

Supplemental Documentation Required for  
Fiscal Review Committee

*Contact Name:	Stroud Vaughn	*Contact Phone:	(615) 313-4905
*Presenter's name(s):	Whitney Page		
Edison Contract Number: <i>(if applicable)</i>	61811	RFS Number: <i>(if applicable)</i>	34501-13619
*Original or Proposed Contract Begin Date:	June 1, 2019	*Current or Proposed End Date:	May 31, 2022
Current Request Amendment Number: <i>(if applicable)</i>	N/A		
Proposed Amendment Effective Date: <i>(if applicable)</i>	N/A		
*Department Submitting:	Department of Human Services		
*Division:	Vocational Rehabilitation		
*Date Submitted:	March 13, 2019		
*Submitted Within Sixty (60) days:	Yes		
<i>If not, explain:</i>			
*Contract Vendor Name:	Alliance Enterprises, Inc.		
*Current or Proposed Maximum Liability:	\$7,852,104.00		
*Estimated Total Spend for Commodities:	Not Applicable		
<b>*Current or Proposed Contract Allocation by Fiscal Year: (as Shown on Most Current Fully Executed Contract Summary Sheet)</b>			
FY: 2019	FY: 2020	FY: 2021	FY: 2022
\$150,628.82	\$1,656,917.06	\$1,292,618.38	\$4,751,939.74
<b>*Current Total Expenditures by Fiscal Year of Contract: (attach backup documentation from Edison)</b>			
FY:	FY:	FY:	FY:
\$N/A	\$N/A	\$N/A	\$N/A
<b>IF</b> Contract Allocation has been greater than Contract Expenditures, please give the reasons and explain where surplus funds were spent:	Not Applicable		
<b>IF</b> surplus funds have been carried forward, please give the reasons and provide the authority for the carry forward provision:	Not Applicable		
<b>IF</b> Contract Expenditures exceeded Contract Allocation, please give the reasons and explain how funding was acquired to pay the overage:	Not Applicable		

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<b>*Contract Funding Source/Amount:</b>			
State:	\$1,672,498.14	Federal:	\$6,179,605.86
<i>Interdepartmental:</i>		<i>Other:</i>	
If “ <i>other</i> ” please define:			
If “ <i>interdepartmental</i> ” please define:			
Dates of All Previous Amendments or Revisions: <i>(if applicable)</i>		Brief Description of Actions in Previous Amendments or Revisions: <i>(if applicable)</i>	
Not Applicable		Not Applicable	
Method of Original Award: <i>(if applicable)</i>			
*What were the projected costs of the service for the entire term of the contract prior to contract award? How was this cost determined?		Projected Cost: \$7,852,104.00 The proposed cost was provided by the contractor, Alliance Enterprises, Inc.	
*List number of other potential vendors who could provide this good or service; efforts to identify other competitive procurement alternatives; and the reason(s) a sole-source contract is in the best interest of the State.		A Request for Information (RFI #34570-90818) was issued by the Department in September 2017. Responses were received from five entities, however, only Alliance Enterprises, Inc. exhibited the necessary vocational rehabilitation experience and capacity to implement and support a large scale system required by the Department.	



# CONTRACT

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

<b>Begin Date</b> June 1, 2019	<b>End Date</b> May 31, 2022	<b>Agency Tracking #</b> 34501-13619	<b>Edison Record ID</b> 61811
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<b>Contractor Legal Entity Name</b> Alliance Enterprises, Inc.	<b>Edison Vendor ID</b> 213364
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**Goods or Services Caption** (one line only)  
Software and Support Services for Web-Based Rehabilitation Services System

<b>Contractor</b> <input checked="" type="checkbox"/> Contractor	<b>CFDA #</b>
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**Funding ---**

FY	State	Federal	Interdepartmental	Other	TOTAL Contract Amount
2019	\$32,083.94	\$118,544.88	\$0.00	\$0.00	\$150,628.82
2020	\$352,923.33	\$1,303,993.73	\$0.00	\$0.00	\$1,656,917.06
2021	\$275,327.71	\$1,017,290.67	\$0.00	\$0.00	\$1,292,618.38
2022	\$1,012,163.16	\$3,739,776.58	\$0.00	\$0.00	\$4,751,939.74
					\$0.00
					\$0.00
<b>TOTAL:</b>	<b>\$1,672,498.14</b>	<b>\$6,179,605.86</b>	<b>\$0.00</b>	<b>\$0.00</b>	<b>\$7,852,104.00</b>

**Contractor Ownership Characteristics:**

- Minority Business Enterprise (MBE):
    - African American
    - Asian American
    - Hispanic American
    - Native American
  - Woman Business Enterprise (WBE)
  - Tennessee Service Disabled Veteran Enterprise (SDVBE)
  - Disabled Owned Business (DSBE)
  - Tennessee Small Business Enterprise (SBE): \$10,000,000.00 averaged over a three (3) year period or employs no more than ninety-nine (99) employees.
  - Government
  - Non-Minority/Disadvantaged
  - Other
- Corporate For-Profit Entity**

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

<input type="checkbox"/> Competitive Selection	
<input checked="" type="checkbox"/> Other	Sole Source as the contractor is in the best position to ensure compliance and continued WIOA compliance in response to emerging law and rules.

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

*Winfield Shiers*

CPO Use - FA

<b>Speed Code</b> (optional) HS00001699	<b>Account Code</b> (optional) 72203000
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**CONTRACT  
BETWEEN THE STATE OF TENNESSEE,  
DEPARTMENT OF HUMAN SERVICES  
AND  
ALLIANCE ENTERPRISES, INC.**

This Contract, by and between the State of Tennessee, Department of Human Services (the "State" or "TDHS") and Alliance Enterprises, Inc. ("Contractor"), is for the provision of a vocational rehabilitation case management system, maintenance and support services, as further defined in the "SCOPE." State and Contractor may be referred to individually as a "Party" or collectively as the "Parties" to this Contract.

The Contractor is a For-Profit Corporation.

Contractor Place of Incorporation or Organization: Washington

Contractor Edison Registration ID # 213364

**A. SCOPE:**

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

A.2. Legacy System Replacement. The Contractor shall provide all licenses and services required to deliver, install, configure and modify the Contractor's vocational rehabilitation case management software (referred to herein as "Aware Software" or the "System") to replace the State's existing Tennessee Rehabilitation Information Management System ("TRIMS" or "Legacy System").

The Aware Software shall reside in a secure, certified data center mutually agreed upon by the Parties, but in any event this data center shall be located in the continental United States. Contractor shall provide advance written notice to the State as to any intended changes affecting the security or location of the data center.

When fully configured and implemented in accordance with Section A.18 of this Contract, the System shall meet all the System, technical, organizational, administrative, and operational requirements.

A.3. Milestones. There are seven (7) discrete components of the Legacy System replacement contemplated in this Contract ("Milestones"). The Milestones are:

Milestone 1: State's Approval of the Proposed Project Schedule;

Milestone 2: State's Approval of the Proposed PMP;

Milestone 3: State's Approval of the Data Migration Plan;

Milestone 4: On-time Completion of Data Migration;

Milestone 5: Successful Delivery of Training to the State;

Milestone 6: Successful Pilot Implementation; and

Milestone 7: Successful and Timely Full Implementation of the System, Aware Business Enterprise Program, and Aware Application Program Interface.

A.4. Project Schedule. No later than thirty (30) days after the Effective Date, Contractor shall submit

to the State a proposed Project Schedule in Microsoft Project format (the "Project Schedule"). The Project Schedule shall include sufficient information to track project tasks, deliverables, Milestones, dependencies, and resources to ensure accurate project status reporting. The Project Schedule shall include at a minimum the following:

- a. A comprehensive schedule in Gantt chart format indicating start and completion dates and an accurate completion percentage for all in-process tasks, including without limitation:
  1. Submission of the PMP;
  2. Any necessary testing;
  3. Submission of the data migration plan;
  4. Completion of data migration;
  5. Training of State employees; and
  6. Full implementation of the System, Aware Business Enterprise Program, and Aware Application Program Interface ("Go-Live").
- b. Assumptions and constraints specific to scheduling and staffing considerations, such as State working hours and time zone.

The State, in its sole discretion, may approve or reject the proposed Project Schedule. If the State rejects a proposed Project Schedule, Contractor shall revise and resubmit the proposed Project Schedule within one (1) week of rejection.

Upon the State's approval of the proposed Project Schedule, Contractor shall provide the deliverables contemplated in this Contract no later than the dates established in the Project Schedule.

- A.5. Project Management Plan. No later than sixty (60) days after the Effective Date, Contractor shall submit to the State a proposed project management plan ("PMP"). The State shall review the PMP, provide feedback to Contractor, and instruct Contractor to make changes as necessary. Upon the State's approval in writing of the PMP, the Contractor shall comply with the PMP. The Contractor shall not further revise the PMP without obtaining the State's prior approval in writing for such revision.

Contractor shall ensure that the PMP organizes, prioritizes, coordinates, and integrates project activities, including without limitation the items listed in Section A.4.a of this Contract. Contractor shall ensure that the PMP implements and maintains quality assurance measures and manages risks to timely progress and achievement of the overall purpose of this Contract.

Additionally, Contractor shall ensure that the PMP includes, at a minimum, the following components:

- a. Risk management plan, including processes and procedures to ensure that important risks are monitored, have a corresponding mitigation strategy, and are resolved in a timely manner. This plan must cover the following topics:
  1. Risk identification. Contractor shall identify potential project risks, gauge their probability, and estimate their impact on the deliverables, and report this information to the State.

2. Risk response. Contractor shall develop options and actions to mitigate or resolve specific threats to the successful performance of this Contract and propose these options to the State.
  - b. Configuration management plan, including processes and procedures to ensure all configuration artifacts can be tracked and identified throughout and after the Term of this Contract.
  - c. Test plan, covering the period when the System is delivered in whole or in part and ending when the System is fully implemented. Contractor shall submit the test plan to the State and obtain the State's written approval before commencing testing activities. The test plan shall include the following:
    1. Pre-testing validation of functional requirements;
    2. Any necessary UAT evaluation;
    3. Pilot implementation;
    4. Pilot evaluation; and
    5. Full implementation.
- A.6. Project Status Reporting. Contractor shall perform the following duties related to project status reporting:
- a. Develop complete and accurate reports required under this Contract;
  - b. Provide weekly project status reports in such form and substance as the State directs. At a minimum, weekly project status reports shall communicate any issues impacting the Project Schedule;
  - c. Provide monthly executive status reports within five (5) business days following the end of each calendar month in such form and substance as the State directs. At a minimum, the monthly executive status reports shall indicate the Contractor's compliance or noncompliance with all standards set forth in Section A.21;
  - d. Track progress against the approved Project Schedule and report any deviations to TDHS in accordance with Section A.12 of this Contract;
  - e. Provide a semi-monthly presentation to a project steering committee ("PSC") as directed by the State. Contractor shall provide a narrative project status report and presentation detailing the progress of the project, identifying the monthly activities of the project, documenting upcoming key activities, and identifying the issues and items needing PSC attention. The PSC may request, and Contractor shall provide, unscheduled reports to address specific concerns relating to the project status;
  - f. Provide data and reports to comprehensively support the State's federal and state reporting obligations, including without limitation requirements established by the Workforce Innovation and Opportunity Act, Public Law 113-128, as amended.
- A.7. Project Staffing. "Key Personnel" means any of Contractor's staff identified in the table found in Section A.7.b.3 of this Contract. Contractor shall perform the following duties related to staffing:
- a. Contractor shall provide staffing for its project team with sufficient expertise and skill to ensure that all goods and services required under this Contract are timely delivered.
  - b. Contractor shall provide Key Personnel as described below.
    1. All Key Personnel shall be employed by the Contractor and be present full-time at either the Contractor's offices or On-site throughout the Term of this Contract. "On-site" means

physically present at TDHS offices at 505 Deaderick Street, Nashville, Tennessee, 37243 or such other location in Tennessee as the State may indicate. The Contractor shall not change the primary work location of any Key Personnel unless the State grants prior approval in writing.

2. Contractor shall obtain written prior State approval of all Key Personnel. Contractor shall provide the State with resumes for Key Personnel at least thirty (30) days prior to each individual's expected start date. The State may require in-person interviews with proposed Key Personnel prior to such individuals' start date. The State may approve or reject proposed Key Personnel. The State may require Contractor to replace approved Key Personnel at any time. Upon such rejection or request for replacement, Contractor shall provide an interim resource within five (5) business days. In the event that any Key Personnel are terminated or otherwise separated from employment with Contractor, Contractor shall likewise provide an interim resource within five (5) business days of the vacancy. Within thirty (30) days of the separation of any Key Personnel or the State's request for replacement of any Key Personnel, Contractor shall propose a permanent substitute resource.
3. The following individuals are Key Personnel:

Key Personnel	Description	Qualifications
Project Director	<ul style="list-style-type: none"> <li>• Ensures Contract compliance and quality assurance.</li> <li>• Oversees overall project planning and execution.</li> <li>• Available as needed throughout the Term of the Contract.</li> <li>• Communicates with TDHS through formal correspondence.</li> <li>• One hundred percent (100% ) allocated to this Contract.</li> </ul>	<ul style="list-style-type: none"> <li>• A minimum of three (3) years of experience in managing and leading large-scale information technology system projects.</li> <li>• Experience on at least one (1) large scale operating system migration project.</li> <li>• Broad IT-related experience.</li> </ul>
Technical Lead	<ul style="list-style-type: none"> <li>• Defines and develops system architecture design documentation.</li> <li>• Defines and documents network, security, server, and operating system specifications for the System.</li> <li>• Ensures that policies, standards ,and procedures related to infrastructure and code anre establish, communicated, and enforced.</li> <li>• Available as needed throughout the Term of the Contract.</li> <li>• One hundred percent (100%) allocated to this Contract.</li> </ul>	<ul style="list-style-type: none"> <li>• A minimum of two (2) years of experience managing system architecture at the enterprise level.</li> <li>• At least two (2) years of experience with the System.</li> <li>• Robust background in information technology development, infrastructure, and security.</li> <li>• Relevant experience and advanced skills with architectural design tools, development and deployment tools, testing tools, and programming best practices.</li> </ul>

- A.8. Documentation Access. Upon execution of this Contract, Contractor shall provide a login name and access code to access Contractor's support site, [www.aboutaware.com](http://www.aboutaware.com), for the associated Aware Documentation. The Aware Documentation shall include without limitation:
- a. User's manuals, training materials, online "help", and other user documentation for the System, Aware Business Enterprise Program, and Aware Application Program Interface

("User Documentation"); and

- b. Technical specifications and documents, data model documentation, data dictionary, technical standards, and instructional tools for the System, Aware Business Enterprise Program, and Aware Application Program Interface (collectively, "Technical Documentation").

A.9. Support. With regard to all deliverables required under this Contract, the Contractor shall provide:

- a. Technical Support. With regard to all deliverables required under this Contract, the Contractor shall provide:
  - 1. A contact phone number to report technical problems;
  - 2. Technical support Monday-Friday, 7:00 a.m. to 7:00 p.m. CT, excluding State holidays;
  - 3. Electronic technical support twenty-four (24) hours per day, seven (7) days per week, excluding state holidays, including without limitation the capability to report problems to the Contractor on-line, browse a database containing problems and technical questions, and the ability to order fixes electronically;
  - 4. A physical address, to which any hard-copy documents, screens, reports, error logs, etc. can be delivered; and
  - 5. Additional technical support as mutually agreed upon between the Parties.
- b. Error Classification and Response Time.
  - 1. If the State can reproduce the System error independently of modifications that the State has made unilaterally to the System ("Extensions"), the State shall report it to the Contractor by electronic mail to "[support@allianceenterprises.com](mailto:support@allianceenterprises.com)," "[support@getaware.com](mailto:support@getaware.com)," or other address provided in advance by Contractor, specifying the nature of such system error and the circumstances under which the error occurs.
  - 2. Response, Verification, and Resolution Time. Contractor shall respond to and resolve support requests as follows:
    - i. Severity 1 - Critical: The Contractor shall give the highest scheduling priority and devote its best available resources to resolve Severity 1 - Critical-level errors. The Contractor shall respond to the State within four (4) hours after receipt of the support request and will collaborate with the State to verify the error as soon as possible after the initial response. If practicable, Contractor shall provide a work-around process or procedure to address the effect of the error immediately after verification of the error. Contractor shall work continuously on Severity 1 - Critical-level errors until resolved. Even if a work-around procedure is implemented, Contractor will continue to devote its best available resources until the Critical-level error is resolved.
    - ii. Severity 1 - High: Contractor shall give the next highest scheduling and resource priority to Severity 1 - High-level errors. Contractor shall respond to the State within one (1) business day after receipt of the support request. Verification of the problem will be concluded within five (5) business days after The Contractor has responded to the support request. The Contractor shall resolve Severity 1 - High-Level errors no more than fifteen (15) days after verification for those functions that are used on a daily basis or needed by an immediate date. Otherwise, The Contractor will release the correction within the next software release but

no later than forty-five (45) days after verification. The State and The Contractor will jointly set the release schedule based on the frequency of use of the feature.

- iii. Severity 2 - Medium: The Contractor will give the next highest scheduling and resource priority to Severity 2 errors. The Contractor shall respond to Severity 2 errors within one (1) business day after receipt of the support request. Verification of the problem will be concluded within seven (7) business days after the Contractor has responded to the support request. The Contractor will use commercially reasonable efforts to resolve Severity 2 errors no more than thirty (30) days after verification for those functions that are used on a daily basis or needed by an immediate date. Otherwise, the Contractor will release the correction within the next software release but no later than ninety (90) days after verification. The State and the Contractor will jointly set the release schedule based on the frequency of use of the feature.
- iv. Severity 3 - Low: The Contractor in its sole discretion will determine whether or not to respond to Severity 3 errors in a future New Release.
- v. State-introduced error: Provided the Contractor has the knowledge and ability to resolve such errors, the Contractor will correct these under a Change Order as set forth in Section A.16. Otherwise, The Contractor shall have no obligation to correct any State-introduced error.

A.10. Support and Maintenance: Conditions Covered. Services provided under this Contract shall include support and maintenance of the Aware Software, Aware Business Enterprise Program, and Aware Application Program Interface and any hot fixes, service packs, updates, upgrades and new versions furnished to the State by Contractor under this or any other agreement. Contractor shall be compensated for support and maintenance work in accordance with Sections C.3.b.3 and C.3.b.4 of this Contract. Following the release by Contractor of an upgrade or new version, Contractor shall support the immediately prior version of the Aware Software for a period of six (6) months. At the end of that six (6) month period, Contractor shall have no obligation to provide services for the prior version. In addition, Contractor shall support the prior version for six (6) months following the initial delivery of the Aware Software under this Contract. Contractor shall provide the following types of support services:

- a. Upgrade, Maintenance and Support. The Contractor shall provide:
  - i. system administration support and maintenance services for the Aware Software.
  - ii. a minimum of two (2) new releases during each year this Contract is in effect as further detailed in the release schedule. New releases shall be made to at least:
    - keep the Aware Software current with the RSA Regulations and RSA reporting Policy Directives within the scope of the system as defined by the User Documentation and Technical Documentation for the current version;
    - upgrade the Aware Software in order to maintain compatibility with underlying software technologies comprised within the overall architecture of the application; and
    - incorporate new features, functions or enhancements developed as a result of continued research and development efforts.

A.11. Hosting Service Hours & Maintenance Windows. Contractor shall make its services available twenty-four (24) hours a day, seven (7) days a week, three hundred sixty-five (365) days a year, excluding scheduled maintenance windows that Contractor proposes to the State in writing and

the State approves at least fourteen (14) days in advance. Scheduled maintenance activities shall occur between 10:01 PM and 3:00 AM CT.

- A.12. Problem Management. The Contractor will manage each unplanned interruption in services and applicable general service targets, and service availability targets as defined herein.

At the point at which Contractor discovers or reasonably should have known of any problem that is reasonably likely to jeopardize Contractor's ability to perform any function as specified in this Contract, Contractor shall notify the State in person, via phone, or via email within one (1) hour if the problem is discovered within the business day and no later than 9:00 am CT the following business day if the problem occurs after close of business.

- a. Corrective Action Plan. Unless otherwise directed by the State, Contractor shall within three (3) business days of a problem's occurrence deliver a comprehensive Corrective Action Plan that describes how Contractor shall determine the root cause of the issue, remedy the immediate operational challenges, and prevent this or similar problems from occurring again. Contractor's Corrective Action Plan shall also include the following:

1. Identification;
2. Logging;
3. Categorization;
4. Prioritization;
5. Escalation;
6. Investigation/Diagnosis;
7. Resolution/Recovery; and
8. Closure.

- b. Contractor shall treat any known or suspected occurrence of System unavailability as a reportable problem under this Section.

- A.13. System Maintenance Components. The Contractor shall ensure that the System includes maintenance functionality as either an embedded process within the System or by providing access to the System through the support functions contained within the database. The System must provide the ability to perform, at a minimum, purging of records.

- A.14. Compliance. In providing services under this Contract, the Contractor shall comply with and meet all standards set forth in: applicable federal and state laws and regulations, including without limitation requirements of the Workforce Innovation and Opportunity Act, Public Law 113-128, as amended; State policies and procedures; policy memoranda issued by the U.S. Department of Education; all applicable Office of Management and Budget ("OMB") circulars; material or code requested through the State of Tennessee Comptroller of the Treasury or other entity with audit jurisdiction related to the collection, preparation and submission of reports and data; State of Tennessee Enterprise Information Security Policies; all Department of Human Services' program and fiscal policy memoranda issued; and any other applicable federal, state or local requirements that are in effect as of the date this contract receives final state approval and is executed.

The System shall be and shall remain accessible to users with disabilities. This includes compatibility with the assistive technology hardware and software of said users. To ensure accessibility, the products and systems delivered by the Contractor pursuant to this Contract shall conform to the provisions set forth by the Section 508 Electronic Information Technology Accessibility Standards (36 CFR Part 1194), specifically Subparts B-Technical Standards (§1194.21 Software Applications and Operating Systems and §1194.22 Web-based Intranet and Internet Information and Applications); Subpart C-Functional Performance Criteria; and Subpart D-Information Documentation & Support).

The products and systems delivered by the Contractor pursuant to this Contract shall ensure

access by employees with disabilities as required by Title I - Employment and Title II - State and Local Government of the Americans with Disabilities Act (42 U.S.C. § 12101).

- A.15. Annual Service Review. Contractor and the State shall conduct a joint annual service review of services provided under this Contract within thirty (30) days following the end of each year this Contract is in effective in order to identify service concerns, areas of new business opportunity, regulatory requirements, and means for improving services. Contractor shall provide a summary of this review and recommendations to the State no later than thirty (30) business days after the annual review is concluded. Excepting deficiencies in services, the annual review will be considered advisory in nature.
- A.16. Change Orders. The State may, at its sole discretion and with written notice to the Contractor, request changes in the Scope that are necessary but were inadvertently unspecified in this Contract.
- a. Change Order Creation— After receipt of a written request for additional services from the State, the Contractor shall respond to the State, within a maximum of ten (10) business days, with a written proposal for completing the service. Contractor's proposal must specify:
- (1) the effect, if any, of implementing the requested change(s) on all other services required under this Contract;
  - (2) the specific effort involved in completing the change(s);
  - (3) the expected schedule for completing the change(s); and
  - (4) the maximum cost for the change(s).
- The Contractor shall not perform any additional service until the State has approved the proposal. If approved, the State will sign the proposal, and it shall constitute a Change Order between the Contract Parties pertaining to the specified change(s) and shall be incorporated, hereby, as a part of this Contract.
- b. Change Order Performance. Subsequent to creation of a Change Order, the Contractor shall complete the required services. The State will be the sole judge of the acceptable completion of work and, upon such determination, shall provide the Contractor written approval.
- c. Prior to commencing work, the Contractor shall submit Change Order which defines project-specific activities, deliverables, and timelines for State approval. The State shall accept and approve all Statements of Work in writing.
- d. Change Order Remuneration. The State will remunerate the Contractor only for acceptable work. 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 Contract Section C.3.c, 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 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.
- A.17. Data Migration. Contractor shall provide goods and services related to data migration in accordance with this Section.

- a. **Data Migration Plan.** Contractor shall provide a proposed data migration plan no later than the deadline established in the Project Schedule. Contractor's proposed data migration plan shall establish the methodology used during the Term to establish and count the in-scope records that will be migrated from the Legacy System. The data migration scope includes open cases and records closed within seven (7) years from Go-Live. Contractor shall identify the number of records to be migrated in the proposed data migration plan. The data migration plan shall also document any data excluded from data migration, such as inactive vendors or cases outside of a specific date range. The State, in its sole discretion, may approve or reject the proposed data migration plan.
- b. **Data Migration.** Upon the State's approval of the proposed data migration plan, Contractor shall migrate data from the Legacy System to Aware in accordance with the approved data migration plan and applicable deadlines established in the Project Schedule. Contractor shall migrate one hundred percent (100%) of in-scope records from the State's Legacy System to Aware Software no later than the deadline established in the Project Schedule.

The Contractor shall design, develop, and test the migration system interfaces. The Contractor shall ensure the deliverables meet the specifications and coding standards established in the approved data migration plan and are capable of interfacing with State systems as necessary.

Contractor shall install and implement Aware Analytics. Contractor shall conduct remote knowledge transfer work sessions to prepare Aware Analytics for the State's use. Contractor shall conduct an On-site training event to introduce the State's staff to Aware Analytics.

- A.18. **Go-Live.** Contractor shall ensure that the System, Aware Business Enterprise Program and Aware Application Program Interface are ready for full implementation (i.e., the State's use as a system of record) no later than the Go-Live date established in the Project Schedule approved by the State. No later than the date specified in the approved Project Schedule, Contractor shall submit to the State a proposed Go-Live plan documenting the schedule, roles, and responsibilities for the final tasks of the project.

The Contractor shall implement the Aware Business Enterprise Program commercial off-the-shelf system, including without limitation software license, adaptation, and training. The State's Aware Business Enterprise Program implementation includes software license, adaptation, and training.

The Contractor shall implement the Aware Application Program Interface and provide Aware Application Program Interface user training for State users. The State's Aware Application Program Interface implementation includes license and installation.

- A.19. **Training.** The Contractor shall provide end-user training to staff members selected by the State. The Contractor shall ensure that this training adequately prepares the selected State staff members to train other agency staff on using Aware. Aware implementations include System administration, financial, reporting, and staff management training. All training and training materials provided under this Contract shall comply with the accessibility requirements established in Section A.14.
- A.20. **Production and Test Environments.** Contractor shall provide an on-going production environment and a test environment which is accessible to the State. Both environments shall feature the ability to encrypt data at rest and in transit.
- A.21. **Performance Standards.** The System shall be designed and implemented to meet the response time and availability standards described herein. The Contractor should assume a user load of six hundred (600) concurrent users accessing the System during an average day. If response time and/or System availability degrades to a level of non-compliance during the periods specified, the Contractor shall take the necessary steps to bring the System back to the required level unless the State determines that factors outside the Contractor's control, such as the State's infrastructure, are the cause.

- a. The non-report application-page responses shall occur in less than five (5) seconds ninety-five percent (95%) of the time during core and non-core business hours. The response time measurement will be the amount of time from the application receiving a request until the application sends the result, i.e., internal application response time between receipt and response to a user request. The response time measurement shall not include the time required to transmit the user's request or the request results over the user's network connection. The non-report application-page responses shall occur in less than eight (8) seconds ninety-nine percent (99%) of the time.

Response times will be reviewed during the user acceptance test phase and again during the first month of each implementation of a production version.

- b. The System shall be available and fully functional 99.0% of the time, with the exception of downtime scheduled in accordance with Section A.11 of this Contract. Availability is defined as the ability to fully execute business processes reliant on use of the System.

System response times will be calculated based on the average response time for several key transactions. System availability will be tracked throughout the day and averaged for core and non-core daily periods, with additional weekly and monthly averages.

The State may increase the maximum number of users, from time to time, by providing written notice to the Contractor. Upon receipt of such notice, Contractor will notify the State of required additional charges and the Parties will proceed in accordance with Section A.16 of this Contract. Upon payment by the State of any such additional charges the State shall be deemed authorized to have the new maximum numbers of users as specified in the State's most current notice.

- A.22. Warranty. Contractor represents and warrants that the term of the warranty ("Warranty Period") shall be the greater of the Term of this Contract or any other warranty generally offered by Contractor, its suppliers, or manufacturers to customers of its goods or services. The goods or services provided under this Contract shall conform to the terms and conditions of this Contract throughout the Warranty Period. Any nonconformance of the goods or services to the terms and conditions of this Contract shall constitute a "Defect" and shall be considered "Defective." If Contractor receives notice of a Defect during the Warranty Period, then Contractor shall correct the Defect, at no additional charge.

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

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

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

- A.23. Inspection and Acceptance. The State shall have the right to inspect all goods or services provided by Contractor under this Contract. If, upon inspection, the State determines that the goods or services are Defective, the State shall notify Contractor, and Contractor shall re-deliver the goods or provide the services at no additional cost to the State. Except with regard to Milestones as set forth in Sections A.3, A.24 and C.3, if after a period of thirty (30) days following

delivery of goods or performance of services the State does not provide a notice of any Defects, the goods or services shall be deemed to have been accepted by the State.

- A.24. Milestones – Performance Standards. Release of payment to Contractor for each of the seven (7) Milestones for this Contract is contingent upon TDHS' written approval and acceptance in accordance with Section A.23 of this Contract.

Compensation to Contractor corresponds to the timeliness of the deliverables provided under each Milestone as described below and in Section C.3 of this Contract.

Measure	Measure Details	Minimum Level Target
<p><b>Timeliness</b></p> <p>(applies to all Milestones)</p>	<p><b>Description:</b></p> <p>Each Milestone will have a corresponding due date as established pursuant to Contract Section A.4. All deliverables must be submitted to and approved by TDHS no later than the date listed in the Project Schedule, unless TDHS grants an exception in writing. <b>Contractor must allocate adequate time for draft and final review by the State of deliverables and Milestones</b> and must track progress against the Project Schedule to manage and report risks of performance delay.</p> <p><b>Measurement:</b></p> <p>The date the Milestone is approved is the same date or before the date listed in the approved Project Schedule. This measure is reported per Milestone.</p>	<p>Milestone deadline met</p>

- A.25. In the event of a discrepancy between the terms and conditions of this Contract and those contained in any of attachment hereto, the terms and conditions of this Contract shall be controlling and shall take precedence over such terms, conditions and/or additional or different terms contained in the attachment.

**B. TERM OF CONTRACT:**

- B.1. This Contract shall be effective for the period beginning on June 1, 2019 (“Effective Date”) and ending on May 31, 2022, (“Term”). The State shall have no obligation for goods delivered or services provided by the Contractor prior to the Effective Date.
- B.2. Renewal Options. This Contract may be renewed upon satisfactory completion of the Term. The State reserves the right to execute up to two (2) renewal options under the same terms and conditions for a period not to exceed twelve (12) months each by the State, at the State's sole option. In no event, however, shall the maximum Term, including all renewals or extensions, exceed a total of sixty (60) months.
- B.3. Term Extension. The State may extend the Term 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.

**C. PAYMENT TERMS AND CONDITIONS:**

- C.1. **Maximum Liability.** In no event shall the maximum liability of the State under this Contract exceed seven million, eight hundred and fifty two thousand one hundred and four dollars (\$7,852,104.00) (“Maximum Liability”). This Contract does not grant the Contractor any exclusive rights. The State does not guarantee that it will buy any minimum quantity of goods or services under this Contract. Subject to the terms and conditions of this Contract, the Contractor will only be paid for goods or services provided under this Contract after a purchase order is issued to Contractor by the State or as otherwise specified by this Contract.
- C.2. **Compensation Firm.** The payment methodology in Section C.3. of this Contract shall constitute the entire compensation due the Contractor for all goods or services provided under this Contract regardless of the difficulty, materials or equipment required. The payment methodology includes all applicable taxes, fees, overhead, and all other direct and indirect costs incurred or to be incurred by the Contractor.
- C.3. **Payment Methodology.** The Contractor shall be compensated based on the payment methodology for goods or services authorized by the State in a total amount as set forth in Section C.1.
- a. The Contractor’s compensation shall be contingent upon the satisfactory provision of goods or services as set forth in Section A.
  - b. The Contractor shall be compensated based upon the following payment methodology:
    1. Milestone Payments. The State shall pay the Contractor based on the completion of the Milestone and its associated deliverables. When the Contractor receives the State’s written approval and acceptance of a Milestone and all its associated deliverables, Contractor shall invoice the State according to the table below, minus any performance withholds described in Section C.3.b.2 below.

Milestone		Fee (per compensable increment)
1	State Approval of the Project Schedule	\$267,995.69
2	State Approval of Project Management Plan	\$267,995.69
3	State Approval of the Data Migration Plan	\$535,991.38
4	Timely Completion of Data Migration	\$267,995.69
5	Successful Delivery of Training	\$267,995.69
6	Successful Pilot Implementation	\$1,607,974.19
7	Successful and Timely Full Implementation of the System, Aware Business Enterprise Program, and Aware Application Program Interface	\$2,143,965.55

2. Performance Withhold for Milestone Payments. The State shall evaluate Contractor’s compliance with the Milestone performance standards in accordance with Section A.3 and the Project Schedule approved by the State pursuant to Section A.4.
  - i. If the State provides written confirmation that the Milestone performance standard has been met, the Contractor shall invoice for one hundred percent (100%) of the Milestone fee.

- ii. If the State determines that the Milestone performance deadline was missed, and Contractor was the cause of such noncompliance, Contractor shall invoice for ninety percent (90%) of the Milestone fee (the Milestone fee minus ten percent (10%) performance withhold).
3. Monthly Administrative Fee. Separate from the compensation described in Sections C.3.b.1 and C.3.b.2, Contractor shall be compensated a Monthly Administrative Fee. The Monthly Administrative Fee shall be the Contractor's sole compensation for support, maintenance, and reporting required under this Contract. The State shall not pay the Contractor any additional fee for licenses. Contractor shall invoice the State according to the table below, minus any performance withholds described in Section C.3.b.4 below.

Description	Amount
Monthly Administrative Fee – Contract Year 1 (June 1, 2019 to May 31, 2020)	\$41,666.66 per month
<b>Total Contract Year 1 Administrative Fee</b>	\$500,000.00
Monthly Administrative Fee – Contract Year 2 (June 1, 2020 to May 31, 2021)	\$63,052.25
<b>Total Contract Year 2 Administrative Fee</b>	\$756,627.00
Monthly Administrative Fee – Contract Year 3 (June 1, 2021 to May 31, 2022)	\$83,333.33
<b>Total Contract Year 3 Administrative Fee</b>	\$1,000,000.00

4. Performance Withhold for Administrative Fee Payments. The State shall evaluate Contractor's compliance with contractual requirements regarding reporting, maintenance, and support.
- i. If Contractor timely provides all support, maintenance, and reports required under the Contract and if the State provides written confirmation that Contractor has done so, Contractor shall invoice for one hundred percent (100%) of the applicable Monthly Administrative Fee.
  - ii. If the State determines that Contractor failed to timely provide all support, maintenance, and reports required under the Contract, Contractor shall invoice for ninety percent (90%) of the applicable Monthly Administrative Fee (the applicable Monthly Administrative Fee minus ten percent (10%) performance withhold).
  - iii. If the State determines that Contractor failed to timely provide support, maintenance, or reports in two (2) or more instances, Contractor shall invoice for seventy-five percent (75%) of the applicable Monthly Administrative Fee (the applicable Monthly Administrative Fee minus twenty-five percent (25%) performance withhold).
- c. The Contractor shall be compensated for changes requested and performed pursuant to Contract Section A.16, without a formal amendment of this Contract based upon the fixed rate quoted by Contractor and approved in writing by the State pursuant to Section A.16, PROVIDED THAT compensation to the Contractor for such "change order" work shall not exceed two hundred thirty-five thousand five hundred sixty-three and twelve one-hundredths dollars (\$ 235,563.12) (three percent (3%) of the Maximum Liability established in Section C.1). If, at any point during the Term, the State determines that the cost of necessary services under a Change Order would exceed this amount, the State may amend this Contract to address the need.

- C.4. Travel Compensation. The Contractor shall not be compensated or reimbursed for travel time, travel expenses, meals, or lodging.
- C.5. Invoice Requirements. The Contractor shall invoice the State only for goods delivered and accepted by the State or services satisfactorily provided at the amounts stipulated in Section C.3., above. Contractor shall submit invoices and necessary supporting documentation, no more frequently than once a month, and no later than thirty (30) days after goods or services have been provided to the following address:

Wayne Glaus, Chief Information Officer  
Tennessee Department of Human Services  
Polk Building, 13<sup>th</sup> Floor  
505 Deaderick Street  
Nashville, TN 37243

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);
- (1) Customer account name: Department of Human Services, Division of Rehabilitation Services;
- (2) Customer account number (assigned by the Contractor to the above-referenced Customer);
- (3) Contractor name;
- (4) Contractor Tennessee Edison registration ID number;
- (5) Contractor contact for invoice questions (name, phone, or email);
- (6) Contractor remittance address;
- (7) Description of delivered goods or services provided and invoiced, including identifying information as applicable;
- (8) Number of delivered or completed units, increments, hours, or days as applicable, of each good or service invoiced;
- (9) Applicable payment methodology (as stipulated in Section C.3.) of each good or service invoiced;
- (10) Amount due for each compensable unit of good or service; and
- (11) Total amount due for the invoice period.

a. Contractor's invoices shall:

- (1) Only include charges for goods delivered or services provided as described in Section A and in accordance with payment terms and conditions set forth in Section C;
- (2) Only be submitted for goods delivered or services completed and shall not include any charge for future goods to be delivered or services to be performed, with the exception of recurring services like Managed Services or Maintenance and Support which are invoiced annually at the beginning of the annual term;
- (3) Not include Contractor's taxes, which includes without limitation Contractor's sales and use tax, excise taxes, franchise taxes, real or personal property taxes, or income taxes; and
- (4) Include shipping or delivery charges only as authorized in this Contract.

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

- C.6. Payment of Invoice. A payment by the State shall not prejudice the State's right to object to or question any payment, invoice, or other matter. A payment by the State shall not be construed as acceptance of goods delivered, any part of the services provided, or as approval of any amount invoiced.
- C.7. Invoice Reductions. The Contractor's invoice shall be subject to reduction for amounts included in any invoice or payment that is determined by the State, on the basis of audits conducted in accordance with the terms of this Contract, to not constitute proper compensation for goods delivered or services provided.
- C.8. Deductions. The State reserves the right to deduct from amounts, which are or shall become due and payable to the Contractor under this or any contract between the Contractor and the State of Tennessee, any amounts that are or shall become due and payable to the State of Tennessee by the Contractor.
- C.9. Prerequisite Documentation. The Contractor shall not invoice the State under this Contract until the State has received the following, properly completed documentation.
- a. The Contractor shall complete, sign, and present to the State the "Authorization Agreement for Automatic Deposit Form" provided by the State. By doing so, the Contractor acknowledges and agrees that, once this form is received by the State, payments to the Contractor, under this or any other contract the Contractor has with the State of Tennessee, may be made by ACH; and
  - b. The Contractor shall complete, sign, and return to the State the State-provided W-9 form. The taxpayer identification number on the W-9 form must be the same as the Contractor's Federal Employer Identification Number or Social Security Number referenced in the Contractor's Edison registration information.

**D. MANDATORY TERMS AND CONDITIONS:**

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

The State:

Wayne Glaus, Chief Information Officer  
Tennessee Department of Human Services  
Polk Building, 13<sup>th</sup> Floor  
505 Deaderick Street  
Nashville, TN 37243  
[wayne.glaus@tn.gov](mailto:wayne.glaus@tn.gov)  
Telephone # (615) 770-3891

The Contractor:

Lisa Gifford, President  
Alliance Enterprises, Inc.  
2980 Center Drive, Suite 200  
DuPont, WA 98327  
Lisa.gifford@the Contractorenterprises.com  
Telephone # (360) 456-7000

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

- D.3. Modification and Amendment. This Contract may be modified only by a written amendment signed by all Parties and approved by all applicable State officials.
- D.4. Subject to Funds Availability. The Contract is subject to the appropriation and availability of State or federal funds. In the event that the funds are not appropriated or are otherwise unavailable, the State reserves the right to terminate this Contract upon written notice to the Contractor. The State's exercise of its right to terminate this Contract shall not constitute a breach of Contract by the State. Upon receipt of the written notice, the Contractor shall cease all work associated with the Contract. If the State terminates this Contract due to lack of funds availability, the Contractor shall be entitled to compensation for all conforming goods requested and accepted by the State and for all satisfactory and authorized services completed as of the termination date. Should the State exercise its right to terminate this Contract due to unavailability of funds, the Contractor shall have no right to recover from the State any actual, general, special, incidental, consequential, or any other damages of any description or amount.
- D.5. Termination for Convenience. The State may terminate this Contract for convenience without cause and for any reason. The State shall give the Contractor at least thirty (30) days written notice before the termination date. The Contractor shall be entitled to compensation for all conforming goods delivered and accepted by the State or for satisfactory, authorized services completed as of the termination date. In no event shall the State be liable to the Contractor for compensation for any goods neither requested nor accepted by the State or for any services neither requested by the State nor satisfactorily performed by the Contractor. In no event shall the State's exercise of its right to terminate this Contract for convenience relieve the Contractor of any liability to the State for any damages or claims arising under this Contract.
- D.6. Termination for Cause. If the Contractor fails to properly perform its obligations under this Contract in a timely or proper manner, or if the Contractor materially violates any terms of this Contract ("Breach Condition"), the State shall have the right to immediately terminate the Contract and withhold payments in excess of compensation for completed services or provided goods. Notwithstanding the above, the Contractor shall not be relieved of liability to the State for damages sustained by virtue of any Breach Condition and the State may seek other remedies allowed at law or in equity for breach of this Contract.
- D.7. Assignment and Subcontracting. The Contractor shall not assign this Contract or enter into a subcontract for any of the goods or services provided under this Contract without the prior written approval of the State. Notwithstanding any use of the approved subcontractors, the Contractor shall be the prime contractor and responsible for compliance with all terms and conditions of this Contract. The State reserves the right to request additional information or impose additional terms and conditions before approving an assignment of this Contract in whole or in part or the use of subcontractors in fulfilling the Contractor's obligations under this Contract.
- D.8. Conflicts of Interest. The Contractor warrants that no part of the Contractor's compensation shall be paid directly or indirectly to an employee or official of the State of Tennessee as wages, compensation, or gifts in exchange for acting as an officer, agent, employee, subcontractor, or consultant to the Contractor in connection with any work contemplated or performed under this Contract.

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

D.9. Equal Opportunity. The Contractor agrees as follows:

- a. The Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. The Contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to the following:
  - (1) Employment, upgrading, demotion, or transfer, recruitment or recruitment advertising;
  - (2) Layoff or termination;
  - (3) Rates of pay or other forms of compensation; and
  - (4) Selection for training, including apprenticeship.

The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting officer setting forth the provisions of this nondiscrimination clause.

- b. The Contractor will, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive considerations for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.
  - c. If the State approves any subcontract, the subcontract shall include paragraphs (a) and (b) above.
  - d. In addition, to the extent applicable the Contractor agrees to comply with 41 C.F. R. § 60-1.4, as that section is amended from time to time during the term.
- D.10. Prohibition of Illegal Immigrants. The requirements of Tenn. Code Ann. § 12-3-309 addressing the use of illegal immigrants in the performance of any contract to supply goods or services to the state of Tennessee, shall be a material provision of this Contract, a breach of which shall be grounds for monetary and other penalties, up to and including termination of this Contract.

- a. The Contractor agrees that the Contractor shall not knowingly utilize the services of an illegal immigrant in the performance of this Contract and shall not knowingly utilize the services of any subcontractor who will utilize the services of an illegal immigrant in the performance of this Contract. The Contractor shall reaffirm this attestation, in writing, by submitting to the State a completed and signed copy of the document at Attachment A, semi-annually during the Term. If the Contractor is a party to more than one contract with the State, the Contractor may submit one attestation that applies to all contracts with the State. All Contractor attestations shall be maintained by the Contractor and made available to State officials upon request.
- b. Prior to the use of any subcontractor in the performance of this Contract, and semi-annually thereafter, during the Term, the Contractor shall obtain and retain a current, written attestation that the subcontractor shall not knowingly utilize the services of an illegal immigrant to perform work under this Contract and shall not knowingly utilize the services of any subcontractor who will utilize the services of an illegal immigrant to perform work under this Contract. Attestations obtained from subcontractors shall be maintained by the Contractor and made available to State officials upon request.

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

The State's total liability under this Contract (including any exhibits, schedules, amendments or other attachments to the Contract) or otherwise shall under no circumstances exceed the Maximum Liability. This limitation of liability is cumulative and not per incident.

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

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

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

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

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

- D.24. Force Majeure. “Force Majeure Event” means fire, flood, earthquake, elements of nature or acts of God, wars, riots, civil disorders, rebellions or revolutions, acts of terrorism or any other similar cause beyond the reasonable control of the Party except to the extent that the non-performing Party is at fault in failing to prevent or causing the default or delay, and provided that the default or delay cannot reasonably be circumvented by the non-performing Party through the use of alternate sources, workaround plans or other means. A strike, lockout or labor dispute shall not excuse either Party from its obligations under this Contract. Except as set forth in this Section, any failure or delay by a Party in the performance of its obligations under this Contract arising from a Force Majeure Event is not a default under this Contract or grounds for termination. The non-performing Party will be excused from performing those obligations directly affected by the Force Majeure Event, and only for as long as the Force Majeure Event continues, provided that the Party continues to use diligent, good faith efforts to resume performance without delay. The occurrence of a Force Majeure Event affecting Contractor’s representatives, suppliers, subcontractors, customers or business apart from this Contract is not a Force Majeure Event under this Contract. Contractor will promptly notify the State of any delay caused by a Force

Majeure Event (to be confirmed in a written notice to the State within one (1) day of the inception of the delay) that a Force Majeure Event has occurred, and will describe in reasonable detail the nature of the Force Majeure Event. If any Force Majeure Event results in a delay in Contractor's performance longer than forty-eight (48) hours, the State may, upon notice to Contractor: (a) cease payment of the fees until Contractor resumes performance of the affected obligations; or (b) immediately terminate this Contract or any purchase order, in whole or in part, without further payment except for fees then due and payable. Contractor will not increase its charges under this Contract or charge the State any fees other than those provided for in this Contract as the result of a Force Majeure Event.

- D.25. State and Federal Compliance. The Contractor shall comply with all applicable state and federal laws and regulations in the performance of this Contract.
- D.26. Governing Law. This Contract shall be governed by and construed in accordance with the laws of the State of Tennessee. The Tennessee Claims Commission or the state or federal courts in Tennessee shall be the venue for all claims, disputes, or disagreements arising under this Contract. The Contractor acknowledges and agrees that any rights, claims, or remedies against the State of Tennessee or its employees arising under this Contract shall be subject to and limited to those rights and remedies available under Tenn. Code Ann. §§ 9-8-101 - 407.
- D.27. Entire Agreement. This Contract is complete and contains the entire understanding between the Parties relating to its subject matter, including all the terms and conditions of the Parties' agreement. This Contract supersedes any and all prior understandings, representations, negotiations, and agreements between the Parties, whether written or oral.
- D.28. Severability. If any terms and conditions of this Contract are held to be invalid or unenforceable as a matter of law, the other terms and conditions of this Contract shall not be affected and shall remain in full force and effect. The terms and conditions of this Contract are severable.
- D.29. Headings. Section headings of this Contract are for reference purposes only and shall not be construed as part of this Contract.
- D.30. Incorporation of Additional Documents. Each of the following documents is included as a part of this Contract by reference. In the event of a discrepancy or ambiguity regarding the Contractor's duties, responsibilities, and performance under this Contract, these items shall govern in order of precedence below:
- a. any amendment to this Contract, with the latter in time controlling over any earlier amendments;
  - b. this Contract with any attachments or exhibits (excluding the items listed at subsections c. through f., below), which includes Attachment A.
  - c. any clarifications of or addenda to the Contractor's proposal seeking this Contract;
  - d. the State solicitation, as may be amended, requesting responses in competition for this Contract;
  - e. any technical specifications provided to proposers during the procurement process to award this Contract; and
  - f. the Contractor's response seeking this Contract.
- D.31. Iran Divestment Act. The requirements of Tenn. Code Ann. § 12-12-101, *et seq.*, addressing contracting with persons as defined at Tenn. Code Ann. §12-12-103(5) that engage in investment activities in Iran, shall be a material provision of this Contract. The Contractor certifies, under penalty of perjury, that to the best of its knowledge and belief that it is not on the list created pursuant to Tenn. Code Ann. § 12-12-106.
- D.32. Insurance. Contractor shall maintain insurance coverage as specified in this Section. The State reserves the right to amend or require additional insurance coverage, coverage amounts, and endorsements required under this Contract. Contractor's failure to maintain or submit evidence of

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

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

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

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

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

a. Commercial General Liability (“CGL”) Insurance

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

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

b. Workers’ Compensation and Employer Liability Insurance

- 1) For Contractors statutorily required to carry workers’ compensation and employer liability insurance, the Contractor shall maintain:
  - i. Workers’ compensation in an amount not less than one million dollars (\$1,000,000) including employer liability of one million dollars (\$1,000,000) per accident for bodily injury by accident, one million dollars (\$1,000,000) policy limit by disease, and one million dollars (\$1,000,000) per employee for bodily injury by disease.
- 2) If the Contractor certifies that it is exempt from the requirements of Tenn. Code Ann. §§ 50-6-101 – 103, then the Contractor shall furnish written proof of such exemption for one or more of the following reasons:
  - i. The Contractor employs fewer than five (5) employees;
  - ii. The Contractor is a sole proprietor;
  - iii. The Contractor is in the construction business or trades with no employees;
  - iv. The Contractor is in the coal mining industry with no employees;
  - v. The Contractor is a state or local government; or
  - vi. The Contractor self-insures its workers’ compensation and is in compliance with the TDCI rules and Tenn. Code Ann. § 50-6-405.

c. Automobile Liability Insurance

- 1) The Contractor shall maintain automobile liability insurance which shall cover liability arising out of any automobile (including owned, leased, hired, and non-owned automobiles).
- 2) The Contractor shall maintain bodily injury/property damage with a limit not less than one million dollars (\$1,000,000) per occurrence or combined single limit.

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

**E. SPECIAL TERMS AND CONDITIONS:**

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

E.2. Confidentiality of Records. Strict standards of confidentiality of records and information shall be maintained in accordance with applicable state and federal law. All material and information, regardless of form, medium or method of communication, provided to the Contractor by the State or acquired by the Contractor on behalf of the State that is regarded as confidential under state or federal law shall be regarded as "Confidential Information." Nothing in this Section shall permit Contractor to disclose any Confidential Information, regardless of whether it has been disclosed or made available to the Contractor due to intentional or negligent actions or inactions of agents of the State or third parties. Confidential Information shall not be disclosed except as required or permitted under state or federal law. Contractor shall take all necessary steps to safeguard the confidentiality of such material or information in conformance with applicable state and federal law.

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

E.3. Additional lines, items, or options. At its sole discretion, the State may make written requests to the Contractor to add lines, items, or options that are needed and within the Scope but were not included in the original Contract. Such lines, items, or options will be added to the Contract through a Memorandum of Understanding ("MOU"), not an amendment.

a. After the Contractor receives a written request to add lines, items, or options, the Contractor shall have ten (10) business days to respond with a written proposal. The Contractor's written proposal shall include:

- (1) The effect, if any, of adding the lines, items, or options on the other goods or services required under the Contract;
- (2) Any pricing related to the new lines, items, or options;
- (3) The expected effective date for the availability of the new lines, items, or options; and
- (4) Any additional information requested by the State.

b. The State may negotiate the terms of the Contractor's proposal by requesting revisions to the proposal.

c. To indicate acceptance of a proposal, the State will sign it. The signed proposal shall constitute a MOU between the Parties, and the lines, items, or options shall be incorporated into the Contract as if set forth verbatim.

d. Only after a MOU has been executed shall the Contractor perform or deliver the new lines, items, or options.

- E.4. Intellectual Property Indemnity. The Contractor agrees to indemnify and hold harmless the State of Tennessee as well as its officers, agents, and employees from and against any and all claims or suits which may be brought against the State concerning or arising out of any claim of an alleged patent, copyright, trade secret or other intellectual property infringement. In any such claim or action brought against the State, the Contractor shall satisfy and indemnify the State for the amount of any settlement or final judgment, and the Contractor shall be responsible for all legal or other fees or expenses incurred by the State arising from any such claim. The State shall give the Contractor notice of any such claim or suit, however, the failure of the State to give such notice shall only relieve Contractor of its obligations under this Section to the extent Contractor can demonstrate actual prejudice arising from the State's failure to give notice. This Section shall not grant the Contractor, through its attorneys, the right to represent the State of Tennessee in any legal matter, as provided in Tenn. Code Ann. § 8-6-106.
- E.5. Software License. Contractor grants a license to the State to use all software provided under this Contract in the course of the State's business and purposes.
- E.6. Extraneous Terms and Conditions. Contractor shall fill all orders submitted by the State under this Contract. No purchase order, invoice, or other documents associated with any sales, orders, or supply of any good or service under this Contract shall contain any terms or conditions other than as set forth in the Contract. Any such extraneous terms and conditions shall be void, invalid and unenforceable against the State. Any refusal by Contractor to supply any goods or services under this Contract conditioned upon the State submitting to any extraneous terms and conditions shall be a material breach of the Contract and constitute an act of bad faith by Contractor.
- E.7. Contractor Hosted Services Confidential Data, Audit, and Other Requirements.
- a. "Confidential State Data" is defined as data deemed confidential by State or Federal statute or regulation. The Contractor shall protect Confidential State Data as follows:
- (1) The Contractor shall ensure that all Confidential State Data is housed in the continental United States, inclusive of backup data.
  - (2) The Contractor shall encrypt Confidential State Data at rest and in transit using the current version of Federal Information Processing Standard ("FIPS") 140-2 validated encryption technologies.
  - (3) The Contractor's processing environment containing Confidential State Data shall either (1) be in accordance with at least one of the following security standards: (i) International Standards Organization ("ISO") 27001; (ii) Federal Risk and Authorization Management Program ("FedRAMP"); or (2) be subject to an annual engagement by a CPA firm in accordance with the standards of the American Institute of Certified Public Accountants ("AICPA") for a System and Organization Controls for service organizations ("SOC") Type II audit. The State shall approve the SOC audit control objectives. The Contractor shall provide proof of current ISO certification or FedRAMP authorization for the Subcontractor(s), or provide the State with the Subcontractor's annual SOC Type II audit report within 30 days from when the CPA firm provides the audit report to the Contractor or Subcontractor. The Contractor shall submit corrective action plans to the State for any issues included in the audit report within 30 days after the CPA firm provides the audit report to the Contractor or Subcontractor.
- If the scope of the most recent SOC audit report does not include all of the current State fiscal year, upon request from the State, the Contractor must provide to the State a letter from the Contractor or Subcontractor stating whether the Contractor or Subcontractor made any material changes to their control environment since the prior audit and, if so, whether the changes, in the opinion of the Contractor or

Subcontractor, would negatively affect the auditor's opinion in the most recent audit report.

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

- (4) The Contractor must annually perform Penetration Tests and Vulnerability Assessments against its Processing Environment. "Processing Environment" shall mean the combination of software and hardware on which the Application runs. "Application" shall mean the computer code that supports and accomplishes the State's requirements as set forth in this Contract. "Penetration Tests" shall be in the form of attacks on the Contractor's computer system, with the purpose of discovering security weaknesses which have the potential to gain access to the Processing Environment's features and data. The "Vulnerability Assessment" shall be designed and executed to define, identify, and classify the security holes (vulnerabilities) in the Processing Environment. The Contractor shall allow the State, at its option, to perform Penetration Tests and Vulnerability Assessments on the Processing Environment.
- (5) Upon State request, the Contractor shall provide a copy of all Confidential State Data it holds. The Contractor shall provide such data in a database document format .
- (6) Upon termination of this Contract and in consultation with the State, the Contractor shall destroy all Confidential State Data it holds (including any copies such as backups) in accordance with the current version of National Institute of Standards and Technology ("NIST") Special Publication 800-88. The Contractor shall provide a written confirmation of destruction to the State within ten (10) business days after destruction.

b. Minimum Requirements

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

c. Comptroller Audit Requirements

Upon reasonable notice and at any reasonable time, the Contractor agrees to allow the State, the Comptroller of the Treasury, or their duly appointed representatives to perform information technology control audits of the Contractor. Contractor will 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 personnel for the purpose of performing the information technology control audit.

The information technology control audit may include a review of general controls and application controls. General controls are the policies and procedures that apply to all or a large segment of the Contractor's 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 compliance with the State's Enterprise Information Security Policies and all applicable requirements, laws, regulations or policies.

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

For any audit issues identified, the Contractor shall provide a corrective action plan to the State within 30 days from the Contractor receiving the audit report.

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

- d. Business Continuity Requirements. The Contractor shall maintain set(s) of documents, instructions, and procedures which enable the Contractor to respond to accidents, disasters, emergencies, or threats without any stoppage or hindrance in its key operations ("Business Continuity Requirements"). Business Continuity Requirements shall include:
- (1) "Disaster Recovery Capabilities" refer to the actions the Contractor takes to meet the Recovery Point and Recovery Time Objectives defined below. Disaster Recovery Capabilities shall meet the following objectives:
    - i. Recovery Point Objective ("RPO"). The RPO is defined as the maximum targeted period in which data might be lost from an IT service due to a major incident. This target will be jointly determined as described in the Aware Implementation Work Plan, Security and Disaster Recovery Review deliverable.
    - 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. This target will be jointly determined as described in the Aware Implementation Work Plan, Security and Disaster Review deliverable.
  - (2) The Contractor shall perform at least one Disaster Recovery Test every three hundred sixty-five (365) days. A "Disaster Recovery Test" shall mean the process of verifying the success of the restoration procedures that are executed after a critical IT failure or disruption occurs. The Disaster Recovery Test shall use actual State Data Sets that mirror production data, and success shall be defined as the Contractor verifying that the Contractor can meet the State's RPO and RTO requirements. A "Data Set" is defined as a collection of related sets of information that is composed of separate elements but can be manipulated as a unit by a computer. The Contractor shall provide written confirmation to the State after each Disaster Recover Test that its Disaster Recovery Capabilities meet the RPO and RTO requirements.
- E.8. State Furnished Property. The Contractor shall be responsible for the correct use, maintenance, and protection of all articles of nonexpendable, tangible personal property furnished by the State for the Contractor's use under this Contract. Upon termination of this Contract, all property furnished by the State shall be returned to the State in the same condition as when received, less

reasonable wear and tear. Should the property be destroyed, lost, or stolen, the Contractor shall be responsible to the State for the fair market value of the property at the time of loss.

E.9. Lobbying. The Contractor certifies, to the best of its knowledge and belief, that:

- a. No federally appropriated funds have been paid or will be paid, by or on behalf of the Contractor, to any person for influencing or attempting to influence an officer or employee of an agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.
- b. If any funds other than federally appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with any contract, grant, loan, or cooperative agreement, the Contractor shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
- c. The Contractor shall require that the language of this certification be included in the award documents for all sub-awards at all tiers (including subcontracts, sub-grants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

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

E.10. Personally Identifiable Information. While performing its obligations under this Contract, Contractor may have access to Personally Identifiable Information held by the State ("PII"). For the purposes of this Contract, "PII" includes "Nonpublic Personal Information" as that term is defined in Title V of the Gramm-Leach-Bliley Act of 1999 or any successor federal statute, and the rules and regulations thereunder, all as may be amended or supplemented from time to time ("GLBA") and personally identifiable information and other data protected under any other applicable laws, rule or regulation of any jurisdiction relating to disclosure or use of personal information ("Privacy Laws"). Contractor agrees it shall not do or omit to do anything which would cause the State to be in breach of any Privacy Laws. Contractor shall, and shall cause its employees, agents and representatives to: (i) keep PII confidential and may use and disclose PII only as necessary to carry out those specific aspects of the purpose for which the PII was disclosed to Contractor and in accordance with this Contract, GLBA and Privacy Laws; and (ii) implement and maintain appropriate technical and organizational measures regarding information security to: (A) ensure the security and confidentiality of PII; (B) protect against any threats or hazards to the security or integrity of PII; and (C) prevent unauthorized access to or use of PII. Contractor shall immediately notify State: (1) of any disclosure or use of any PII by Contractor or any of its employees, agents and representatives in breach of this Contract; and (2) of any disclosure of any PII to Contractor or its employees, agents and representatives where the purpose of such disclosure is not known to Contractor or its employees, agents and representatives. The State reserves the right to review Contractor's policies and procedures used to maintain the security and confidentiality of PII and Contractor shall, and cause its employees, agents and representatives to, comply with all reasonable requests or directions from the State to enable the State to verify and/or ensure that Contractor is in full compliance with its obligations under this Contract in relation to PII. Upon termination or expiration of the Contract or at the State's direction at any time in its sole discretion, whichever is earlier, Contractor shall immediately return to the State any and all PII which it has received under this Contract and shall destroy all records of such PII.

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

- E.11. Federal Funding Accountability and Transparency Act (FFATA). This Contract requires the Contractor to provide supplies or services that are funded in whole or in part by federal funds that are subject to FFATA. The Contractor is responsible for ensuring that all applicable requirements, including but not limited to those set forth herein, of FFATA are met and that the Contractor provides information to the State as required.

The Contractor shall comply with the following:

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

- (1) The Contractor shall report the names and total compensation of each of its five most highly compensated executives for the Contractor's preceding completed fiscal year, if in the Contractor's preceding fiscal year it received:
  - i. 80 percent or more of the Contractor's annual gross revenues from federal procurement contracts and federal financial assistance subject to the Transparency Act, as defined at 2 CFR 170.320 (and subawards); and
  - ii. \$25,000,000 or more in annual gross revenues from federal procurement contracts (and subcontracts), and federal financial assistance subject to the Transparency Act (and subawards); and
  - iii. The public does not have access to information about the compensation of the executives through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(a), 78o(d)) or section 6104 of the Internal Revenue Code of 1986. (To determine if the public has access to the compensation information, see the U.S. Security and Exchange Commission total compensation filings at <http://www.sec.gov/answers/execomp.htm>).

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

- (2) Total compensation means the cash and noncash dollar value earned by the executive during the Contractor's preceding fiscal year and includes the following (for more information see 17 C.F.R. § 229.402(c)(2)):
  - i. Salary and bonus.
  - ii. Awards of stock, stock options, and stock appreciation rights. Use the dollar amount recognized for financial statement reporting purposes with respect to the fiscal year in accordance with the Statement of Financial Accounting Standards No. 123 (Revised 2004) (FAS 123R), Shared Based Payments.
  - iii. Earnings for services under non-equity incentive plans. This does not include group life, health, hospitalization or medical reimbursement plans

that do not discriminate in favor of executives and are available generally to all salaried employees.

- iv. Change in pension value. This is the change in present value of defined benefit and actuarial pension plans.
  - v. Above-market earnings on deferred compensation which is not tax qualified.
  - vi. Other compensation, if the aggregate value of all such other compensation (e.g. severance, termination payments, value of life insurance paid on behalf of the employee, perquisites or property) for the executive exceeds \$10,000.
- b. The Contractor must report executive total compensation described above to the State by the end of the month during which this Contract is awarded.
  - c. If this Contract is amended to extend the Term, the Contractor must submit an executive total compensation report to the State by the end of the month in which the term extension becomes effective.
  - d. The Contractor will obtain a Data Universal Numbering System (DUNS) number and maintain its DUNS number for the term of this Contract. More information about obtaining a DUNS Number can be found at: <http://fedgov.dnb.com/webform/>

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

- E.12. Survival. The terms, provisions, representations, and warranties contained in this Contract which by their sense and context are intended to survive the performance and termination of this Contract, shall so survive the completion of performance and termination of this Contract.

**IN WITNESS WHEREOF,**

**ALLIANCE ENTERPRISES, INC.:**

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**CONTRACTOR SIGNATURE**

**DATE**

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**LISA C. GIFFORD, PRESIDENT**

**DEPARTMENT OF HUMAN SERVICES:**

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**DANIELLE BARNES, COMMISSIONER**

**DATE**

**ATTESTATION RE PERSONNEL USED IN CONTRACT PERFORMANCE**

<b>SUBJECT CONTRACT NUMBER:</b>	
<b>CONTRACTOR LEGAL ENTITY NAME:</b>	
<b>EDISON VENDOR IDENTIFICATION NUMBER:</b>	

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

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**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.

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**PRINTED NAME AND TITLE OF SIGNATORY**

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**DATE OF ATTESTATION**