



STATE OF TENNESSEE
TREASURY DEPARTMENT

**REQUEST FOR PROPOSALS # 30901-49822
AMENDMENT # 4
FOR RECORDKEEPING SERVICES RELATIVE TO
THE STATE'S COLLEGE SAVINGS PLAN AND
ACHIEVING A BETTER LIFE EXPERIENCE PROGRAM**

DATE: January 11, 2022

RFP # 30901-49822 IS AMENDED AS FOLLOWS:

1. This RFP Schedule of Events updates and confirms scheduled RFP dates. Any event, time, or date containing revised or new text is highlighted.

EVENT	TIME (central time zone)	DATE	Updated or Confirmed
1. RFP Issued		November 12, 2021	Confirmed
2. Disability Accommodation Request Deadline	2:00 p.m.	November 17, 2021	Confirmed
3. Pre-response Teleconference	10:00 a.m.	November 18, 2021	Confirmed
4. Notice of Intent to Respond Deadline	2:00 p.m.	November 27, 2021	Confirmed
5. Written "Questions & Comments" Deadline	2:00 p.m.	November 30, 2021	Confirmed
6. State Response to Written "Questions & Comments"		December 15, 2021	Confirmed
7. Second and Final Written Questions & Comments		December 21, 2021	Confirmed
8. Final State Response to Written Questions & Comments		January 19, 2022	Confirmed
9. Response Deadline	2:00 p.m.	January 27, 2022	Confirmed
10. State Completion of Technical Response Evaluations		February 7, 2022	Confirmed
11. State Schedules Respondent Oral Presentation (Respondent Finalists only)		February 8, 2022	Confirmed
12. Respondent Oral Presentation (Respondent Finalists Only)	8 a.m. - 4:30 p.m.	February 14-16, 2022	Confirmed

13. Completion of Oral Presentation Evaluations		February 17, 2022	Confirmed
14. State Opening & Scoring of Cost Proposals		February 18, 2022	Confirmed
15. Negotiations (Optional to the State)		February 22 – 25, 2022	Updated
16. State Notice of Intent to Award Released and RFP Files Opened for Public Inspection		February 28, 2022	Updated
17. End of Open File Period		March 7, 2022	Updated
18. State sends contract to Contractor for signature		March 8, 2022	Updated
19. Contractor Signature Deadline	2:00 p.m.	March 14, 2022	Updated

2. State responses to questions and comments in the table below amend and clarify this RFP.

Any restatement of RFP text in the Question/Comment column shall NOT be construed as a change in the actual wording of the RFP document.

QUESTION / COMMENT	STATE RESPONSE
<p>1</p> <p>Respondent respectfully submits these “questions and comments” for the State’s consideration pursuant to the instructions contained in Amendment #1 (“Amendment #1”) to the Request for Proposals for Recordkeeping Services Relative to the State’s College Savings Plan and Achieving a Better Life Experience Program, RFP # 30901-49822 (“RFP”). Pursuant to the State’s response to Question/Comment #4 in Amendment #1, Respondent respectfully submits the below specific proposed revisions to the Pro Forma Contract for consideration by the State.</p> <p>Respondent understands, pursuant to the requirements in the RFP, that the State does not desire to negotiate contract terms after the procurement process is complete. Respondent is submitting proposed language that adheres closely to its current contract with the State or represents our ability to commit to certain provisions as of the date of this submission; however, Respondent respectfully requests that the State, pursuant to its discretion described in Section 5.3.5 of the RFP, consider allowing for limited revisions to the pro forma contract prior to Contract signing, in order to allow for the best mutually agreeable outcome for both the State and Respondent. Respondent believes this would allow for Respondent and the State to have meaningful</p>	<p>The State declines to make changes to the pro forma contract outside the question and comment periods provided during the RFP schedule of events. Engaging in negotiations of any kind outside of the written question and comment period(s) of the procurement period may prejudice the process as a whole; however, the State reserves the right, at its option, to conduct clarifications or negotiations with one or more of the respondents.</p> <p>For more detailed information, see the updated Schedule of Events above as well as the addition of Section 5.2.3. to the RFP, as shown in deletion item #16 below.</p>

QUESTION / COMMENT	STATE RESPONSE
<p>dialogue, including with Respondent's and the State's subject matter experts, as necessary, regarding important matters addressed in the Contract, such as information security and audits. Thank you for your consideration.</p>	
<p>2 Section A. SCOPE:</p> <ul style="list-style-type: none"> • Subsection A.2(1)(n). Maintenance of Participant Records. Pursuant to the State Response to Question/Comment 6 in Amendment #1, Contractor respectfully requests that this provision be revised as follows: <ul style="list-style-type: none"> “Monitoring changes in Applicable Laws and Rules as well as the State's policies and procedures and making any necessary changes in the Software to ensure compliance therewith in consultation with the State and, at the request of the State, reviewing and/or drafting related compliance documents, including, but not limited to, disclosure brochures;” 	<p>The State agrees with the proposed language. Accordingly, the language in Section A.2.(1).(n). of the Pro Forma Contract is amended as follows and shall read:</p> <p>Monitoring changes in Applicable Laws and Rules as well as the State's policies and procedures and making any necessary changes in the Software to ensure compliance therewith in consultation with the State and, at the request of the State, reviewing related compliance documents, including, but not limited to, disclosure brochures;</p> <p>See deletion item #3 below.</p>
<p>3</p> <p>Subsection A.2(7). Online Access by Legal Representatives, Investment Professionals, and Other Individuals. Contractor provides a portal allowing for online account access to TNStars by financial professionals; others authorized to act on an account are able to transact via appropriate forms or over the telephone, if authenticated. Should Contractor expand online access in the future, Contractor would make such expansion available for the Plans. Accordingly, Contractor respectfully proposes that this provision be revised as follows:</p> <p>“Online Access by <u>Legal Representatives, Investment Professionals, and Other Individuals.</u> The Contractor shall provide <u>Legal Representatives and</u> Investment Professionals with online access to <u>Plan-TNStars</u> accounts as permitted by <u>the respective Plan-TNStars</u> account owners, and as allowed by Applicable Laws and Rules. The levels of access provided to <u>Legal Representatives and</u> Investment Professionals shall be as follows: making contributions and withdrawals; viewing account information; maintaining account information; and transacting in an account or accounts. <u>Legal Representatives and</u> Investment Professionals shall have access through an online account owner self-service website portal that will allow them to have access to all accounts established by an account owner from a single log-on. The <u>account screens accessible via the</u> website portal shall be mobile-responsive and platform agnostic, the design of</p>	<p>The State requires that individuals with authority to act on behalf of an Account Owner (e.g., a conservator for an ABLE Account Owner) have online account access. The State agrees to make the following changes Subsection A.2.(6). and A.2.(7). to clarify these expectations.</p> <p>Subsection A.2.(6). is amended by adding the following language to the end of the subsection:</p> <p>“For purposes of the access described in this section, “Account Owner” shall include Legal Representatives, as defined in the applicable program’s disclosure brochure, and authorized agents, as permitted by Applicable Laws and Rules.”</p> <p>See deletion item #4 below.</p> <p>Subsection A.2.(7). is amended by deleting the subsection and replacing it with the following:</p> <p>“Online Access by Investment Professionals, and Other Individuals. The Contractor shall provide Investment Professionals with online access to Plan accounts as permitted by the respective Plan account owners, and as allowed by Applicable Laws and Rules. The levels of access provided to Legal Representatives and Investment Professionals</p>

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<p>which shall allow Legal Representatives and Investment Professionals easy access from all devices, including smartphones.</p> <p>For the purposes of this Contract, "Legal Representative" shall have the meaning set forth in the Applicable Laws and Rules, and "Investment Professional" is defined as registered investment advisors, registered broker dealers and their respective authorized staff members. For purposes of this Contract and with respect to the Contractor's provision of services relative to the ABLE TN Plan, the access described herein this Subsection (7) shall also be provided, in the same manner, to any individual who establishes a Plan account in accordance with the Applicable Laws and Rules. Account owners will be provided a separate log-on for account(s) in each Plan."</p>	<p>shall be as follows: making contributions and withdrawals; viewing account information; maintaining account information; and transacting in an account or accounts. Legal Representatives and Investment Professionals shall have access through an online account owner self-service website portal that will allow them to have access to all accounts established by an account owner from a single log-on. The website portal shall be mobile-responsive and platform agnostic, the design of which shall allow Legal Representatives and Investment Professionals easy access from all devices, including smartphones. For the purposes of this Contract, "Legal Representative" shall have the meaning set forth in the Applicable Laws and Rules, and "Investment Professional" is defined as registered investment advisors, registered broker dealers and their respective authorized staff members. For purposes of this Contract and with respect to the Contractor's provision of services relative to the ABLE TN Plan, the access described herein this Subsection (7) shall also be provided, in the same manner, to any individual who establishes a Plan account in accordance with the Applicable Laws and Rules. Account owners will be provided a separate log-on for account(s) in each Plan."</p> <p>See deletion item #5 below.</p>
<p>4 Subsection A.3. Current Client Communication Services. Pursuant to the State Response to Question/Comment 9 in Amendment #1, it is Contractor's understanding that Contractor would not be creating any trademarks or marketing materials for the State. In addition, Contractor has added proposed language to clarify that while Contractor would provide the means to send email communications, State would be responsible for the cost of such campaigns. Therefore, to avoid ambiguity, Contractor respectfully requests that this provision be revised as follows:</p> <p><u>"Current Client Communication Services.</u> The Contractor shall provide the State with the following communication services for current participants in consultation with the State relative to the Plans:</p> <p>(1) <u>Targeted and Personalized Communications.</u> The Contractor shall provide the method and functionality necessary for distributing targeted and personalized messages to Plan</p>	<p>The State agrees to make a portion of the requested changes. Subsection A.3. of the Pro Forma Contract is amended by deleting the subsection in its entirety and replacing it with the following:</p> <p>"A.3. <u>Current Client Communication Services.</u> If requested by the State, the Contractor shall provide the State with the following marketing related communication services for current participants in consultation with the State relative to the Plans:</p> <p>(1). <u>Targeted and Personalized Communication.</u> To encourage contributions to the Plans, the Contractor shall provide the method and functionality necessary for distributing targeted and personalized messages to Plan participants using various modes of electronic communication. The</p>

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<p>participants using various modes of communication. The State shall develop and supply the Contractor with the necessary information and content, including creative elements of the communication itself, for the targeted and personalized communications. Based on targeting criteria supplied by the State, the Contractor shall identify the Plan participant and/or group(s) of Plan participants and transmit the communications. The Contractor and the State shall mutually agree on the format to be used for the distribution of such communications.</p> <p>(2) Transfer of Rights of Communications. The Contractor agrees and does hereby transfer, assign, and convey to the State, without additional consideration therefor, all property rights, tangible and intangible, including State trademarks and copyrights, to all materials developed specifically for the State and not generally utilized by the Contractor in its recordkeeping business.</p> <p>(3)<u>(2)</u> <u>Communication Campaigns.</u> Com In order to promote the Plans, the Contractor shall assist in implementing the State’s annual current client communication strategy, including Communication Campaigns on topics including, but not limited to, the advantages of saving in the Plans; how to set up recurring contributions; how to invite family and friends to contribute through gifting; and applicable incentives. Occurring within at least one (1) week, three (3) weeks, and six (6) weeks of the Communication Campaign, the Contractor shall provide reporting of account activity, including, but not limited to, new contributions, new recurring contributions, and rollover contributions.</p> <p>(4)<u>(3)</u> <u>The State shall compensate Contractor for Contractor’s costs associated with distributing such messages and communications (e.g. emails).</u></p>	<p>State shall develop and supply the Contractor with the necessary information and content, including creative elements of the communication itself, for the targeted and personalized communications. Based on targeting criteria supplied by the State, which may include, but is not limited to, beneficiaries celebrating birthdays, accounts with low balances, and/or accounts with no recurring contributions established, the Contractor shall identify the Plan participant and/or group(s) of Plan participants and transmit the communication. The Contractor and the State shall mutually agree on the format to be used for the distribution of such communications. The costs associated with these services for which the State shall compensate the Contractor shall be based on a per-communication basis, regardless of the size or number of the targeted audience recipients and shall not include any of the Contractor’s transactional communication services.</p> <p><u>(2). Reporting.</u> Occurring within a mutually agreed upon timeline the Contractor shall provide reporting of account activity, including, but not limited to, new one-time contributions, new recurring contributions, and rollover contributions for Plan participant and/or group(s) of Plan participants included within a Targeted and Personalized Communication.”</p> <p>See deletion item #6 below.</p>

QUESTION / COMMENT	STATE RESPONSE				
	<p>The State amends Subsection C.3.(b) of the Pro Forma Contract by adding the following row to the table:</p> <table border="1" data-bbox="894 338 1463 997"> <thead> <tr> <th data-bbox="894 338 1170 447">Goods and Services Description</th> <th data-bbox="1170 338 1463 447">Amount (per compensable increment)</th> </tr> </thead> <tbody> <tr> <td data-bbox="894 447 1170 997">Current Client Communication Services as described in Section A.3. of the Pro Forma Contract (RFP Attachment 6.6)</td> <td data-bbox="1170 447 1463 997"> <p><u>[THIS WILL REFLECT A SINGLE COST-PER-COMMUNICATION REGARDLESS OF THE NUMBER OF RECIPIENTS; COSTS ASSOCIATED WITH TRANSACTIONAL COMMUNICATIONS SHOULD NOT BE INCLUDED IN THIS AMOUNT]</u></p> <p>_____ per communication</p> </td> </tr> </tbody> </table> <p>See deletion item #7 below.</p> <p>RFP Attachment 6.3. is amended by adding current client communication services as a new and separate cost item that will be weighted and evaluated separately and apart from the combined recordkeeping and administrative services.</p> <p>See deletion item #15 below and Exhibit A attached hereto.</p>	Goods and Services Description	Amount (per compensable increment)	Current Client Communication Services as described in Section A.3. of the Pro Forma Contract (RFP Attachment 6.6)	<p><u>[THIS WILL REFLECT A SINGLE COST-PER-COMMUNICATION REGARDLESS OF THE NUMBER OF RECIPIENTS; COSTS ASSOCIATED WITH TRANSACTIONAL COMMUNICATIONS SHOULD NOT BE INCLUDED IN THIS AMOUNT]</u></p> <p>_____ per communication</p>
Goods and Services Description	Amount (per compensable increment)				
Current Client Communication Services as described in Section A.3. of the Pro Forma Contract (RFP Attachment 6.6)	<p><u>[THIS WILL REFLECT A SINGLE COST-PER-COMMUNICATION REGARDLESS OF THE NUMBER OF RECIPIENTS; COSTS ASSOCIATED WITH TRANSACTIONAL COMMUNICATIONS SHOULD NOT BE INCLUDED IN THIS AMOUNT]</u></p> <p>_____ per communication</p>				
<p>5 Subsection A.5. IS Security Certification and Accreditation. Pursuant to the State Response to Question/Comment 10 in Amendment #1, as well as to clarify that (1) as Contractor maintains its own platform (i.e. the Software), such security audit obligations are not relevant to subcontractors, and (2) Contractor provides summaries of audit results, Contractor respectfully requests that this provision be revised as follows:</p>	<p>The state agrees with a portion of the proposed changes; accordingly, Subsection A.5. of the Pro Forma Contract is amended to read as follows:</p> <p><u>“IS Security Certification and Accreditation.</u> The State shall receive a summary of the results of security audits that are performed by a third-party on behalf of the Contractor that are pertinent to the Software provided that the Contractor may redact any information that</p>				

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<p>"IS Security Certification and Accreditation. The State, <u>upon request</u>, shall receive <u>a summary of</u> the results of any security audits that are performed by a third-party on behalf of the Contractor or its sub-contractors that are pertinent to the Software provided that the Contractor or its sub-contractors and may redact any information that may lead to the identity of other customers of the Contractor or its sub-contractors. The State may request that a third- party conduct a security audit of the applications according to the Federal Government program and guidelines (NIST Special Publication 800-37, Guide for the Security Certification and Accreditation of Federal Information Systems), <u>subject to the Contractor's agreement</u>. The cost of that effort (if undertaken) will be the responsibility of the State; however, should that effort result in errors or findings, it is the Contractor's responsibility to research and fix such items at the Contractor's discretion, provided that if a significant security flaw is identified, the Contractor shall be responsible for researching and fixing such flaw."</p>	<p>may lead to the identity of other customers of the Contractor. The State may request that a third- party conduct a security audit of the applications according to the Federal Government program and guidelines (NIST Special Publication 800-37, Guide for the Security Certification and Accreditation of Federal Information Systems), subject to the Contractor's agreement. The cost of that effort (if undertaken) will be the responsibility of the State; however, should that effort result in errors or findings, it is the Contractor's responsibility to research and fix such items at the Contractor's discretion, provided that if a significant security flaw is identified, the Contractor shall be responsible for researching and fixing such flaw."</p> <p>See deletion item #8 below.</p>
<p>6 Subsection A.6. Back-up and Disaster Recovery. Pursuant to the State Response to Question/Comment 11 in Amendment #1, Contractor respectfully requests that the second paragraph of this provision be revised as shown below to clarify (1) the timing of the Disaster Recovery Test, (2) that the Disaster Recovery test does not mirror data but rather involves a cut-over to the backup data center and access to all needed applications, and (3) that the test involves only the Contractor's system, as sole recordkeeper for the Plans.</p> <p>"The Contractor and the Subcontractor(s) shall perform at least one Disaster Recovery Test every three hundred sixty five (365) days<u>annually</u>. 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 <u>involve cutting over to the backup data center, use actual State Data Sets that mirror production data,</u> and success shall be defined as the Contractor verifying that the Contractor can meet the State's RPO and RTO requirements. A "Data Set" is defined as a collection of related sets of information that is composed of separate elements but can be manipulated as a unit by a computer.—The Contractor shall provide written confirmation to the State after each Disaster Recovery Test that its Disaster Recovery Capabilities meet the RPO and RTO requirements."</p>	<p>The State agrees to the proposed changes. Accordingly, Section A.6. of the Pro Forma contract shall read as follows:</p> <p>"The Contractor shall perform at least one Disaster Recovery Test annually. 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 involve cutting over to the backup data center, and success shall be defined as the Contractor verifying that the Contractor can meet the State's RPO and RTO requirements. The Contractor shall provide written confirmation to the State after each Disaster Recovery Test that its Disaster Recovery Capabilities meet the RPO and RTO requirements."</p> <p>See deletion item #9 below.</p>

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<p>7 Subsection A.9. Transition of Services Upon Termination. Pursuant to the State Response to Question/Comment 13 in Amendment #1, Contractor respectfully requests that the third paragraph of this provision be revised as proposed below to clarify that the Contractor would continue to receive the fees and charges associated with the services Contractor performs during a transition period.</p> <p>“Each party shall be responsible for its own expenses to facilitate the transition; <u>provided that during the transition phase, the State shall continue to pay Contractor the agreed upon fees for the services as set forth in this Contract.</u>”</p>	<p>The State respectfully declines this request. The State notes that any and all compensation owed to the contractor is based upon the payment methodology in Section C. of the Pro Forma Contract.</p>
<p>8 Subsection A.11.(7). Reports for Recordkeeping Services. Contractor respectfully requests that this provision be revised as proposed below to clarify that Contractor would be able to provide benchmark reporting using anonymous data relating to plans it services.</p> <p>“Such other reports as may be necessary and available to accomplish the Contractor's duties hereunder or required by the State, including, but not limited to, those containing any industry benchmarking or benchmarking for plans <u>Contractor services</u> of similar demographics, assets, and accounts as TNStars® and ABLE TN.”</p>	<p>The State agrees with the proposed language. Accordingly, the language in Section A.11.(7). of the Pro Forma Contract is amended as follows and shall read:</p> <p>Such other reports as may be necessary and available to accomplish the Contractor's duties hereunder or required by the State, including, but not limited to, those containing any industry benchmarking or benchmarking for plans Contractor services of similar demographics, assets, and accounts as TNStars® and ABLE TN.</p> <p>See deletion item #10 below.</p>
<p>9 Subsection A.13. Service Organization Control (SOC) Report. Contractor acknowledges that per the State Response to Question/Comment 14 in Amendment #1, the State declined Contractor's request to exclude the obligation to provide subcontractor SOC reports. While Contractor can continue to provide or facilitate provision of the custodian's SOC 1 report, Contractor cannot commit to providing reports of other vendors and does not believe they would be of primary relevance to the State as Contractor provides its own platform. However, Contractor would be pleased to discuss with the State its vendor oversight process pursuant to which Contractor receives assurances from vendors regarding various controls. In addition, as Contractor indicated in Question/Comment 14, Contractor cannot commit to a specific course of corrective action to the State as this would be determined at an organizational level. Finally, although Contractor appreciates that SOC reports are confidential under the Tennessee Open Records Act, auditors and organizations may have specific protocols relating to confidentiality prior to allowing</p>	<p>The State agrees with a portion of the proposed changes; however, as stated in Question B.20 of the RFP, SOC reports are confidential under the Tennessee Open Records Act. Accordingly, Subsection A.13. of the Pro Forma Contract is amended to read as follows:</p> <p><u>“Service Organization Control (SOC) Report.</u> On an annual basis, the Contractor shall provide the State with a System and Organization Controls (“SOC) for service organizations report on Controls at a Service Organization Relevant to User Entities’ Internal Control over Financial Reporting Type II report (“SOC 1, Type II”) and a report on Controls at a Service Organization Relevant to Security, Availability, Processing Integrity, Confidentiality or Privacy Type II (“SOC 2, Type II”), relevant to the services provided under this Contract. The SOC 1, Type II and SOC 2, Type II shall be prepared by an independent auditing firm in accordance with the standards of the American Institute of Certified Public</p>

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<p>third party access to a SOC report. Therefore, Contractor respectfully requests that the State consider the following proposed revised provision:</p> <p>“Service Organization Control (SOC) Report. On an annual basis, the Contractor shall provide the State with a System and Organization Controls (“SOC) for service organizations report on Controls at a Service Organization Relevant to User Entities’ Internal Control over Financial Reporting Type II report (“SOC 1, Type II”) and a report on Controls at a Service Organization Relevant to Security, Availability, Processing Integrity, Confidentiality or Privacy Type II (“SOC 2, Type II”), relevant to the services provided under this Contract. The SOC 1, Type II and SOC 2, Type II shall be prepared by an independent auditing firm in accordance with the standards of the American Institute of Certified Public Accountants (“AICPA”), or similar international standard(s), at the Contractor’s own expense. The Contractor shall provide the State with the Contractor’s SOC 1, Type II and SOC 2, Type II reports within 30 days from when the independent auditing firm provides the audit report to the Contractor. The Contractor, <u>at its determination</u>, shall submit corrective action plans to the State correct for <u>any material</u> issues included in the audit report within 30 days after the independent auditing firm provides the audit report to the Contractor. If the scope of the most recent report does not include all of the State’s current fiscal year, upon request from the State, the Contractor shall provide to the State a letter from the Contractor stating whether the Contractor made any material changes to their control environment since the prior audit and, if so, whether the changes, in the opinion of the Contractor, would negatively affect the auditor’s opinion in the most recent audit report (“Bridge Letter”). The Contractor must also verify that <u>all its Subcontractors-Subcontractor that provides custodian services and any other service providers, including data center vendors,</u> successfully completes and provides to the State an annual SOC 1, Type II and SOC 2, Type II 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. The <u>Parties acknowledge that Subcontractors may Contractor will provide or cause to be provided the reports required by this section without requiring Contractor and/or</u> the State to execute <u>any</u> other agreements or agree to <u>any</u> additional</p>	<p>Accountants (“AICPA”), or similar international standard(s), at the Contractor’s own expense. The Contractor shall provide the State with the Contractor’s SOC 1, Type II and SOC 2, Type II reports within 30 days from when the independent auditing firm provides the audit report to the Contractor. The Contractor, at its determination, shall correct for material issues included in the audit report. If the scope of the most recent report does not include all of the State’s current fiscal year, upon request from the State, the Contractor shall provide to the State a letter from the Contractor stating whether the Contractor made any material changes to their control environment since the prior audit and, if so, whether the changes, in the opinion of the Contractor, would negatively affect the auditor’s opinion in the most recent audit report (“Bridge Letter”). The Contractor must also verify that all Subcontractors and any other service providers, including data center vendors, successfully complete and provide to the State an annual SOC 1, Type II and SOC 2, Type II 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.”</p> <p>See deletion item #11 below.</p>

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<p>confidentiality obligations <u>prior to providing its SOC report(s).</u>"</p>	
<p>10 Section C. Payment Terms and Conditions.</p> <ul style="list-style-type: none"> • Subsection C.6 Payment of Invoice. Contractor respectfully requests that this Subsection be revised as proposed below to include language regarding timing of State's payment of the invoice. <p><u>"Payment of Invoice.</u> 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. <u>Payment by the State is due within 45 days of invoice receipt to the extent practicable. However, Contractor acknowledges that certain amendments to the Contract (e.g., price or name change, or term extension) may delay payment of invoices; State will promptly notify Contractor of any anticipated delays, and the Parties agree to work expeditiously to resolve such delays, to the extent practicable."</u></p>	<p>The State respectfully declines this request. This language is contained in the State-standard contract template.</p>
<p>11 Section D. Mandatory Terms and Conditions.</p> <ul style="list-style-type: none"> • Subsection D.4. Subject to Funds Availability. Contractor acknowledges the State Response to Question/Comment 16 in Amendment #1 indicating that Contractor would be entitled to compensation for services rendered as of the termination date. Contractor respectfully requests that this subsection be revised as proposed below to include language clarifying that Contractor would be entitled to compensation for services rendered during a post-termination transition period. <p><u>"Subject to Funds Availability.</u> 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</p>	<p>The State notes that Section D.4. of the Pro Forma Contract already provides that the Contractor shall be entitled to compensation for all satisfactory and authorized services completed as of the termination date.</p>

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<p>as of the termination date <u>and for services rendered during a post-termination transition period</u>. 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, <u>however Contractor may recover damages equal to compensation for services rendered.</u>”</p>	
<p>12 Subsection D.5. Termination for Convenience. Contractor acknowledges the State Response to Question/Comment 16 in Amendment #1 indicating that the State declines to modify the termination for convenience. Contractor respectfully requests that this subsection be revised as proposed below to include language clarifying that Contractor would be entitled to compensation for services rendered during a post-termination transition period.</p> <p><u>“Termination for Convenience.</u> 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 <u>and for services rendered during a post-termination transition period</u>. 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.”</p>	<p>The State respectfully declines to modify the termination for convenience language. The State notes that Section D.4. of the Pro Forma Contract already provides that the Contractor shall be entitled to compensation for all satisfactory and authorized services completed as of the termination date.</p>
<p>13 Subsection D.6. Termination for Cause. Contractor respectfully requests that this subsection be revised as proposed below to include language (1) clarifying that Contractor would be entitled to a notice and cure period in the event the State seeks to terminate the Contract for cause and (2) allowing for Contractor’s right to terminate the Contract in the event of the State’s material breach of its payment obligations.</p> <p><u>“Termination for Cause.</u> 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 <u>provide written notice to Contractor specifying the Breach</u></p>	<p>The State agrees to modify this section. Accordingly, the language in Section D.6. of the Pro Forma Contract is amended as follows and shall read:</p> <p><u>Termination for Cause.</u> If a Party (“Breaching Party”) fails to properly perform its obligations under this Contract, or if a Party materially violates any terms of this Contract (“Breach Condition”), the other Party (“Non-breaching Party”) may provide written notice to the Breaching Party specifying the Breach Condition. If within thirty (30) days of notice, the Breaching Party has not cured the Breach Condition, the Non-breaching Party may terminate the Contract. In the event the Non-</p>

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<p><u>Condition. If within thirty (30) days of notice, the Contractor has not cured the Breach Condition, the State shall</u> 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.</p> <p><u>If the State fails to properly perform its obligations (e.g., payment) under this Contract in a timely or proper manner ("Breach Condition"), and such failure is not cured within sixty (60) calendar days (or a longer period in accordance with Subsection C.6) after the Contractor's notice to the State of the breach, or such longer period as the Contractor may specify in its notice, the Contractor shall have the right to terminate the Contract."</u></p>	<p>breaching Party is the State, the State may withhold payments in excess of compensation for completed services or provided goods. The Breaching Party shall not be relieved of liability to the Non-breaching Party for damages sustained by virtue of any breach of this Contract, and the Non-breaching Party may seek other remedies allowed at law or in equity for breach of this Contract.</p> <p>See deletion item #12 below.</p>
<p>14 Subsection D.9. Nondiscrimination. Contractor respectfully requests that this subsection be revised as proposed below to include language clarifying that Contractor would provide proof of its nondiscrimination policies to comply with this obligation.</p> <p><u>"Nondiscrimination.</u> The Contractor hereby agrees, warrants, and assures that no person shall be excluded from participation in, be denied benefits of, or be otherwise subjected to discrimination in the performance of this Contract or in the employment practices of the Contractor on the grounds of handicap or disability, age, race, creed, color, religion, sex, national origin, or any other classification protected by federal or state law. The Contractor shall, upon request, show proof of <u>Contractor's</u> nondiscrimination <u>policies</u> and shall post in conspicuous places, available to all employees and applicants, notices of nondiscrimination."</p>	<p>The State acknowledges the respondent will provide proof of its nondiscrimination policies. The State, however, respectfully declines to modify this provision. This language is used statewide to satisfy the Central Procurement Office's non-discrimination requirement pursuant to Tenn. Comp. R. & Regs. 0690-03-01-.17(2)(d).</p>
<p>15 Subsection D.10.b. and Subsection D.10.c Prohibition of Illegal Immigrants. Contractor respectfully requests that paragraph b of this Subsection be revised as proposed below to clarify that Contractor will obtain additional attestations from Subcontractors upon the State's request. Contractor further respectfully requests that paragraph c. of this subsection be revised as proposed below to clarify that Contractor can make its process and policies relating to compliance with immigration laws available to the State for review once per year upon the State's</p>	<p>The State respectfully declines to modify this provision. Similar to the State's response immediately above, the language in this provision is used statewide to satisfy the Central Procurement Office's requirement pursuant to Tenn. Comp. R. & Regs. 0690-03-01-.17(2)(e).</p>

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<p>reasonable request, but Contractor does not provide personnel records for privacy reasons.</p> <p>“b. Prior to the use of any subcontractor in the performance of this Contract, and, <u>upon the State's request</u> 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.</p> <p>c. The Contractor shall maintain records for all personnel used in the performance of this Contract. Contractor's <u>process for compliance with federal immigration laws records</u> shall be subject to review and random inspection <u>no more than once in a twelve month period</u> at any reasonable time upon reasonable notice by the State, <u>provided such inspection does not violate applicable state laws or regulations.</u>”</p>	
<p>16 Subsection D.11 Records. Contractor respectfully requests that this subsection be revised as proposed below to include language clarifying that Contractor can make its records available to the State for review once per year and during business hours.</p> <p>“<u>Records.</u> 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, <u>during business hours and no more frequently than once per year,</u> and upon reasonable notice by the State, the Comptroller of the Treasury, or their duly appointed representatives. The financial statements, <u>if any,</u> shall be prepared in accordance with generally accepted accounting principles.”</p>	<p>The State respectfully declines this request. The State acknowledges that the provision already requires the State to be reasonable in its requests for review.</p>
<p>17 Subsection D.12. Monitoring and Subsection D.13. Progress Reports. Contractor respectfully requests that these subsections be revised as proposed below to clarify that such requests and activities by the State would be reasonable in nature.</p> <p>D.12. <u>Monitoring.</u> The Contractor's activities conducted and records maintained pursuant to this Contract shall be subject to <u>reasonable</u></p>	<p>The State affirms that any monitoring and/or requests for progress reports as requested under these provisions will be done reasonably. Therefore, the State respectfully declines this request.</p>

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<p>monitoring and evaluation by the State, the Comptroller of the Treasury, or their duly appointed representatives.</p> <p>D.13.<u>Progress Reports</u>. The Contractor shall submit brief, periodic, progress reports to the State as <u>reasonably</u> requested.</p>	
<p>18 Subsection D.18. Limitation of Contractor's Liability. Contractor respectfully submits that this subsection be modified as proposed below to clarify that Contractor's liability would exclude consequential type damages and that Contractor would not be liable for losses arising from the acts, omissions or instructions of the State and its service providers.</p> <p><u>"Limitation of Contractor's Liability.</u> 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. Except as set forth below, in no event will the Contractor be liable to the State or any other party for any lost revenues, lost profits, loss of business, decrease in the value of any securities or cash position, time, goodwill, or any 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, unless such damages are insured by the insurance coverages required by this Contract or would have been covered had the required insurance been purchased or maintained. Furthermore, Contractor shall have no liability or indemnification obligations for any losses arising out of acts or omissions or instructions of the State, its officers, agents, employees, or contractors. -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 <u>pertaining to Contractor's intellectual property</u>; (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."</p>	<p>The State respectfully declines to modify this provision. The State has already modified this provision to the extent permissible within the State-standard contract.</p>
<p>19 Subsection D.19. Hold Harmless. Contractor respectfully requests that this subsection be revised as proposed below, to clarify that while Contractor agrees to indemnify the State for State losses caused by Contractor as</p>	<p>The State respectfully declines this request. This language is found within the most recently updated State standard contract template.</p>

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<p>described in this Subsection, Contractor cannot agree to a broad liability for attorney fees in order for the State to enforce the Contract.</p> <p><u>“Hold Harmless.</u> 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 <u>intentional</u> acts, omissions, or negligence on the part of the Contractor, its employees, or any person acting for or on its or their behalf relating to this Contract. The Contractor further agrees it shall be liable for the reasonable cost of attorneys’ fees, court costs, expert witness fees, and other litigation expenses for the State to enforce the terms of this Contract.”</p>	
<p>20 Subsection D.20. HIPAA Compliance. Contractor respectfully requests that this subsection be revised as proposed below, to clarify that Contractor will comply with privacy laws applicable to Contractor in its provision of the services but will not be collecting information that would subject it to HIPAA or HITECH.</p> <p><u>“HIPAA Compliance.</u> The State and Contractor, <u>to the extent applicable,</u> 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.</p> <p>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.</p> <p>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.</p> <p>c. The State and the Contractor, <u>if and to the extent applicable,</u> 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.</p> <p>d. The Contractor will indemnify the State and hold it harmless for any violation by the Contractor or its</p>	<p>The State notes that this provision is state standard and only applies if the respondent collects information subject to HIPPA or HITECH; however, regardless of the possible inapplicability this provision, the State respectfully declines to modify this provision.</p>

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<p>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.</p> <p>e. <u>The Contractor represents and warrants that as of the Effective Date of this Contract performance under this Contract does not require compliance with HIPPA and HITECH. Additionally, no health records shall be maintained by the Contractor.</u></p>	
<p>21 Subsection D.32. Insurance. Contractor respectfully requests that this subsection be revised as proposed below to clarify (1) that while Contractor would be pleased to evidence insurance coverage through certificates of insurance, Contractor, as a matter of corporate policy does not disseminate insurance policies outside the organization; (2) while Contractor's cyber policy covers data breaches, it does not include a cyber errors and omissions policy, as that type of policy is meant for providers of technology services directly to clients, whereas Contractor allows for access to its technology; and (3) Contractor maintains insurance at the corporate level in order to obtain the most favorable coverage and cannot agree to allow the State to unilaterally amend the insurance requirements or to approve deductible amounts.</p> <p><u>"Insurance.</u> Contractor shall maintain insurance coverage as specified in this Section. The State reserves the right to <u>reasonably request that Contractor</u> amend or require additional insurance coverage, coverage amounts, and endorsements required under this Contract, <u>subject to Contractor's agreement to make such requested change.</u> Contractor's failure to maintain or submit evidence of insurance coverage, as required, <u>is may be</u> a material breach of this Contract <u>if Contractor fails to cure such failure in accordance with Subsection D.6 Termination for Cause.</u> If Contractor loses insurance coverage, fails to renew coverage, or for any reason becomes uninsured during the Term, Contractor shall <u>immediately-promptly</u> 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</p>	<p>The State agrees to a portion of these suggested modifications. Accordingly, the language in Section D.32. of the Pro Forma Contract is amended as shown below.</p> <p>(d) Technology Professional Liability (Errors & Omissions)/Cyber Liability Insurance</p> <p>The Contractor shall maintain technology professional liability (errors & omissions)/cyber liability insurance appropriate to the Contractor's profession in an amount not less than ten million dollars (\$10,000,000) per occurrence or claim and ten million dollars (\$10,000,000) annual aggregate, covering all acts, claims, errors, omissions, negligence, infringement of intellectual property (including copyright, patent and trade secret for multimedia liability); network security and privacy risks, including but not limited to unauthorized access, failure of security, information theft, damage to destruction of or alteration of electronic information, breach of privacy perils, wrongful disclosure and release of private information, collection, or other negligence in the handling of confidential information, and including coverage for related regulatory fines, defenses, and penalties.</p> <p>Such coverage shall include data breach response expenses, in an amount not less than ten million dollars (\$10,000,000) and payable whether incurred by the State or Contractor, including but not limited to consumer notification, whether or not required by law, computer forensic investigations, public relations and crisis management firm fees, credit file or identity monitoring or remediation services and expenses in the performance of services for the State or on behalf of the State hereunder.</p> <p><u>e. Professional Liability Insurance.</u></p>

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<p>(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 <u>(with the exception of professional liability)</u>. 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.</p> <p>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 <u>certificate of insurance</u> 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.</p> <p>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 TDCl (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 <u>insurance broker</u>. The COI must list the State of Tennessee – CPO Risk Manager, 312 Rosa L. Parks Ave., 3rd floor Central</p>	<p><u>Any professional liability insurance policy shall have a limit not less than two million dollars (\$2,000,000) per claim and two million dollars (\$2,000,000) in the aggregate.”</u></p> <p>See also deletion item #13 below.</p>

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<p>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 <u>other appropriate levels of coverage</u>. 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 <u>may be</u> a material breach of this Contract <u>if Contractor fails to cure such failure in accordance with Subsection D.6 Termination for Cause</u>. If Contractor self-insures, then a COI will not be required to prove coverage. Instead Contractor shall provide a certificate of self-insurance or a letter, on Contractor's letterhead, detailing its coverage, policy amounts, and proof of funds to reasonably cover such expenses. The State reserves the right to require complete copies of all required insurance policies, including endorsements required by these specifications, at any time.</p> <p>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.</p> <p>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</p>	

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<p>Contractor arising under this Contract. The Contractor shall obtain and maintain, at a minimum, the following insurance coverages and policy limits.</p> <p>a. Commercial General Liability (“CGL”) Insurance</p> <p>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).</p> <p>2) 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.</p> <p>b. Workers’ Compensation and Employer Liability Insurance</p> <p>1) For Contractors statutorily required to carry workers’ compensation and employer liability insurance, the Contractor shall maintain:</p> <p>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.</p> <p>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:</p>	

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<ul style="list-style-type: none"> 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. <p>c. Automobile Liability Insurance</p> <ul style="list-style-type: none"> 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. <p>d. Technology Professional Liability (Errors & Omissions)Cyber Liability Insurance</p> <ul style="list-style-type: none"> 1) The Contractor shall maintain technology professional liability (errors & omissions)cyber liability insurance appropriate to the Contractor's profession in an amount not less than ten million dollars (\$10,000,000) per occurrence or claim and ten million dollars (\$10,000,000) annual aggregate, covering all acts, claims, errors, omissions, negligence, infringement of intellectual property (including copyright, patent and trade secret <u>for multimedia liability</u>); network security and privacy risks, including but not limited to unauthorized access, failure of security, information theft, damage to destruction of or alteration of electronic information, breach of privacy perils, wrongful 	

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<p>disclosure and release of private information, collection, or other negligence in the handling of confidential information, and including coverage for related regulatory fines, defenses, and penalties.</p> <p>2) Such coverage shall include data breach response expenses, in an amount not less than ten million dollars (\$10,000,000) and payable whether incurred by the State or Contractor, including but not limited to consumer notification, whether or not required by law, computer forensic investigations, public relations and crisis management firm fees, credit file or identity monitoring or remediation services and expenses in the performance of services for the State or on behalf of the State hereunder.</p> <p><u>e. Professional Liability Insurance.</u></p> <p><u>Any professional liability insurance policy shall have a limit not less than two million dollars (\$2,000,000) per claim and two million dollars (\$2,000,000) in the aggregate.”</u></p>	
<p>22 Subsection D.34. Confidentiality of Records. Contractor acknowledges that per the State Response to Question/Comment 26, the State declines to modify this language. Contractor respectfully requests that additional language be added to this subsection in a separate paragraph as proposed below to allow Contractor’s confidential information to be protected from public disclosure to the extent permitted by the State’s open records laws.</p> <p><u>“Confidentiality of Records.</u> 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</p>	<p>This is language from the State’s standard required contract terms. Such records are subject to the State’s open records laws, which will govern what information (if any) is confidential. As stated in Question B.20 of the RFP, SOC reports are confidential under the Tennessee Open Records Act. Accordingly, the State respectfully declines this request.</p>

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<p>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.</p> <p><u>The State shall keep confidential such information that the Contractor has designed as confidential to the extent permissible by State law.</u></p> <p>The obligations set forth in this Section shall survive the termination of this Contract.”</p>	
<p>23 Section E. Special Terms and Conditions</p> <p>Subsection E.2. Contractor Commitment to Diversity (and related RFP Attachment 6.2 – Section B: General Qualifications & Experience – Item B.15). Although Contractor is committed to diversity as an organization, Contractor is unable, at this time, to contractually commit that subcontractors involved in the performance of this Contract qualify as small business enterprises and businesses owned by minorities, women, service-disabled veterans, and persons with disabilities. However, should this change in the future, Contractor would be pleased to provide requested reporting to the State. Accordingly, Contractor respectfully requests that this subsection be revised as proposed below.</p> <p><u>“Contractor Commitment to Diversity.</u> The Contractor shall comply with and make reasonable business efforts to exceed the commitment to diversity represented by the Contractor’s Response to RFP Attachment 6.2., Section B, Item B.15. and resulting in this Contract.</p> <p>The Contractor shall assist the State in monitoring the Contractor’s performance of this commitment by providing, as requested upon request, a monthly report of participation in the performance of this Contract by small business enterprises and businesses owned by minorities, women, service-disabled veterans, and persons with disabilities. Such reports shall be provided to the State of Tennessee Governor’s Office of Diversity Business Enterprise in the TN Diversity Software available online at: https://tn.diversitysoftware.com/FrontEnd/StartCertification.asp?TN=tn&XID=9810.”</p>	<p>The State acknowledges this response. The language in Section E.2. of the Pro Forma Contract is State-standard and required. Accordingly, the State respectfully declines this request.</p>
<p>24 Subsection E.5. (or E.4. as re-numbered per Amendment #1) Work Papers Subject to Review. Contractor acknowledges the State Response to</p>	<p>The State respectfully declines this request because this is language required by the State Comptroller’s office. The State, however,</p>

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<p>Question/Comment 15 in Amendment #1 indicating that this provision is required by the State Comptroller's office. Contractor respectfully requests that the below proposed paragraph be added to clarify the scope of this obligation.</p> <p><u>"Work Papers Subject to Review.</u> The Contractor shall make all audit, accounting, or financial analysis work papers, notes, and other documentation available for review by the Comptroller of the Treasury or his representatives, upon request, during normal working hours either while the analysis is in progress or subsequent to the completion of this Contract.</p> <p><u>The State acknowledges that review of such documentation is limited to those documents prepared specifically for the State in connection with Contractor's provision of services under this Contract."</u></p>	<p>acknowledges that its review of contractor's work papers will not exceed the scope of the services provided under the contract.</p>
<p>25 Subsection E.7. (or E.6. as re-numbered per Amendment #1) Intellectual Property Indemnity. Contractor respectfully requests that the first paragraph of this subsection be modified as proposed below to clarify the scope of Contractor's indemnity as well Contractor's obligation regarding defense of a suit. In addition, Contractor respectfully proposes that the second and third paragraphs of this section be deleted as they are appropriate for organizations that provide technology to customers for their use (e.g. software as a service) but not applicable to the access to Contractor's recordkeeping platform that Contractor allows the State under its Contract.</p> <p><u>"Intellectual Property Indemnity.</u> 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 third party claims or suits which may be brought against the State concerning or arising out of any claim that the Software provided by the Contractor infringes of an alleged patent, copyright, trade secret or other intellectual property infringement of a third party. In any such claim or action brought against the State, the Contractor shall satisfy defend and indemnify the State against any such claims for the amount of any settlement or final judgment, and the Contractor shall be responsible for all reasonable legal or other fees or expenses incurred by the State arising from any such claim. Provided, (a) tThe State shall give the</p>	<p>The State agrees to modify this section. Accordingly, the language in Section E.7. of the Pro Forma Contract is amended as follows and shall read:</p> <p>"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."</p> <p>See deletion item #14 below.</p>

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<p>Contractor <u>prompt</u> 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, <u>(b) the Contractor shall have the sole control of the defense of any action or suit, and all negotiations for settlement and compromise, and (c) the State shall reasonably cooperates with Contractor in its defense or settlement of the suit or claim. The State shall have the right to be kept reasonably informed of the progress of the defense or settlement negotiations, to have its recommendations considered and/or to employ, at its own expense, counsel of its own choosing to assist therein, all without prejudice to Contractor's sole control.</u> 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.</p> <p>In addition to the above indemnity, if the State's use of any deliverable, or any portion thereof, provided under this Contract, is or is likely to be enjoined by order of a court of competent jurisdiction as such an infringement or unauthorized use, the Contractor, at its expense, shall: (x) procure for the State the continued use of such deliverable; (y) replace such deliverable with a non-infringing counterpart; or (z) modify such deliverable so it becomes non-infringing; provided that, if (y) or (z) is the option chosen by the Contractor, the replacement or modified deliverable must be capable of performing substantially the same function. Notwithstanding the foregoing, the State retains the right to terminate the Contract in accordance with Section D.6 hereunder in the event of such infringement or unauthorized use, and any such exercise of these allowable options by Contractor shall not relieve Contractor of its indemnity obligations under this Section.</p> <p>The foregoing indemnity does not apply to the extent that the infringement arises from the State's: (i) use of the deliverable not in accordance with instructions, documentations, or specifications ("Misuse"); (ii) alteration, modification or revision of the Deliverables not expressly authorized by the Contractor ("Alteration"); (iii) failure to use or implement corrections or enhancements to the Deliverables</p>	

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<p>made available by the Contractor to the State at no additional cost to the State, except where such failure to use or implement corrections or enhancements is a result of State's termination in accordance with the preceding paragraph; or (iv) combination of the Deliverables with materials not provided, specified, or approved by the Contractor."</p>	
<p>26 Subsection E.8. (or E.7 as re-numbered per Amendment #1) Personally Identifiable Information. Contractor respectfully requests that the State modify this provision as proposed below to clarify Contractor's obligations with respect to protection of personally identifiable information.</p> <p><u>"Personally Identifiable Information.</u> 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, <u>as it relates to its performance hereunder,</u> it shall not do or omit to do anything which would cause the State to be in breach of <u>any applicable</u> 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</p>	<p>The State respectfully declines this request. It is commercially reasonable to expect the contractor to alert the State of unauthorized access to PII within twenty-four hours.</p>

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<p>confidentiality of PII and Contractor shall, and cause its employees, agents and representatives to, comply with all reasonable requests or directions from the State to enable the State to verify or ensure that Contractor is in full compliance with its obligations under this Contract in relation to PII. Upon termination or expiration of the Contract or at the State's direction at any time in its sole discretion, whichever is earlier, Contractor shall immediately either return <u>(in a medium mutually agreed upon by the Parties)</u> to the State any and all PII which it has received under this Contract and or shall destroy <u>all such records, at the request of the State and subject to Applicable Law and Rules. The State acknowledges that Contractor may retain certain records, of such including PII, in order to assist the State with transition, and as may be further required by the applicable law and Contractor's retention policies.</u></p> <p>The Contractor shall report to the State any instances <u>requiring State notification under applicable State statute</u>, 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<u>forty-eight (2448)</u> 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, <u>subject to applicable State data privacy laws and</u> at the sole discretion of the State, shall provide no cost credit monitoring services for individuals whose PII was affected by the Unauthorized Disclosure. The Contractor shall bear the cost of notification to all individuals affected by the Unauthorized Disclosure, including individual letters and public notice. The remedies set forth in this Section are not exclusive and are in addition to any claims or remedies available to this State under this Contract or otherwise available at law. The obligations set forth in this Section shall survive the termination of this Contract."</p>	
<p>27 Subsection E.10. (or E.9. as re-numbered per Amendment #1) Contractor Hosted Services Confidential Data, Audit, and Other Requirements. Contractor acknowledges the State Response to Question/Comment 26 in Amendment #1. Contractor respectfully requests the State to further modify this subsection as proposed below to align these requirements with Contractor's internal</p>	<p>The State respectfully declines this request. However, the State offers the following clarifications: (1) if a contractor's processing environment containing confidential state data is subject to an annual engagement by a CPA firm, the State will not seek pre-approval of the SOC audit control objectives; and (2) if the State requests</p>

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<p>procedures. Contractor respectfully submits that while it has robust procedures and controls in place designed to protect account owner and other confidential information, such procedures and controls are applied consistently across our organization and cannot be specifically customized. While Contractor would be pleased to discuss with the State the assessments and testing Contractor performs on its systems, as well as the controls we have in place, Contractor cannot agree to allow specific audits or testing of our systems.</p> <p><u>“Contractor Hosted Services Confidential Data, Audit, and Other Requirements.”</u></p> <p>(1). “Confidential State Data” is defined as <u>personal data contained in a Plan account (e.g. name, address, bank account numbers, social security number, date of birth)</u> deemed confidential by State or Federal statute or regulation. The Contractor shall protect Confidential State Data as follows:</p> <p>(a). The Contractor shall ensure that all Confidential State Data is housed in the continental United States, inclusive of backup data.</p> <p>(b). 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 <u>or another widely used industry standard.</u></p> <p>(c). The Contractor and the Contractor’s processing environment containing Confidential State Data shall either (1) be in accordance with at least one of the following security standards: (i) International Standards Organization (“ISO”) 27001; (ii) Federal Risk and Authorization Management Program (“FedRAMP”); or (2) be subject to an annual engagement by a CPA firm in accordance with the standards of the American Institute of Certified Public Accountants (“AICPA”) for a System and Organization Controls for service organizations (“SOC”) Type II audit. The State shall approve the SOC audit control objectives.—No additional funding shall be allocated for these certifications, authorizations, or audits as these are included in the Maximum Liability of this Contract.</p> <p>(d). The Contractor must annually perform Penetration Tests and Vulnerability Assessments against its Processing Environment. “Processing</p>	<p>copies of confidential state data held by the contractor, the state will do so in a commercially reasonable manner. As for the State Comptroller auditing requirements, the State Comptroller’s office requires strict standards as they relate to data integrity and audit rights.</p>

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<p>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.</p> <p>“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 provide the State upon request with a summary of the results of Penetration Tests and Vulnerability Assessments on the Processing Environment.</p> <p>(e). Upon State request<u>termination of this Contract, and in connection with a transition plan,</u> the Contractor shall provide a copy of all Confidential State Data it holds. The Contractor shall provide such data on media and in a format determined by the State<u>mutually agreeable by the Parties.</u></p> <p>(f). Upon termination of this Contract and in consultation with the State, the Contractor, <u>if required by applicable laws and rules,</u> 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 <u>or another widely used industry standard.</u> The Contractor shall provide a written confirmation of destruction to the State within ten (10) business days after destruction. <u>Notwithstanding the foregoing, Contractor shall be permitted to retain Confidential State Data to the extent required to comply with applicable legal requirements.</u></p> <p>(2). Minimum Requirements</p> <p>(a) The Contractor and all data centers used by the Contractor to host State data, including those of all Subcontractors,<u>will strive to</u> comply with the State’s Enterprise Information Security Policies <u>in place as of the Effective Date, as amended periodically.</u> The State’s Enterprise Information Security Policies document is found at the following URL:</p>	

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<p data-bbox="365 184 865 277">https://www.tn.gov/finance/strategic-technology-solutions/strategic-technology-solutions/sts-security-policies.html</p> <p data-bbox="305 306 865 550">(b)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.</p> <p data-bbox="293 579 865 823">(c)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.</p> <p data-bbox="329 852 786 915">(3). Comptroller <u>Audit-Due Diligence Requirements</u></p> <p data-bbox="365 945 865 1617">(a). Upon reasonable notice and at any reasonable time, <u>but no more than once in a twelve month period</u>, the Contractor and Subcontractor(s) agrees to allow the State, the Comptroller of the Treasury, or their duly appointed representatives to perform <u>a due diligence assessment of Contractor's information technology controls</u>audits of the Contractor and all Subcontractors used by the Contractor. Contractor will maintain and cause its Subcontractors to maintain a complete audit trail of all transactions and activities in connection with this Contract. Contractor will provide to the State, the Comptroller of the Treasury, or their duly appointed representatives access to Contractor and Subcontractor(s) personnel for the purpose of performing the information technology control <u>audit assessment</u>.</p> <p data-bbox="318 1646 865 1890">(b). The information technology control <u>audit assessment</u> may include a review of general controls and application controls. General controls are the policies and procedures that apply to all or a large segment of the Contractor's or Subcontractor's information systems and applications and include controls</p>	

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<p>over security management, access controls, configuration management, segregation of duties, and contingency planning, <u>applicable to the services Contractor provides under this Contract</u>. Application controls are directly related to the application and help ensure that transactions are complete, accurate, valid, confidential, and available. The <u>audit assessment</u> shall include the Contractor's and Subcontractor's compliance with the State's Enterprise Information Security Policies and all applicable requirements, laws, regulations or policies.</p> <p>(c). The <u>audit assessment</u> may include interviews with technical and management personnel, physical inspection of controls, and review of paper or electronic documentation.</p> <p>(d). For any <u>audit</u> issues identified <u>during the assessment</u>, the Contractor and Subcontractor(s) shall <u>develop a mutually agreeable corrective action plan to the State</u> within 30 days from the Contractor or Subcontractor receiving the <u>audit assessment</u> report.</p> <p>(e). Each party shall bear its own expenses incurred while conducting the information technology controls <u>audit assessment</u>."</p>	

3. Delete RFP Attachment 6.6 Pro Forma Contract section A.2.(1).(n). in its entirety and insert the following in its place:

Monitoring changes in Applicable Laws and Rules as well as the State's policies and procedures and making any necessary changes in the Software to ensure compliance therewith in consultation with the State and, at the request of the State, reviewing related compliance documents, including, but not limited to, disclosure brochures;

4. Delete RFP Attachment 6.6 Pro Forma Contract section A.2.(6). in its entirety and insert the following in its place:

Online Access by Account Owners. The Contractor shall provide a secure online access to account owners through its Software for enrollment, online transactions and online Account maintenance. Automatic notices must be sent to Account Owners regarding any online activity. The Contractor agrees to provide a secure internet site, which includes the account owner self-service portal, which shall permit account owners to access information regarding their TNStars® and ABLE TN Accounts and to transact and maintain their accounts. The secure internet site shall be mobile-responsive and platform agnostic, the design of which shall allow account owners easy access from all devices, including smartphones. For purposes of the access described in this section, "Account Owner" shall include Legal Representatives, as defined in the

applicable program's disclosure brochure, and authorized agents, as permitted by Applicable Laws and Rules.

5. Delete RFP Attachment 6.6 Pro Forma Contract section A.2.(7). in its entirety and insert the following in its place:

Online Access by Investment Professionals, and Other Individuals. The Contractor shall provide Investment Professionals with online access to Plan accounts as permitted by the respective Plan account owners, and as allowed by Applicable Laws and Rules. The levels of Page 52 of 79 access provided to Legal Representatives and Investment Professionals shall be as follows: making contributions and withdrawals; viewing account information; maintaining account information; and transacting in an account or accounts. Legal Representatives and Investment Professionals shall have access through an online account owner self-service website portal that will allow them to have access to all accounts established by an account owner from a single log-on. The website portal shall be mobile-responsive and platform agnostic, the design of which shall allow Legal Representatives and Investment Professionals easy access from all devices, including smartphones. For the purposes of this Contract, "Legal Representative" shall have the meaning set forth in the Applicable Laws and Rules, and "Investment Professional" is defined as registered investment advisors, registered broker dealers and their respective authorized staff members. For purposes of this Contract and with respect to the Contractor's provision of services relative to the ABLE TN Plan, the access described herein this Subsection (7) shall also be provided, in the same manner, to any individual who establishes a Plan account in accordance with the Applicable Laws and Rules. Account owners will be provided a separate log-on for account(s) in each Plan.

6. Delete RFP Attachment 6.6 Pro Forma Contract section A.3. in its entirety and insert the following in its place:

Current Client Communication Services. If requested by the State, the Contractor shall provide the State with the following marketing-related communication services for current participants in consultation with the State relative to the Plans:

(1). Targeted and Personalized Communication. To encourage contributions to the Plans, the Contractor shall provide the method and functionality necessary for distributing targeted and personalized messages to Plan participants using various modes of electronic communication. The State shall develop and supply the Contractor with the necessary information and content, including creative elements of the communication itself, for the targeted and personalized communications. Based on targeting criteria supplied by the State, which may include, but is not limited to, beneficiaries celebrating birthdays, accounts with low balances, and/or accounts with no recurring contributions established, the Contractor shall identify the Plan participant and/or group(s) of Plan participants and transmit the communication. The Contractor and the State shall mutually agree on the format to be used for the distribution of such communications. The costs associated with these services for which the State shall compensate the Contractor shall be based on a per-communication basis, regardless of the size or number of the targeted audience recipients and shall not include any of the Contractor's transactional communication services.

(2). Reporting. Occurring within a mutually agreed upon timeline, the Contractor shall provide reporting of account activity, including, but not limited to, new one-time contributions, new recurring contributions, and rollover contributions for Plan participant and/or group(s) of Plan participants included within a Targeted and Personalized Communication.

7. Add as a new row to the table in RFP Attachment 6.6 Pro Forma Contract section C.3.b. the following:

Goods and Services Description	Amount (per compensable increment)
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Current Client Communication Services as described in Section A.3. of the Pro Forma Contract (RFP Attachment 6.6)

THIS WILL REFLECT A SINGLE COST-PER-COMMUNICATION REGARDLESS OF THE NUMBER OF RECIPIENTS; COSTS ASSOCIATED WITH TRANSACTIONAL COMMUNICATIONS SHOULD NOT BE INCLUDED IN THIS AMOUNT

8. **Delete RFP Attachment 6.6 Pro Forma Contract section A.5. in its entirety and insert the following in its place:**

IS Security Certification and Accreditation. The State shall receive a summary of the results of security audits that are performed by a third-party on behalf of the Contractor that are pertinent to the Software provided that the Contractor may redact any information that may lead to the identity of other customers of the Contractor. The State may request that a third-party conduct a security audit of the applications according to the Federal Government program and guidelines (NIST Special Publication 800-37, Guide for the Security Certification and Accreditation of Federal Information Systems), subject to the Contractor's agreement. The cost of that effort (if undertaken) will be the responsibility of the State; however, should that effort result in errors or findings, it is the Contractor's responsibility to research and fix such items at the Contractor's discretion, provided that if a significant security flaw is identified, the Contractor shall be responsible for researching and fixing such flaw.

9. **Delete RFP Attachment 6.6 Pro Forma Contract section A.6. in its entirety and insert the following in its place:**

Back-Up and Disaster Recovery. The Contractor shall perform at least one Disaster Recovery Test annually. 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 involve cutting over to the backup data center, and success shall be defined as the Contractor verifying that the Contractor can meet the State's RPO and RTO requirements. The Contractor shall provide written confirmation to the State after each Disaster Recovery Test that its Disaster Recovery Capabilities meet the RPO and RTO requirements.

10. **Delete RFP Attachment 6.6 Pro Forma Contract section A.11.(7). in its entirety and insert the following in its place:**

Such other reports as may be necessary and available to accomplish the Contractor's duties hereunder or required by the State, including, but not limited to, those containing any industry benchmarking or benchmarking for plans Contractor services of similar demographics, assets, and accounts as TNStars® and ABLE TN.

11. **Delete RFP Attachment 6.6 Pro Forma Contract section A.13. in its entirety and insert the following in its place**

Service Organization Control (SOC) Report. On an annual basis, the Contractor shall provide the State with a System and Organization Controls ("SOC) for service organizations report on Controls at a Service Organization Relevant to User Entities' Internal Control over Financial Reporting Type II report ("SOC 1, Type II") and a report on Controls at a Service Organization Relevant to Security, Availability, Processing Integrity, Confidentiality or Privacy Type II ("SOC 2, Type II"), relevant to the services provided under this Contract. The SOC 1, Type II and SOC 2, Type II shall be prepared by an independent auditing firm in accordance with the standards of the American Institute of Certified Public Accountants ("AICPA"), or similar international standard(s), at the Contractor's own expense. The Contractor shall provide the State with the Contractor's SOC 1, Type II and SOC 2, Type II reports within 30 days from when the independent auditing firm provides the audit report to the Contractor. The Contractor, at its determination, shall correct for material issues included in the audit report. If the scope of the most recent report does not include all of the State's current fiscal

year, upon request from the State, the Contractor shall provide to the State a letter from the Contractor stating whether the Contractor made any material changes to their control environment since the prior audit and, if so, whether the changes, in the opinion of the Contractor, would negatively affect the auditor's opinion in the most recent audit report ("Bridge Letter"). The Contractor must also verify that all Subcontractors and any other service providers, including data center vendors, successfully complete and provide to the State an annual SOC 1, Type II and SOC 2, Type II 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.

12. Delete RFP Attachment 6.6 Pro Forma Contract section D.6. in its entirety and insert the following in its place:

Termination for Cause. If a Party ("Breaching Party") fails to properly perform its obligations under this Contract, or if a Party materially violates any terms of this Contract ("Breach Condition"), the other Party ("Non-breaching Party") may provide written notice to the Breaching Party specifying the Breach Condition. If within thirty (30) days of notice, the Breaching Party has not cured the Breach Condition, the Non-breaching Party may terminate the Contract. In the event the Non-breaching Party is the State, the State may withhold payments in excess of compensation for completed services or provided goods. The Breaching Party shall not be relieved of liability to the Non-breaching Party for damages sustained by virtue of any breach of this Contract, and the Non-breaching Party may seek other remedies allowed at law or in equity for breach of this Contract.

13. Delete RFP Attachment 6.6 Pro Forma Contract section D.32. in its entirety and insert the following in its place:

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

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

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

a. Commercial General Liability (“CGL”) Insurance

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

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

e. Professional Liability Insurance

- 1) Any professional liability insurance policy shall have a limit not less than two million dollars (\$2,000,000) per claim and two million dollars (\$2,000,000) in the aggregate.

14. Delete RFP Attachment 6.6 Pro Forma Contract section E.7. in its entirety and insert the following in its place:

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.

15. Delete the Cost Proposal and Scoring Guide table (do not delete the Cost Proposal Schedule or Notice, or the language associated therewith) in RFP Attachment 6.3 in its entirety and replace it with the following table, as shown in Exhibit A below.

See Exhibit A below.

16. Delete RFP Section 5.2.3. in its entirety and add the following, as well as a new and appropriately numbered RFP Section 5.2.4.

5.2.3. Clarifications and Negotiations. The State reserves the right to award a contract on the basis of initial responses received, therefore, each response shall contain the Respondent's best terms and conditions from a technical and cost standpoint. The State reserves the right to conduct clarifications or negotiations with one or more Respondents. All communications, clarifications, and negotiations shall be conducted in a manner that supports fairness in response improvement.

5.2.3.1. Clarifications: The State may identify areas of a response that may require further clarification or areas in which it is apparent that there may have been miscommunications or misunderstandings as to the State's specifications or requirements. The State may seek to clarify those issues identified during one or multiple clarification rounds. Each clarification sought by the State may be unique to an individual Respondent, provided that the process is conducted in a manner that supports fairness in response improvement.

5.2.3.2. Negotiations: The State may elect to negotiate with one or more Respondents by requesting revised responses, negotiating costs, or finalizing contract terms and conditions. The State reserves the right to conduct multiple negotiation rounds or no negotiations at all.

5.2.3.3. Cost Negotiations: All Respondents, selected for negotiation by the State, will be given equivalent information with respect to cost negotiations. All cost negotiations will be documented for the procurement file. Additionally, the State may conduct target pricing and other goods or services level negotiations. Target pricing may be based on considerations such as current pricing, market considerations, benchmarks, budget availability, or other methods that do not reveal individual Respondent pricing. During target price negotiations, Respondents are not obligated to reduce their pricing to target prices, but no Respondent is allowed to increase prices.

5.2.3.4. If the State determines that it is unable to successfully negotiate terms and conditions of a contract with an apparent best evaluated Respondent, the State reserves the right to bypass that apparent best evaluated Respondent and enter into terms and conditions contract negotiations with the next apparent best evaluated Respondent.

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

Exhibit A

RESPONDENT SIGNATURE:			
PRINTED NAME & TITLE:			
DATE:			
RESPONDENT LEGAL ENTITY NAME:			
Cost Item Description (Subsection A)	Proposed Cost	State Use Only	
		Evaluation Factor	Raw Weighted Score

<p>Combined Recordkeeping and Administrative Services for TNStars and ABLE TN as Described in Section A. of the Pro Forma Contract (RFP Attachment 6.6).</p>	<p>Please provide your complete combined fee structure for both Recordkeeping and Administrative Services for TNStars and ABLE TN, including the nature of the fee (i.e. asset-based, per funded account, etc.) and any breakpoints based on asset levels, account levels, time intervals, or other factors, which will be included in any contract awarded pursuant to this RFP (add additional lines if needed). You must submit one fee structure that covers services for both Plans. The State will not consider Responses that separate pricing for TNStars and ABLE TN.</p> <p>_____</p> <p>_____</p> <p>_____</p> <p>_____</p> <p>_____</p> <p>_____</p> <p>_____</p> <p>_____</p> <p>_____</p> <p>_____</p> <p>_____</p> <p>_____</p> <p>THEN based upon and in accordance with your fee structure as shown above, complete the following hypotheticals for cost evaluation purposes.</p>		
<p>If Combined Plan Assets Under Management are \$350 M and Funded Accounts are 30,000</p>	<p>Annual costs of \$ _____</p>	<p style="text-align: center;">7</p>	
<p>If Combined Plan Assets Under Management are \$500 M and Funded Accounts are 35,000</p>	<p>Annual costs of \$ _____</p>	<p style="text-align: center;">7</p>	

If Combined Plan Assets Under Management are \$750 M and Funded Accounts are 40,000	Annual costs of \$ _____	3			
If Combined Plan Assets Under Management are \$1 B and Funded Accounts are 45,000	Annual costs of \$ _____	3			
<p>The RFP Coordinator shall use the evaluation cost amount derived from the proposed cost amounts above and the following formula to calculate the COST PROPOSAL SCORE. Calculations shall result in numbers rounded to two decimal places.</p>		<p>Evaluation Cost Amount: (sum of all weighted cost amounts above)</p>			
<p>Lowest Evaluation Cost Amount from all Proposals _____</p> <p>Evaluation Cost Amount Being Evaluated</p>	<p>X 29 (maximum section score)</p>	<p>= SUBSCORE A:</p>			
<p>Cost Item Description (Subsection B)</p>	<p>Proposed Cost</p>		<p>State Use Only</p> <table border="1"> <tr> <td data-bbox="1732 878 1871 984">Evaluation Factor</td> <td data-bbox="1871 878 1995 984">Raw Weighted Score</td> </tr> </table>	Evaluation Factor	Raw Weighted Score
Evaluation Factor	Raw Weighted Score				
<p>Current Client Communication Services as described in Section A.3. of the Pro Forma Contract (RFP Attachment 6.6)</p>	<p>\$ _____ per communication</p>		<p>1</p>		
<p>The RFP Coordinator shall use the evaluation cost amount derived from the proposed cost amounts above and the following formula to calculate the COST PROPOSAL SCORE. Calculations shall result in numbers rounded to two decimal places.</p>		<p>Evaluation Cost Amount: (sum of all weighted cost amounts above)</p>			

<p>Lowest Evaluation Cost Amount from all Proposals</p> <hr/> <p>Evaluation Cost Amount Being Evaluated</p>	<p>X 1 <i>(maximum section score)</i></p>	<p>= SUBSCORE B:</p>	
<p>TOTAL SUBSECTIONS SCORES A & B</p>			
<p>State Use: RFP Coordinator Signature, Printed Name & Date:</p>			