Contractor and Authorized Users

18. 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.

19. 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 within ten (10) days of receipt or such other period agreed to by the Parties in the applicable Order, reasonably describing the Defect, including identification of the applicable Requirement(s) not met, and Contractor shall re-deliver the goods or provide the services at no additional cost to the State. The State shall review of the re-delivered goods or services within five (5) business days of receipt or such other period agreed to by the Parties in writing, and shall (within such period) accept such goods or services if all previously identified Defects have been corrected, or provide written notice that a previously identified Defect has not been corrected. If after a period of ten (10) days or such other period agreed to by the Parties in the applicable Order 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. Any

nonconformance in all material respects of the goods or services to the requirements set forth in the applicable Order or otherwise agreed to in writing by the Parties (the "Requirements") shall constitute a "Defect" and shall be considered "Defective."

- 20. Term of Participating Addendum.** This Contract shall be effective on May 15, 2020 ("Effective Date") and extend for a period of 36 months after the Effective Date ("Term"). The State shall have no obligation for goods or services provided by the Contractor prior to the Effective Date.
- 21. Renewal Options.** This Contract may be renewed upon Satisfactory completion of the Term. The State reserves the right to execute up to two (2) renewal options under the same terms and conditions, at the State's sole option. In no event, however, shall the maximum Term, including all renewals or extensions, exceed a total of sixty (60) months.
- 22. Participating Addendum Term Extension.** The State may extend the Term for an additional period of time, not to exceed one hundred-eighty (180) days beyond the expiration date of this Contract, under the same terms and conditions, at the State's sole option. In no event, however, shall the maximum Term, including all renewals or extensions, exceed a total of sixty (60) months.
- 23. Warranty.** Contractor represents and expressly warrants that, with respect to those services and Deliverables provided under an Order for which the Order specifies that this warranty shall apply, such services and Deliverables shall, during the Warranty Period, function as set forth in the terms of the applicable Order (or as otherwise agreed to in writing by the Parties) at no additional cost to the State. The "Warranty Period" shall be defined in the applicable Order. The Contractor agrees to provide corrections for any Defect(s) reported by the State in writing during the Warranty Period, and to provide such corrections in a reasonable timeframe.

Contractor shall have no obligation under this Section to the extent any Defect with a service or Deliverable is attributable to: (i) the State's misuse or modification of any Deliverable unless such use or modification is caused by Contractor; (ii) the State's failure to use corrections or enhancements made available by Contractor at no additional cost to the State; (iii) the State's use of any Deliverable in combination with any product other than those specified by Contractor; (iv) hardware, systems software, telecommunications equipment or software not a part of a Deliverable, excluding such hardware, systems software, telecommunications equipment or software recommended or endorsed by Contractor, which is inadequate to allow proper operation of the Deliverable or which is not operating in accordance with the manufacturer's

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specifications; or (v) operation or utilization of any Deliverable in a manner not contemplated by this Contract.

If Contractor fails to provide the services or Deliverables as warranted in the first paragraph of this Section, then Contractor will correct the Defects at no additional charge as provided in such paragraph. If Contractor is unable or unwilling to correct the Defects within a reasonable timeframe as required under such paragraph, then the State shall be entitled to recover the fees paid to Contractor for the Defective service(s) or Deliverable(s) in an amount representing the Defective portion of any such service(s) or Deliverable(s). 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.

24. Statewide Contract Reports. All reports shall be submitted electronically in Microsoft Excel format. Reports shall include the ability to sort or summarize data in accordance with the Contract Administrator's specifications. All reports shall be provided at no additional cost to the State.

- a) Quarterly Reports: Contractor(s) will submit quarterly reports to the Contract Administrator no later than ten (10) days after the end of the State's quarter (e.g. a fiscal year quarter 2 report for October - December is due no later than January 10th). At the Contract Administrator's sole discretion, the State may extend the time allowed to complete quarterly reports. Quarterly reports shall provide statistical data on all purchases under this Contract by State Agencies, including State Agencies of the judicial or legislative branch, local governmental entities in the State of Tennessee, including but not limited to educational institutions, local governmental authorities, quasi-governmental bodies ("Other Governmental Bodies"), and certain not-for-profit entities under Tenn. Code Ann. § 33-2-1001. At minimum, the quarterly report's statistical data shall be detailed and broken down by line item to include:
 - 1. Edison contract number
 - 2. Contract line item number
 - 3. Invoice date
 - 4. Invoice number
 - 5. Supplier part number
 - 6. Item or bundle description
 - 7. Quantity purchased
 - 8. Unit of measure
 - 9. Unit of measure description

10. Name of State Agency, Other Governmental Body or not-for-profit entity
 11. Identity of purchaser: State entity or non-State entity
 12. State Agency location
 13. Unit/Contract price per line item
 14. List price as listed in supplier's catalog if catalog item
 15. Subtotals for each category above
 16. Grand totals for each category above
- b) Diversity Business and Subcontractor Usage Reports: The Contractor shall provide, as requested, a quarterly report of performance of this Contract by subcontractors, small business enterprises, and businesses owned by minorities, women, Tennessee service-disabled veterans. Such reports shall be submitted to the State of Tennessee Governor's Office of Diversity Business Enterprise in the TN Diversity Software available online at: <https://tn.diversitysoftware.com/FrontEnd/StartCertification.asp?TN=tn&XID=981>
- c) Custom Reports: As reasonably requested by the State, the Contractor shall submit custom reports to the Contract Administrator within thirty (30) days of the request.

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.

26. 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.

27. SOW Execution and Termination.

- a. SOW Execution. Orders placed under this Contract will be documented in separate Statements of Work, the form of which shall be substantially as set forth in Attachment D hereto, which shall describe the services and deliverables, timeline, charges and pricing methodology, and any assumptions associated with

the work. Once executed by Contractor and the Purchasing Entity, such Statement of Work (the "SOW") shall be binding upon the parties thereto. Each SOW shall specifically reference this Contract. A SOW cannot conflict with or seek to delete the terms and conditions of the Contract. In the event of a conflict, the Contract shall prevail. SOWs shall not contain any other legal terms and conditions. Prior to execution of a SOW, each party shall notify the other if it believes that any provision in the SOW conflicts with the parameters set forth in this Section 27(a). In such event, notwithstanding the foregoing provisions of this Section 27, the parties may elect to proceed with execution of the SOW, subject to the approval of the State's Chief Information Officer or the Deputy Chief Information Officer as required under Section 3 of this Contract. Alternatively, if the State Purchasing Entity prefers, the parties can execute an amendment to this Contract to address any such additional or modified terms and conditions, in which case neither party is obligated to execute the applicable SOW unless and until the parties execute such an amendment (and the last sentence of Special Terms and Conditions, Section 12, shall not apply). Notwithstanding anything to the contrary in this Section 27(a) or in Special Terms and Conditions, Section 12, any and all terms and conditions contained in an executed SOW shall be binding and enforceable.

- b. SOW Change Orders. Either party may request changes to the Services, Deliverables, and/or any other aspect of a SOW through a written change request ("Change Request") that are necessary, within the scope of this Contract, but were not specified in the SOW. Promptly thereafter the parties shall discuss what impact the Change Request will have on the Services and Deliverables and on pricing, timing, and other terms of the applicable SOW. Any changes to a SOW agreed upon by the parties as a result of the foregoing process shall be set forth in a change order signed by the parties ("Change Order"). Once a Change Order is signed it shall amend, and become part of, the applicable SOW. Neither party is obligated to change the Services, Deliverables, or any other aspect of a SOW unless a Change Order for such change has been signed by the parties. Subsequent to the execution of a Change Order, the Contractor shall complete the required services. Unless otherwise provided in the Change Order, Work performed under a Change Order shall be subject to acceptance in accordance with Special Terms and Conditions, Section 19, above. The State will remunerate the Contractor only for acceptable work (i.e., work performed in accordance with the requirements of the applicable Change Order). All acceptable work performed pursuant to an approved Change Order, without a formal amendment of this Contract, shall be remunerated in accordance with and further limited by this Contract, PROVIDED THAT, the State shall be liable to the Contractor only for the cost of the actual goods or services provided to complete the necessary work, not to exceed the maximum cost for the change detailed in the Change Order. In no instance shall the State be liable to the Contractor for

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any amount exceeding the maximum cost specified by the Change Order authorizing the goods or services. Upon State approval of the work, the Contractor shall invoice the State in accordance with the relevant provisions of this Contract. Contractor shall be entitled to a Change Order to address any resulting adverse impacts to schedule, price or other aspects of the applicable SOW if delays are encountered that are beyond the reasonable control of Contractor, including delays caused by other service providers or third party software and hardware vendors or their related products and/or services.

c. SOW Termination.

- i. The applicable Purchasing Entity may terminate a SOW for convenience without cause and for any reason. The Purchasing Entity shall give the Contractor at least thirty (30) days written notice before the termination date. The Contractor shall be entitled to compensation for all conforming goods delivered and accepted by the Purchasing Entity and for services completed in accordance with the terms of the SOW as of the termination date. In no event shall the Purchasing Entity be liable to the Contractor for compensation for any goods neither requested nor accepted by the Purchasing Entity or for any services neither requested by the State nor performed by the Contractor in accordance with the terms of the applicable Order. In no event shall the Purchasing Entity's exercise of its right to terminate the applicable SOW for convenience relieve the Contractor of any liability to the Purchasing Entity for any damages or claims arising under the SOW.
- ii. If a party to a SOW ("SOW Breaching Party") fails to properly perform its obligations under the SOW, or if a party to a SOW materially violates any terms of the applicable SOW ("SOW Breach Condition"), the other party to the SOW ("SOW Non-breaching Party") may provide written notice to the SOW Breaching Party specifying the SOW Breach Condition. If within thirty (30) days of notice, the SOW Breaching Party has not cured the SOW Breach Condition, the SOW Non-breaching Party may terminate the applicable SOW. In the event the SOW Non-breaching Party is the Purchasing Entity, the Purchasing Entity may withhold payments under the applicable SOW in excess of compensation for completed services or provided goods. The SOW Breaching Party shall not be relieved of liability to the SOW Non-breaching Party for damages sustained by virtue of any breach of the applicable SOW, and the SOW Non-breaching Party may seek other remedies allowed at law or in equity for breach of the applicable SOW.
- iii. If any SOW is terminated pursuant to this Section, this Contract shall continue to apply to all SOWs that have not been terminated.



- iv. This section shall not limit the State's right to terminate the Contract for convenience or cause in accordance with Sections 4 and 5 of the Standard Terms and Conditions, above.

Attachment B

**ATTESTATION RE PERSONNEL USED IN PARTICIPATING
ADDENDUM PERFORMANCE**

SUBJECT CONTRACT NUMBER:	Statewide Contract 3020
CONTRACTOR LEGAL ENTITY NAME:	Deloitte Consulting LLP
EDISON VENDOR IDENTIFICATION NUMBER:	0000135163

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 Participating Addendum and shall not knowingly utilize the services of any subcontractor who will utilize the services of an illegal immigrant in the performance of this Participating Addendum.

A handwritten signature in black ink, appearing to read "Michael Connors".

CONTRACTOR SIGNATURE

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

Michael Connors, Principal

PRINTED NAME AND TITLE OF SIGNATORY

05/08/2020

DATE OF ATTESTATION

Attachment C

AWS Hosting

In addition to the terms and conditions in the Participating Addendum, the terms and conditions set forth in this Attachment will apply to any Order where AWS hosting is included as part of the Services thereunder.

(a) State Participating Entity or Purchasing Entity acknowledges and agrees that Contractor will be contracting with Amazon Web Services, Inc. ("AWS"), an independent commercial public cloud infrastructure provider, as a vendor to provide the AWS cloud-computing platform, services and tools ("AWS Platform") as part of the Services in the applicable Order. State Participating Entity or Purchasing Entity agrees that AWS shall not be deemed a subcontractor under the terms of the Agreement.

(b) By entering into a new Order for an AWS Platform (an "AWS Order") or any renewal of an existing AWS Order or this Contract, State Participating Entity or Purchasing Entity acknowledges that its use of the AWS Platform is subject to the then-current version (as of the date of such new AWS Order or renewal) of AWS's public sector access policy, which policy is currently located at <https://s3-us-west-2.amazonaws.com/solution-provider-program-legal-documents/AWS+Public+Sector+Access+Policy.pdf>, and as it may be made available on any successor or related site designated by AWS ("AWS Public Sector Access Policy").

Prior to the execution of a new AWS Order or the renewal of an existing AWS Order or this Contract, the State shall have the right to review the then-current AWS Public Sector Access Policy. If the State has concerns with the then-current version of the AWS Public Sector Access Policy, and there are no mutually agreed mitigations to address the State's concerns, the State may decide, in its direction, not to execute such AWS Order or renewal. For clarity, unless otherwise expressly agreed in writing by the parties, by entering into a new AWS Order or any renewal of an existing AWS Order or this Contract, State Participating Entity or Purchasing Entity hereby accepts the terms of the then-current AWS Public Sector Access Policy. This Section shall apply notwithstanding anything to the contrary elsewhere in the Contract, including in Section 12 (Extraneous Terms and Conditions) of the Special Terms and Conditions.

(c) "State Items" shall mean any State-provisioned application or other software installed or uploaded onto the AWS Platform by or on behalf of State Participating Entity or Purchasing Entity, or by Contractor as part of the Services ("State Software") and any State-provisioned machine images, data, text, audio, video, images or other content that is installed or uploaded onto the AWS Platform by Contractor as part of the Services, or that State Participating Entity or Purchasing Entity or any of its end users (a) runs on any State Software hosted on the AWS Platform, (b) uploads to any State Software hosted on the AWS Platform, or (c) causes to interface with the AWS Platform. Any State Items that Contractor maintains in its possession or accesses in connection with the Services shall be treated by Contractor as Confidential Information under the terms of the Agreement. Contractor and its providers will only access



State Items on the AWS Platform, or transfer State Items on the AWS Platform, in performance of its obligations under the Agreement or to comply with legal obligations. Contractor shall promptly notify State Participating Entity or Purchasing Entity of any unauthorized third-party access to any State Items.

(d) State Participating Entity or Purchasing Entity agrees and acknowledges that the Services will utilize AWS infrastructure and notwithstanding anything to the contrary in the Contract, any security or infrastructure security requirements specified in the Contract shall apply only with respect to Contractor systems and infrastructure used to provide the Services, excluding the AWS infrastructure. The security standards and controls applicable to the AWS infrastructure may be found at <https://aws.amazon.com/whitepapers/#security>. Additionally, information regarding the AWS infrastructure and security controls, including applicable SOC Reports, may be accessed here: <https://aws.amazon.com/compliance/soc-faqs>.

(e) State Participating Entity or Purchasing Entity agrees and acknowledges that it will not be given root account access to any AWS Platform procured under the Contract.

Attachment D

Statement of Work Template

SWC #3020 NASPO Services
[Insert Requesting State Agency name]
Statement of Work



For

[Insert Project Title]

[Insert Planview Work ID - Sequential #]

[Date]

1.0 Statement of Work

1.1 *Project Title*

This Statement of Work (SOW) is being executed between Deloitte Consulting LLP (“Contractor”) and *[Insert Agency]* (“Agency” or “Purchasing Entity”) for *[insert a brief description of the project]*, effective as of *[Insert Effective Date]* (the “SOW Effective Date”).

This Statement of Work (SOW) constitutes an Order under that certain Participating Addendum between Deloitte Consulting LLP and the State of Tennessee, NASPO Cloud Managed Services Statewide Contract Number **3020, (the “Contract”)** and incorporates by reference the terms and conditions, specifications, and other incorporated contract documents of the Contract. In case of any conflict between this SOW and the Contract, the Contract shall prevail.

1.2 Background

- *Describe the history of your project and the prior events that brought you to this SOW*

1.3 Reference to other applicable documents

The following documents are hereby incorporated by reference into this SOW:

- *List any pertinent documents or supporting materials pertaining to the SOW, if any, otherwise write “None”.*

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2.0 AGENCY STAFFING AND ROLES

2.1 Staffing

Project Manager – Agency

The Agency's Project Manager is:

Name:

Address:

City:

State & Zip

Phone:

Cell:

Fax:

Email:

Insert contact information for any additional relevant staff.

2.2 Agency Staff and Roles

- *Who within the agency will have decision-making authority, including approval of changes, report, documentation and deliverables?*
- *State agency staff (if any) to assist with the project effort*
- *Individuals key to the project and detail their roles and responsibilities*

3.0 PROJECT REQUIREMENTS AND DELIVERABLES

3.1 Requirements

Describe:

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- *Tasks to be performed and any additional Contractor qualifications for specialized projects*
- *Any known non-standard work schedule tasks*
- *Location(s) where project work is required to be performed or may be performed, including the use of onsite, offsite, and offshore resources at the procuring State agency's discretion*
- *Include tasks that do not result in specific deliverables (i.e. project management)*
- *Include any security requirements from Special Terms and Conditions, Section 13 of the Contract that are applicable to this SOW.*

3.2 Agency Tasks and Responsibilities

- *Include tasks to be performed by the agency*
- *Precise definition of all hardware, software, data services, and facilities the agency will provide*

3.3 Deliverables

Describe the Deliverables to be provided under this SOW, including the estimated delivery dates. If no Deliverables, state "none."

3.4 Exclusions

Describe:

- *Tasks which are not part of the scope of this project*

4.0 COST CRITERIA

4.1 Payment Methodology

Describe the payment methodology and the associated charges applicable to this SOW.

4.2 SOW Monetary Cap

Check one of the following to apply to this SOW:

- ☐ This SOW is a fixed fee SOW. The total charges under this SOW is [] dollars (\$)
[specify SOW monetary cap] for the performance of the work as set forth in this SOW.

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- ☐ This SOW is a time and materials SOW. The total charges under this SOW is [] dollars (\$) [specify SOW monetary cap] for the performance of the work as set forth in this SOW (the "SOW NTE Amount"). The Agency shall compensate the Contractor for actual work performed, in an amount not to exceed the SOW NTE Amount. The Agency shall not be obligated to pay for, and the Contractor shall not be obligated to perform, work under this SOW in excess of the SOW NTE Amount unless and until the parties execute a written amendment to this SOW to increase such SOW NTE Amount.

- ☐ This SOW is a consumption-based SOW. The estimated charges under this SOW is [] dollars (\$) [specify SOW estimated budget]. The Agency is fully responsible for its use of the AWS Account(s) and for managing its Cloud Services consumption and license(s) usage and AWS Marketplace purchases under the AWS Account(s) to remain within such budget. This includes any and all charges resulting from Cloud Services consumption and license(s) usage and AWS Marketplace purchases under the AWS Account(s), regardless of whether such charges exceed such budget, or any not-to-exceed amount or other similar cap on spend set forth in this SOW. For clarity, the terms of this SOW and the Contract will continue to apply to any Cloud Services provided in excess of the specified estimated charges.

4.3 State Agency Billing Address

Insert the applicable State Agency billing address.

5.0 DELIVERABLE ACCEPTANCE

Define the process for submitting, approving and rejecting deliverables (including testing dates and scenarios)

6.0 ESTIMATED TIMELINE AND PERIOD OF PERFORMANCE

Project must begin no later than [Month, Year] and be completed by [Month, Year].

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7.0 PROJECT MANAGEMENT (IF APPLICABLE)

Describe what will be required as far as project management, which reports will be required, how often these reports will be required, and what must be submitted to the State procuring agency.

8.0 ADDITIONAL STATE POLICIES AND STANDARDS

Specifically reference any additional state policies and standards that would apply, to the extent applicable to Contractor in its performance of the work under the Order. If none, write "none".

- Insert any other relevant links to the latest versions of the policies, standards and environment*

9.0 KEY ASSUMPTIONS

Identify any additional agency or contractor assumptions

If additional sections are required for your specific project, please leave the above section numbering as it is and add your new sections here as 10.0, 11.0 etc.

This SOW will not be effective, and Contractor shall not commence services hereunder, until it is approved and signed by Contractor, the Participating Entity and either the State's Chief Information Officer or the Deputy Chief Information Officer.

In witness whereof, the parties have executed this SOW as of the last date of execution of the signatories below.

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<i>[Insert State Purchasing Agency]</i>	Deloitte Consulting LLP
Signature:	Signature:
Name:	Name:
Title:	Title:
Date:	Date:
C I O or Deputy CIO for the State of Tennessee, Strategic Technology Solutions	
Signature:	
Name:	
Date:	

Attachment E

SAFEGUARDING IRS DATA

I. PERFORMANCE

In performance of this contract, the contractor agrees to comply with and assume responsibility for compliance by his or her employees with the following requirements:

- (1) All work will be done under the supervision of the contractor or the contractor's employees.
- (2) The contractor and the contractor's employees with access to or who use FTI must meet the background check requirements defined in IRS Publication 1075.
- (3) Any return or return information made available in any format shall be used only for the purpose of carrying out the provisions of this contract. Information contained in such material will be treated as confidential and will not be divulged or made known in any manner to any person except as may be necessary in the performance of this contract. Disclosure to anyone other than an officer or employee of the contractor will be prohibited.
- (4) All returns and return information will be accounted for upon receipt and properly stored before, during, and after processing. In addition, all related output will be given the same level of protection as required for the source material.
- (5) The contractor certifies that the data processed during the performance of this contract will be completely purged from all data storage components of his or her computer facility, and no output will be retained by the contractor at the time the work is completed. If immediate purging of all data storage components is not possible, the contractor certifies that any IRS data remaining in any storage component will be safeguarded to prevent unauthorized disclosures.
- (6) Any spoilage or any intermediate hard copy printout that may result during the processing of IRS data will be given to the agency or his or her designee. When this is not possible, the contractor will be responsible for the destruction of the spoilage or any intermediate hard copy printouts, and will provide the agency or his or her designee with

a statement containing the date of destruction, description of material destroyed, and the method used.

- (7) All computer systems receiving, processing, storing or transmitting FTI must meet the requirements defined in IRS Publication 1075. To meet functional and assurance requirements, the security features of the environment must provide for the managerial, operational, and technical controls. All security features must be available and activated to protect against unauthorized use of and access to Federal Tax Information.
- (8) No work involving Federal Tax Information furnished under this contract will be subcontracted without prior written approval of the IRS.
- (9) The contractor will maintain a list of employees authorized access. Such list will be provided to the agency and, upon request, to the IRS reviewing office.
- (10) The agency will have the right to terminate the contract if the contractor fails to provide the safeguards described above.

II. CRIMINAL/CIVIL SANCTIONS

- (1) Each officer or employee of any person to whom returns or return information is or may be disclosed will be notified in writing by such person that returns or return information disclosed to such officer or employee can be used only for a purpose and to the extent authorized herein, and that further disclosure of any such returns or return information for a purpose or to an extent unauthorized herein constitutes a felony punishable upon conviction by a fine of as much as \$5,000 or imprisonment for as long as 5 years, or both, together with the costs of prosecution. Such person shall also notify each such officer and employee that any such unauthorized further disclosure of returns or return information may also result in an award of civil damages against the officer or employee in an amount not less than \$1,000 with respect to each instance of unauthorized disclosure. These penalties are prescribed by IRCs 7213 and 7431 and set forth at 26 CFR 301.6103(n)-1.
- (2) Each officer or employee of any person to whom returns or return information is or may be disclosed shall be notified in writing by such person that any return or return information made available in any format shall be used only for the purpose of carrying out the provisions of this contract. Information contained in such material shall be treated

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as confidential and shall not be divulged or made known in any manner to any person except as may be necessary in the performance of the contract. Inspection by or disclosure to anyone without an official need-to-know constitutes a criminal misdemeanor punishable upon conviction by a fine of as much as \$1,000 or imprisonment for as long as 1 year, or both, together with the costs of prosecution. Such person shall also notify each such officer and employee that any such unauthorized inspection or disclosure of returns or return information may also result in an award of civil damages against the officer or employee [United States for Federal employees] in an amount equal to the sum of the greater of \$1,000 for each act of unauthorized inspection or disclosure with respect to which such defendant is found liable or the sum of the actual damages sustained by the plaintiff as a result of such unauthorized inspection or disclosure plus in the case of a willful inspection or disclosure which is the result of gross negligence, punitive damages, plus the costs of the action. These penalties are prescribed by IRC 7213A and 7431 and set forth at 26 CFR 301.6103(n)-1.

- (3) Additionally, it is incumbent upon the contractor to inform its officers and employees of the penalties for improper disclosure imposed by the Privacy Act of 1974, 5 U.S.C. 552a. Specifically, 5 U.S.C. 552a(i)(1), which is made applicable to contractors by 5 U.S.C. 552a(m)(1), provides that any officer or employee of a contractor, who by virtue of his/her employment or official position, has possession of or access to agency records which contain individually identifiable information, the disclosure of which is prohibited by the Privacy Act or regulations established thereunder, and who knowing that disclosure of the specific material is prohibited, willfully discloses the material in any manner to any person or agency not entitled to receive it, shall be guilty of a misdemeanor and fined not more than \$5,000.
- (4) Granting a contractor access to FTI must be preceded by certifying that each individual understands the agency's security policy and procedures for safeguarding IRS information. Contractors must maintain their authorization to access FTI through annual recertification. The initial certification and recertification must be documented and placed in the agency's files for review. As part of the certification and at least annually afterwards, contractors must be advised of the provisions of IRCs 7431, 7213, and 7213A (see [Exhibit 4, Sanctions for Unauthorized Disclosure](#), and [Exhibit 5, Civil Damages for Unauthorized Disclosure](#)). The training provided before the initial certification and annually thereafter must also cover the incident response policy and procedure for reporting unauthorized disclosures and data breaches. (See [Section 10](#)) For both the initial certification and the annual certification, the contractor must sign, either with ink or electronic signature, a confidentiality statement certifying their understanding of the security requirements.



III. INSPECTION

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

Attachment F

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

THIS BUSINESS ASSOCIATE AGREEMENT (hereinafter "Agreement") is between **The State of Tennessee** (hereinafter "Covered Entity") and **DELOITTE CONSULTING LLP** (hereinafter "Business Associate"). Covered Entity and Business Associate may be referred to herein individually as "Party" or collectively as "Parties."

BACKGROUND

Parties acknowledges 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 Orders entered into under the Participating Addendum executed by the Parties under the NASPO ValuePoint Master Agreement for Cloud Solutions, effective 9/9/2016 (such Orders, hereinafter referred to as "Service Contracts").

In the course of providing services under Service Contracts, Business Associate may come into contact with, use, or disclose Protected Health Information ("PHI"). This Agreement is hereby incorporated by reference into each Service Contract in which the Parties have expressly agreed that Business Associate will store, process or transmit PHI and shall be taken and considered as a part of such Service Contract the same as if fully set out therein.

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, 164.501 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.

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- 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 pursuant to Business Associate's performance of services under the applicable Service Contract ("Services").
- 1.15 "Required by Law" shall have the meaning set forth in 45 CFR § 164.103.
- 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 applicable Order and Service Contract. In the course of carrying out these duties, including but not limited to carrying out the Covered Entity's duties under HIPAA, if applicable, 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 the applicable 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

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Agreement and the applicable Service Contract with respect to treatment of PHI, 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 the applicable requirements of 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 such 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 of such requirement, 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, Service Contract, 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 a 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, to agree, by written contract with Business Associate, to the same restrictions and conditions that apply through this Agreement to Business Associate with respect to such information.
- 2.5 Business Associate shall mitigate, to the extent practicable, any harmful effect that is known to Business Associate of a use or disclosure of PHI by Business Associate in violation of the requirements of this Agreement.
- 2.6 Business Associate shall require its employees, agents, and subcontractors to promptly report, to Business Associate, promptly after 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 (to the extent known and subsequently as such information becomes available) 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 procedures to monitor and detect a Breach of Unsecured PHI, whether in paper or electronic form.

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- 2.7.1 Business Associate shall provide to Covered Entity notice of an actual Breach of Unsecured PHI or a Breach which Business Associate reasonably believes has occurred within promptly upon becoming aware of the Breach.
- 2.7.2 Business Associate shall cooperate with Covered Entity in timely providing the appropriate and necessary information required to be included in any Breach notification to Covered Entity.
- 2.7.3 Covered Entity shall make the final determination whether a Breach of Unsecured PHI that is caused by Business Associate or its subcontractors requires notification and whether Covered Entity or Business Associate will draft the content of and deliver such notification to affected members; provided that such notifications will follow Covered Entity's breach notification templates. The Parties shall work together in good faith regarding the content and method of the notification.
- 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 maintained by Business Associate 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 such information.
- 2.9 If Business Associate receives PHI from Covered Entity in a Designated Record Set, then Business Associate shall make any amendments or permit Covered Entity to make any amendments to PHI maintained by Business Associate 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 reasonably designated by Covered Entity, provided that Business Associate shall have at least 30 business days from Covered Entity notice to make an amendment or provide access to PHI to allow Covered Entity to make an amendment.
- 2.10 Business Associate shall make its internal practices, books, and records including policies and procedures and PHI (to the extent permitted by law and required by the Secretary), 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 reasonably 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, in time and manner reasonably designated by Covered Entity, information collected in accordance with this Agreement, to permit Covered Entity to respond to a request by an Individual for and accounting of disclosures of PHI in accordance with 45 CFR § 164.528, provided that Business Associate shall have at least 30 business days from Covered Entity notice to provide access to, or deliver such information which shall include, at minimum, (a) date of the disclosure; (b) name of the third party to whom the PHI was disclosed

and, if known, the address of the third party; (c) brief description of the disclosed information; and (d) brief explanation of the purpose and basis for such disclosure. Business Associate shall provide an accounting of disclosures directly to an individual when required by section 13405(c) of Public Law 111-5 [designated as 42 U.S.C. 17935(c)].

- 2.13 Business Associate agrees it must limit any use, disclosure, or request for use or disclosure of PHI to the minimum amount necessary to accomplish the intended purpose of the use, disclosure, or request in accordance with the requirements of the Privacy Rule.
- 2.13.1 Business Associate represents to Covered Entity that all its uses and disclosures of, or requests for, PHI shall be the minimum necessary in accordance with the Privacy Rule requirements.
- 2.13.2 Covered Entity may, pursuant to the Privacy Rule, reasonably rely on any requested disclosure as the minimum necessary for the stated purpose when the information is requested by Business Associate.
- 2.13.3 Business Associate acknowledges that if Business Associate is also a covered entity, as defined by the Privacy Rule, Business Associate is required, independent of Business Associate's obligations under this Memorandum, to comply with the Privacy Rule's minimum necessary requirements when making any request for PHI from Covered Entity.
- 2.14 Business Associate shall maintain all PHI received from, or created or received on behalf of, Covered Entity in accordance with the requirements in this Agreement.
- 2.15 If Business Associate receives a written request from an Individual for a copy of the individual's PHI that is maintained in a Designated Record Set in the sole possession and control of the Business Associate, Business Associate will provide the requested copies to the individual and notify the Covered Entity of such request. If Business Associate receives a written request for PHI in the possession of the Covered Entity, or receives a written 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.

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, with respect to electronic PHI. In case of any conflict between this Agreement and the applicable Service Contract with respect to treatment of PHI, this Agreement shall govern.
- 3.2 Business Associate shall implement appropriate administrative, physical, and technical safeguards to 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 a technology commercially available at the time to the Business Associate to protect the Covered

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Entity's PHI against any reasonably anticipated threats or hazards. The Business Associate understands that, with respect to its own systems, 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 in compliance with 45 C.F.R. § 164.316 of 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, to substantially similar, but not less stringent restrictions and conditions that apply through this Agreement to Business Associate with respect to such information.
- 3.4 Business Associate shall require its employees, agents, and subcontractors performing Services to report to Business Associate within forty-eight hours, any Security Incident affecting electronic PHI (as that term is defined in 45 CFR § 164.304) of which it becomes aware. Business Associate shall promptly report any Security Incident affecting electronic PHI of which it becomes aware to Covered Entity.
- 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 reasonable 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 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 promptly after becoming aware of the event, with supplemental notification by facsimile and/or telephone as soon as practicable, to:

SWC 3020 Contract Administrator
State of Tennessee
Central Procurement Office
WRS Tennessee Tower, 3rd Floor
312 Rosa L. Parks Ave, Nashville, TN 37243
Telephone: **615 741-1035**
Fax: **615 741-0684**

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

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Michael Connors _____
1033 Demonbreun St Suite 400, Nashville, TN 37203 _____
773-818-3486 _____
mconnors@deloitte.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 of any such change.

4. PERMITTED USES AND DISCLOSURES BY BUSINESS ASSOCIATE

- 4.1 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 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 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 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 obtain reasonable assurances from such third party that such third party will: (a) maintain the confidentiality 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 of the PHI is breached promptly 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 42 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.

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- 4.7 Business Associate shall enter into written agreements that are substantially similar to this 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.
- 5.4 Covered Entity shall not make any disclosure of PHI to Business Associate if such disclosure would violate HIPAA, HITECH or any applicable federal or state law or regulation.

6. PERMISSIBLE REQUESTS BY COVERED ENTITY

Covered Entity shall not request Business Associate to use or disclose PHI in any manner that would not be permissible under HIPAA, the Privacy or Security Rule, HITECH or any applicable federal or state law or regulation , if such use or disclosure were 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, in accordance with this Section 7.2, have the right to terminate this Agreement and the applicable Service Contract in the event Business Associate violates a material provision of this Agreement.

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

- 7.2.2.1 Provide written notice and a reasonable opportunity for Business Associate to cure the breach or end the violation (in no event less than 20 days; however, Business Associate shall endeavor to cure the breach as soon as possible), 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 Covered Entity (in no event less than 20 days; however, Business Associate shall endeavor to cure the breach as soon as possible), and at the sole discretion of, Covered Entity, Covered Entity may, upon written notice to Business Associate, immediately terminate this Agreement and the applicable Service Contract.
- 7.2.2.3 If neither cure nor termination is feasible, Covered Entity may 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 with respect to a Service Contract, for any reason, Business Associate shall, if feasible, return or destroy all PHI received from Covered Entity, or created or received by Business Associate on behalf of, Covered Entity pursuant to such Service Contract. 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 (such as in the event that the retention of PHI is required for archival purposes to evidence the Services or prohibited by law), Business Associate shall, upon Covered Entity's written request, provide to Covered Entity notification of the conditions that make return or destruction unfeasible. If return or destruction of PHI is unfeasible; Business Associate shall extend the protections of this Agreement to such PHI and limit further uses and disclosures of such PHI to those purposes that make the return or destruction unfeasible, for so long as Business Associate maintains such PHI.

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 Reimbursement. To the extent that any Breach of Unsecured PHI is caused by Business Associate's breach of the terms of this Agreement, Business Associate shall reimburse Covered Entity for its reasonable and direct out-of-pocket expenses incurred for the following: (a) its

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notification of affected individuals who are required by law to receive such notification; and (b) credit monitoring for no more than twenty-four (24) months, but only if credit monitoring is an appropriate remedy given the circumstances of the Breach of Unsecured PHI and the nature of the PHI compromised. Business Associate's reimbursement obligations in this Section 8.2 shall be subject to the limitation of liability that applies to the Service Contracts.

- 8.3 Amendment. The Parties agree to reasonably cooperate as is necessary to amend this Agreement from time to time as is necessary for Covered Entity and Business Associate to comply with the requirements of the Privacy and Security Rules and the Health Insurance Portability and Accountability Act, Public Law 104-191, 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 before or upon the effective date of such amendment and changes required by the American Recovery and Reinvestment Act of 2009, Public Law 111-5.
- 8.4 Survival. The respective rights and obligations of Business Associate under Section 7.3. of this Agreement shall survive the termination of this Agreement.
- 8.5 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.
- 8.6 Notices and Communications. All instructions, notices, consents, demands, or other communications required or contemplated by this Agreement (other than in Section 3.7 above) shall be in writing and shall be delivered by hand or by recognized overnight courier service, or by first class certified mail (return receipt requested), postage prepaid, addressed to the respective party as set forth below, or to such other party, or address as may be hereafter specified by written notice.

COVERED ENTITY:

SWC 3020 Contract Administrator
State of Tennessee
Central Procurement Office
WRS Tennessee Tower, 3rd Floor
312 Rosa L. Parks Ave, Nashville, TN 37243
Telephone: **615 741-1035**
Fax: **615 741-0684**

BUSINESS ASSOCIATE:

Deloitte Consulting LLP
Michael Connors, Principal
1033 Demonbreun St Suite 400,
Nashville, TN 37203
Telephone: 773-818-3486
Fax: 512-480-1677

All instructions, notices, consents, demands, or other communications shall be considered effectively given as of the date of hand delivery; as of the date received when sent via overnight courier service or certified mail.

- 8.7 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

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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

- 8.8 Severability. With respect to any provision of this Agreement finally determined by a court of competent jurisdiction to be unenforceable, such court shall have jurisdiction to reform such provision so that it is enforceable to the maximum extent permitted by applicable law, and the Parties shall abide by such court's determination. 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.
- 8.9 Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Tennessee except to the extent that Tennessee law has been pre-empted by HIPAA.
- 8.10 Compensation. There shall be **no** remuneration for performance under this Agreement except as specifically provided by, in, and through, existing administrative requirements of Tennessee State government and Services Contract referenced herein.
- 8.11 Security Breach. A violation of the requirements of HIPAA or the Privacy or Security Rules applicable to Business Associate in its performance of Services constitutes a breach of this Agreement and a breach of the Service Contract listed on page one of this Agreement, and may be subject to all remedies available to Covered Entity hereunder for such breach.
- 8.12 No Third-Party Beneficiaries. Nothing contained in this Agreement is intended to confer upon any person (other than the parties hereto) any rights, benefits, or remedies of any kind or character whatsoever, whether in contract, statute, tort (such as negligence), or otherwise, and no person shall be deemed a third-party beneficiary under or by reason of this Agreement.

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IN WITNESS WHEREOF,

COVERED ENTITY LEGAL ENTITY NAME:

	Michael F. Perry	05/11/2020
NAME AND TITLE		Date:

BUSINESS ASSOCIATE LEGAL ENTITY NAME: DELOITTE CONSULTING LLP

	Michael, Connors, Principal	05/08/2020
NAME AND TITLE		Date: