



CONTRACT

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

Begin Date September 1, 2015	End Date December 31, 2020	Agency Tracking # 31786-00130	Edison Record ID 48012
--	--------------------------------------	---	----------------------------------

Contractor Legal Entity Name PayFlex Systems USA, Inc.	Edison Vendor ID 191072
--	-----------------------------------

Goods or Services Caption (one line only)
HSA and FSA vendor services

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

Funding —					
FY	State	Federal	Interdepartmental	Other	TOTAL Contract Amount
2016			\$620,000.00		620,000.00
2017			\$1,240,000.00		\$1,240,000.00
2018			\$1,240,000.00		\$1,240,000.00
2019			\$1,240,000.00		\$1,240,000.00
2020			\$1,240,000.00		\$1,240,000.00
2021			620,000.00		620,000.00
TOTAL:			\$6,200,000.00		\$6,200,000.00

Contractor Ownership Characteristics:

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

Woman Business Enterprise (WBE)

Tennessee Service Disabled Veteran Enterprise (SDVBE)

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

Other: Not minority/disadvantaged

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

Competitive Selection Request for Proposals

Other

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

Felenceo M. Hill Digitally signed by Felenceo Hill
Date: 2016.02.17 12:44:13 -06'00'

Speed Chart (optional)	Account Code (optional) 78902000
-------------------------------	--



**CONTRACT
BETWEEN THE STATE OF TENNESSEE,
INSURANCE COMMITTEES
AND
PAYFLEX SYSTEMS USA, INC**

This Contract, by and between the State of Tennessee, Finance & Administration, Division of Benefits Administration, hereinafter referred to as the "State" and Payflex Systems USA, Inc, hereinafter referred to as the "Contractor," is for the provision of Health Savings Account and Flexible Spending Arrangement Services, as further defined in the "SCOPE OF SERVICES."

The Contractor is a For-Profit Corporation.
Contractor Place of Incorporation or Organization: Delaware
Contractor Edison Registration ID # 191072

A. SCOPE OF SERVICES:

A.1. General

- a. The Contractor shall provide all service and deliverables as required, described, and detailed herein and shall meet all service and delivery timelines as specified by this Contract.
- b. The Contractor shall manage all aspects of Health Savings Accounts (HSA) for state/higher education, local education and local government members enrolled in a Public Sector Plan sponsored Consumer Driven Health Plan (CDHP); referred to as a High Deductible Health Plan (HDHP) by the IRS. Such services shall include, but not be limited to, account administration services; account enrollment services such as development, production, and distribution of all account enrollment materials and online and/or paper application account enrollment processing; employer set-up; program communication and education to participating employees and employers; reimbursement services in compliance with applicable Internal Revenue Code; online and telephone support; and management of investment options.
- c. At the State's request, the Contractor shall manage all aspects of a Flexible Spending Arrangement (FSA) for state and higher education employees for eligible medical, dependent care, parking and transportation expenses. Such services shall include, but not be limited to, claims substantiation and adjudication, member communications, debit card processing, customer service, reporting and compliance support. Enrollment services may also be required for a subset of members. All FSA services are optional and will only be implemented or utilized at the state's request.
- d. The Contractor shall work with the State to ensure that the Contractor satisfies applicable requirements of this Contract, including requirements in the State Plan, Local Education Plan, and Local Government Plan Documents (referred to as the "Plan Documents" and which are located on the State's website at <http://tennessee.gov/finance/ins/publications.shtml>) and State and Federal law.

A.2. HSA Set-Up and Management

- a. The Contractor must establish and maintain the appropriate custodian banking arrangement, in compliance with applicable Internal Revenue Code, for the implementation of HSAs for use by each participating CDHP member.
- b. The Contractor shall manage all member account activities including, but not limited to, online account set-up/application processing, assistance with opening an account, providing educational information and toll-free and online customer assistance. Paper forms shall be available to members unable to complete enrollment activities online.
- c. The Contractor shall manage all employer account activities including, but not limited to, establishing and processing various data files, salary deduction notification, establishing a process to receive



employer contributions, providing refunds, providing educational information and toll-free and online customer assistance.

- d. The Contractor shall receive and process weekly eligibility and payroll deduction files from the State and only establish a HSA for those eligible members enrolling in a CDHP (also known as a HDHP) as identified by the State. At the State's request, the Contractor shall process eligibility files more or less frequently than weekly. See requirements in contract section A.12.e.
- e. The Contractor shall work with the State to establish procedures for the opening, transferring and closing of HSAs; such procedures shall include a process to allow electronic enrollment, prompt funding of the HSA, online account set-up, a process to terminate and liquidate a HSA established for ineligible members, and the ability to transfer funds to other accounts for members leaving the State plan(s).
- f. The Contractor shall have a process to refuse or refund HSA contributions exceeding the annual statutory maximum contribution amounts.
- g. The Contractor shall have a process in place to redistribute employer funds exceeding the annual statutory maximum contribution amounts directly to members with an accompanying 1099-SA, if applicable.
- h. The Contractor, or its qualified subcontractor, shall offer various diversified HSA investment opportunities, such as mutual funds, to members in compliance with the applicable Internal Revenue Code. Any conditions surrounding the investment opportunities shall be prior approved by the State and any material changes in the investment portfolio will be communicated to the State within thirty (30) days of the change.
- i. The Contractor shall deposit non-invested HSA funds in into an FDIC-insured deposit account.
- j. The Contractor shall provide continuing program support services to participating employers. Employer personnel may require periodic assistance and training for deduction management, account enrollments, facilitating the filing of forms, etc.
- k. The Contractor shall receive and process financial transactions on a daily basis. Members must have 24-hour access to their funds per the agreed upon terms in the contract. The Contractor shall provide members with an up-to-date HSA balance 24 hours a day, seven days a week through its website described below in Section A.10., and provide a timely feed of such updated balances to other vendors as requested by the State.
- l. The Contractor shall accept HSA contributions directly from the member at any time and directly from the member's employer at a frequency and in a format determined by each individual employer. At a minimum, unless otherwise directed by the state, the Contractor shall allow the following member contribution methods: payroll deduction, one-time or recurring EFT contributions, personal check or money order, and mobile deposits. The Contractor shall follow the timeframes, if any, specified for the State for the establishment of a new HSA for members.
- m. Employer contributions, if any, shall be decided annually by each participating employer. The Contractor shall work with the State and all participating employers to establish links to multiple payroll systems in support of employer account funding and payroll deduction functions. This shall include the development of mutually agreed upon files to support the receipt and allocation of pre-tax contributions (e.g. FTP files, ACH, other).
- n. The Contractor shall, at the State's request, credit member HSA accounts for achieving specific wellness requirements, based on files received from the State or other State contracted vendors. The Contractor shall have the ability to invoice individual employers for such member credits.
- o. The Contractor shall hold in the HSA all cash contributed and gains and losses attributable thereto for the exclusive purpose of administering the CDHP (also known as a HDHP) member's HSA.



- p. The Contractor shall comply with the provisions restricting recoupment by employers to circumstances described in Internal Revenue Service ("IRS") Notice 2008-59, Q&A23-25 or any future guidance issued regarding the nonforfeitability of employer contributions to HSAs.
- q. The Contractor shall refund employers directly for any funds paid in error by the employer, pursuant to A2. p. above.
- r. The Contractor shall act upon the written directions of the CDHP member, including settling investment transactions and making distributions from the HSA.
- s. The Contractor shall maintain applicable custodian records reflecting an inventory of the assets of each HSA, all activity transacted during the previous year and the market value of the assets of the HSA.
- t. The Contractor shall capture and maintain account beneficiary information. If no valid designation is on file then the Contractor shall follow their standard order of precedence.
- u. The Contractor shall provide and service debit cards that allow members to pay for qualified medical expenses. The cost of creating and mailing the cards shall be borne by the Contractor. The initial debit card as well as at least one replacement card shall be provided free of charge to members; additional replacement cards and/or checks shall be provided according to the fee schedule outlined in contract section C.3.
- v. The Contractor shall mail debit cards and/or checks to members within ten (10) days of completion of the HSA enrollment/set-up process, including receipt of all required signatures, either wet or electronic and no later than ten (10) days from receipt of a member's request for a replacement or duplicate card.
- w. The Contractor shall accept rollovers and account transfers from other HSAs and Archer Medical Spending Accounts (MSA) and transfers of funds from Individual Retirement Accounts (IRA).
- x. The HSA shall have no minimum balance requirement to open or maintain the account and member fees shall not vary based on the account balance. Fees related to overdrafts are permissible and must comply with the fee schedule outlined in contract section C.3.
- y. The Contractor shall provide employees with enrollment confirmation notices within ten (10) days of successfully establishing their HSA account.
- z. The Contractor shall establish a reserve fund to hold employer contributions for members that have not yet activated their account. The funds shall be returned to the employer within a timeframe established by the employer.
- aa. The Contractor shall notify the State if there are changes in regulations or federal guidance which may require the State to amend the CDHP as necessary to remain qualified and comply with changes in applicable Federal, state, or local statutes, guidance or regulations.
- bb. The Contractor shall offer all services contained in this contract to any employer or member participating in the State sponsored CDHP.

A.3. FSA Set-Up and Management

- a. The Contractor shall hold all FSA funds received from the State, members, or on behalf of a member, as applicable, in an FDIC insured account established for such purposes at an eligible financial institution.
- b. At a minimum, the Contractor shall offer accountholders the following FSA reimbursement methods: debit card, online bill pay, check reimbursement and direct deposit.



- c. The Contractor shall manage all member account activities including, but not limited to, claims substantiation, claims payment, account creation and termination, member account or claims assistance, providing educational information and toll-free and online customer assistance. At the State's request, enrollment activities such as application processing or online enrollment shall be provided to a subset of members.
- d. The Contractor shall manage all employer account activities including, but not limited to, establishing and processing various enrollment and payroll deduction files, providing educational information, terminating accounts established for ineligible members, continuing program support services and toll-free and online assistance. The State shall be solely responsible for the collection and administration of contributions to the plan.
- e. The Contractor shall receive and process a weekly eligibility and payroll deduction file from the State and Higher Education (if applicable) and establish a FSA for those employees who have elected to participate. At the State's request, the Contractor shall process eligibility and payroll files more or less frequently than weekly. See requirements in contract section A.12.e.
- f. The Contractor shall, at the State's request process FSA enrollments for higher education employees. The state shall provide no less than a sixty (60) day notice of the need to provide such services. Such enrollments shall be online when possible, but paper applications shall be available to members unable to complete enrollment activities online. The Contractor shall transmit a file of enrolled members and their contribution amounts to Higher Education entities at a frequency determined by Higher Education. The Contractor shall provide all State and Higher Education employees with enrollment confirmation notices within ten (10) days of successfully establishing their FSA account.
- g. The Contractor shall provide and service debit cards that allow members to pay for qualified medical expenses. The cost of creating and mailing the cards shall be borne by the Contractor. The initial debit card as well as at least one replacement card shall be provided free of charge to members; additional replacement cards shall be provided according to the fee schedule outlined in contract section C.3.
- h. The Contractor shall issue a single debit card for members with both a HSA and a limited purpose FSA that is coordinated and functional for either account.
- i. The Contractor shall mail debit cards to members within ten (10) days of completion of the FSA enrollment process, including receipt of all required signatures, either wet or electronic and no later than ten (10) days from receipt of a member's request for a replacement or duplicate card.
- j. The Contractor shall maintain monthly automatic card adjudication rates above eighty percent (80%) for FSA and HSA transactions and shall report rates on a quarterly basis.
- k. The Contractor shall handle all processes related to the substantiation and payment of claims in compliance with IRS rules and shall make the determination of the eligibility of the member to benefits under the plan as well as the amounts due. The Contractor shall notify the employer in a timely manner of any improper payments that cannot be substantiated or recovered.
- l. The Contractor shall receive and process reimbursement claims on a daily basis and shall accept claims or substantiation online.
- m. In the event a claim is determined to not be allowable, the Contractor shall notify the member of such decision within thirty (30) days of receipt of the claim, including the reason for the denial. The member shall have the right to appeal such denial. The Contractor will evaluate the appeal within sixty days, of receipt of the appeal and advise the State of claims ultimately determined to not be allowable. The State shall have the final authority to authorize or disallow claim payments.



- n. In accordance with IRS rules, and as determined by the State, the Contractor shall have the capability to implement either a grace period for unused funds or allow a carryover of funds for the following plan year.
- o. The Contractor shall administer a general purpose health FSA and/or a limited purpose health FSA, as determined by the State and shall establish processes to coordinate HSA reimbursements with limited purpose FSA reimbursements.
- p. The Contractor shall implement controls to prevent HSA accountholders from establishing a general purpose FSA.
- q. The Contractor shall assist with routine non-discrimination testing of the flexible spending plan at least annually by providing data available to the Contractor to the State to ensure that the plan is operating in a nondiscriminatory manner in compliance with Internal Revenue Code (IRC).
- r. The Contractor shall have a process in place to annually refund all unused funds to the State following the plan year run-out period.
- s. The Contractor shall notify the State if there are changes in regulations or federal guidance which may require the State to amend the FSA plan as necessary to remain qualified and comply with changes in applicable Federal, state, or local statutes, guidance or regulations.
- t. The Contractor shall contact (via mail or electronically) participants enrolled in FSA Medical Reimbursement Accounts and Dependent Care Accounts one month before the end of the plan year and one month before the end of the grace period of their available balance and that if unclaimed these funds will be forfeited to the State.
- u. The Contractor shall manage and administer any COBRA requirements applicable to the accounts of FSA plan members.

A.4. Member / Employer Support and Education

- a. The Contractor shall provide member access to personal HSA and FSA account information 24-hours-a-day seven days a week via the website described below in Section A.10. as well as an Interactive Voice Response telephone system.
- b. The Contractor shall provide alternative means for members who are not internet-capable to access the same level of information and services available to on-line members.
- c. The Contractor shall send a representative to perform educational sessions and enrollment meetings at employer sites across the state, as necessary, to ensure understanding of the HSA. Such trainings may include in-person or online webinar sessions. The Contractor shall attend meetings predicted to have 100 or more members in attendance but shall provide copies of training materials for all in-person meetings.
- d. The Contractor shall provide tools to employers for purposes of testing the HSA plan for comparable contributions for comparable participating employees under IRC Section 4980G and applicable regulations.
- e. The Contractor shall perform, following review and approval by the State, member satisfaction surveys. The State reserves the right to review and mandate changes in the survey it feels are necessary to obtain valid, reliable, unbiased results. Those changes may include, but are not limited to, changes in the research design, units of analysis or observation, study dimension, sample size, sample frame, sample method, coding, or evaluation method. Based upon the results of the survey, the Contractor and the State will jointly develop an action plan to correct problems or deficiencies identified through this activity.

A.5. Implementation



- a. The Contractor shall be fully operational and capable of delivering all contracted services on the various go-live dates specified in Contract Section A.20.
- b. All key Contractor project staff shall attend a project kick-off meeting at the State offices in Nashville, TN within the first thirty (30) days after the contract start date or after the notification of awarding of the contract to the vendor, as requested by the State. The Contractor shall prepare and develop the agenda for the kick-off meeting, subject to State approval.
- c. The Contractor shall provide a project implementation plan to the State no later than thirty (30) days after the Contract start date. The plan shall be electronically maintained, daily, in a format accessible to the State. The plan shall comprehensively detail all aspects of implementation, which includes all tasks with deliverable dates necessary to satisfactorily implement contracted services no later than the applicable go-live date specified in Contract Section A.20. and a description of the members on the implementation team and their roles with respect to each item/task/function. The plan shall include a detailed timeline description of all work to be performed both by the Contractor and the State. This plan shall require written approval by the State. At a minimum, the implementation plan shall provide specific details on the following:
 - i. Identification and timing of significant responsibilities and tasks;
 - ii. Names and titles of key implementation staff;
 - iii. Identification and timing of the state's responsibilities;
 - iv. Data requirements (indicate type and format of data required) from the State and/or its vendors and participating employers;
 - v. Identification and timing for the testing, acceptance and certification of receipt of the State's enrollment information;
 - vi. Member communications;
 - vii. Schedule of in-person meetings and conference calls; and
 - viii. Staff assigned to attend and present (if required) at educational sessions.
- d. At the State's request, the Contractor shall provide for a comprehensive operational readiness review (pre implementation audit) by the State, and/or its authorized representative, within thirty (30) days prior to the applicable go-live date. Such review by the State, and/or its authorized representative, may include, but not be limited to, an onsite review of the Contractor's operational readiness for all services required in this Contract. The review may also include desk reviews of documentation that includes but is not limited to:
 - i. Policy and procedures manual;
 - ii. Call center scripts;
 - iii. Information systems documentation; and
 - iv. The ability to provide, and the process governing the preparation of, any and all deliverables required under this Contract.
- e. At its discretion, the State may conduct an additional, pre-implementation review of the Contractor's progress towards fulfilling the information systems requirements of this Contract. Such review by the State, and/or its authorized representative, may include both onsite and desk reviews, including but not limited to staff interviews, system demonstrations, systems testing, and document review.
- f. During onsite visits as part of a readiness review or a pre-implementation review the Contractor shall provide State staff and/or the State's designee with onsite workspace and access to a telephone, scanner, printer, copy machine, and Internet connection.
- g. The Contractor shall participate in all readiness review activities conducted by State staff and/or the State's designee to ensure the Contractor's operational readiness for all services required in this contract. The State may provide the Contractor with a summary of findings including areas requiring



corrective action. The Contractor shall ensure any findings identified by the State are resolved prior to the applicable go-live.

- h. The Contractor shall conduct status meetings concerning project development, project implementation and Contractor performance at least twice a week during implementation and daily for the two weeks prior to and the first month following each go-live date, unless otherwise approved by the State. Such meetings shall be either by phone or onsite at the offices of the State, as determined by the State, and shall include the Account Manager and appropriate Contractor staff. Any costs incurred by the Contractor as a result of a meeting with the State shall be the responsibility of the Contractor.
- i. No later than sixty (60) days post account go-live, the Contractor shall provide the State with an Implementation Performance Assessment survey for completion by the State. This assessment will be used to document the State's satisfaction with the implementation process and identify any necessary corrective action(s). The Contractor shall comply with all recommendations/requirements made in writing by the State that are required to bring the Contractor into compliance with the contract within the timeframes specified by the State.

A.6. Reporting

- a. The Contractor shall prepare and distribute all tax reporting with respect to HSA contributions and distributions as required by the Internal Revenue Code and applicable law or regulations (Forms 5498-SA and 1099-SA).
- b. At the State's request, the Contractor shall provide to the State all information necessary for plan reporting as required by law. Such information shall exclude specific member account information such as balances and payouts.
- c. In addition to the reports outlined in this contract, the Contractor shall provide the State with all HSA and FSA reports included in the Contractor's standard reporting package.
- d. The Contractor shall prepare and provide monthly and year-end aggregate summary reports for each participating employer setting forth information including, but not limited to, employer HSA contributions, employee payroll deduction amounts, and unused FSA fund amounts with sufficient detail to provide for the audit and control of deposits made and account reconciliation. Such reports shall be delivered electronically to the extent permitted by law and agreed upon by the participating employer.
- e. At the request of each employer, the Contractor shall produce and distribute a salary deduction data file of HSA and FSA salary reductions elected by their employees. The report shall be delivered in the format required by each employer to support entry into their payroll system.
- f. The Contractor shall maintain all records prepared by the Contractor relating to the services provided pursuant to this Contract for a period no less than seven (7) years.
- g. The Contractor shall send quarterly member account and investment statements. Statements shall be consolidated to include information from multiple member accounts (HSA, FSA), as applicable. Such statements shall be sent electronically or via mail at the member's request.
- h. Unless otherwise directed by the state, the Contractor shall submit a quarterly portfolio performance review report to the state. The report shall describe the financial performance and investment environment for the investment portfolio offered to HSA accountholders served by this contract. The Contractor shall be available to meet quarterly, or as otherwise directed, with the State to discuss any State identified issues or concerns regarding the portfolio.
- i. The Contractor shall provide the State with the following reports:
 - i. A monthly listing of employees who have not activated their HSA account;



- ii. Aggregate member HSA deposits and withdrawals, by employer, annually;
 - iii. Average monthly HSA & FSA balances, by employer;
 - iv. Annual investment summaries;
 - v. Total fees assessed to members by transaction type, category, quarterly;
 - vi. Number of opened, closed or transferred HSA accounts, by employer, annually;
 - vii. A monthly report of aggregate HSA year to date deposits, payments, denials, and account balances;
 - viii. Annual enrollment by FSA plan (i.e., Medical Reimbursement, Dependent Care, Parking, Transportation) including number electing coverage and pledge amount;
 - ix. FSA claims submitted, claims approved, claims paid and claims denied;
 - x. Year-end FSA close reports (total contributions, total claims paid, claims paid > contributions, and funds forfeited).
- j. The Contractor shall submit reports in a mutually agreeable electronic format (e.g., Microsoft Word or Microsoft Excel), of the type, at the frequency, and containing the detail described in Contract Attachment C.
- k. The Contractor shall provide the State access to an ad-hoc reporting liaison to assist in the development of reports that cannot be generated using the Contractor's standard reporting package. The Contractor shall deliver such reports to the State within five (5) business days of the State's request. If requested by the State, the Contractor shall deliver up to ten (10) reports annually deemed as "urgent" by the State within two business days. All ad-hoc reports shall be provided at no additional cost to the State.
- l. The Contractor shall ensure that reports submitted by the Contractor to the State shall meet the following standards:
- i. The Contractor shall verify the accuracy and completeness of data and other information in reports submitted.
 - ii. The Contractor shall ensure delivery of reports or other required data on or before scheduled due dates.
 - iii. Reports or other required data shall conform to the State's defined written standards.
 - iv. All required information shall be fully disclosed in a manner that is responsive and with no material omission.
 - v. The Contractor shall notify the State regarding any significant changes in its ability to collect information relative to required data or reports.
 - vi. The submission of late, inaccurate or otherwise incomplete reports shall be considered failure to report within the specified timeframe (see Contract Attachment B).
 - vii. State requirements regarding reports, report content and frequency of submission may change during the term of the Contract. The Contractor shall have at least forty-five (45) days to comply with changes specified in writing by the State.

A.7. Call Center

- a. The Contractor shall establish and operate a single integrated call center with a dedicated toll-free customer service number and dedicated e-mail address to respond to member and employer inquiries, issues and complaints.



- b. The Contractor shall have sufficient staff to respond to inquiries, correspondence, complaints, and problems related to all aspects of the services required in this contract. The Contractor shall not answer technical questions regarding eligibility policy and shall refer these questions to the State.
- c. The Contractor's call center shall be open and staffed with trained personnel at least one (1) week prior to the HSA operational go-live date specified in Contract Section A.20.
- d. The Contractor's call center and designated member services representatives shall be located in the continental United States.
- e. The Contractor may temporarily route calls to another available Contractor call center for occasions related to weather, training, or similar situations. The Contractor shall notify the State of any such instances prior to the switch, or as soon as practical.
- f. The Contractor's call center shall, at a minimum, accept calls Monday through Friday 7:00 a.m.-5:00 p.m. CST, except on official State Government Holidays.
- g. The Contractor shall implement procedures for monitoring and ensuring the quality of services provided by its member services representatives. Such procedures may include, but are not limited to, the following activities:
 - i. Auditing calls/correspondence for each member services representative;
 - ii. Silent monitoring of calls;
 - iii. Recording calls for quality and training purposes;
 - iv. Skill refresher courses; and
 - v. Call coaching.
- h. The Contractor's call center shall be equipped with TDD (Telecommunications Device for the Deaf) technology in order to serve the hearing impaired population.
- i. During normal business hours the Contractor's call center shall have at least one member services representative on duty that is bilingual in English and Spanish. The Contractor shall provide oral interpretation services via a telephone interpretation service free of charge to callers with Limited English Proficiency.
- j. The Contractor shall provide the State's Agency Benefits Coordinators (ABCs) with a special number or access code that they can use to have immediate access to a member services representative. The Contractor can satisfy this requirement by expediting calls to the front of the general queue – or it may provide designated staff to serve ABCs.
- k. The Contractor's call center shall meet each of the following performance standards and shall report on these standards monthly:
 - i. Average Speed of Answer (ASA) of thirty (30) seconds. After answering the call the Contractor may only put callers on hold in order to (a) make outbound calls as necessary or (b) to research a caller's issue.
 - ii. First Call Resolution of 85% as measured by one or more of the following methods: a member post-call phone or web survey; an end of call script where the customer service representative asks if the member's issue has been resolved; a voice menu allowing the member to indicate if this is the first call they've made to resolve their inquiry or problem; or another method prior approved by the state.
 - iii. Open call/inquiry closure rate of 90% within five (5) business days.
- l. The Contractor shall provide their standard book of business call center statistics to the State on a biweekly basis for sixty (60) days after the HSA operational go-live date. Thereafter, call center statistics shall be provided to the State monthly.



- m. The Contractor's call center shall have call management systems and communications infrastructure that can manage the potential call volume and achieve the performance standards described in this Contract.
- n. The Contractor's call management systems shall be scalable and flexible so they can be adapted as needed, within negotiated timeframes where applicable, in response to program, benefit, or enrollment changes.
- o. The Contractor shall provide a custom greeting, prior approved by the State. The Contractor shall not play advertising or informational messages for callers while they are on hold unless prior approved by the State (or the State directs the Contractor to play certain messages). Additionally, the Contractor's systems shall provide a message that notifies callers that calls are being recorded and may be monitored for quality control purposes.
- p. The Contractor's call management system shall record and index all calls such that the Contractor can easily retrieve recordings of individual calls. The Contractor shall be able to provide a full recording of each call upon the State's request and shall, at the State's request, allow the State, or its authorized representative to monitor recorded calls from a remote location.
- q. The Contractor's call management systems shall facilitate the processing of all calls received and assign incoming calls to available member services representatives in an efficient manner. The system shall transfer calls to other telephone lines as necessary and appropriate, including transfers to external call centers.
- r. The Contractor may use an automated interactive voice response (IVR) system for managing inbound calls, provided that the caller always has the ability to leave the IVR system and wait in queue in order to speak directly with a live-voice member services representative during normal business hours rather than continue through additional prompts. The Contractor's decision tree and menu are subject to State review and prior approval.
- s. The Contractor shall inform callers of their likely wait times (based on real-time information, including call volume and member services representative availability) as they enter the queue.
- t. The Contractor shall have the ability to make outbound calls without interrupting the ability of callers to continue to access the call center.
- u. The call management system shall enable the logging of all calls, including:
 - i. the caller's identifying information (e.g., employee ID);
 - ii. the call date and time;
 - iii. the reason for the call (using a coding scheme);
 - iv. the member services representative that handled the call;
 - v. the length of call; and
 - vi. the resolution of the call (including a resolution reason code) and, if unresolved, the action taken and follow up steps required.
- v. The call management system shall maintain a history of correspondence and call transactions for performance management, quality management and audit purposes. This history shall contain the actual information, a date/time stamp that corresponds to when the transaction took place, the origin of the data management transaction (e.g., the State and/or one of its authorized representatives or the member), and the member services representative that processed the transaction. Related correspondence and calls shall be indexed and properly recorded such that they can be treated in reporting and analysis as part of a distinct transaction.
- w. The Contractor shall develop an Interview Guide (or "scripts") to guide representatives/operators in their discussions with members. The Interview Guide shall include but not be limited to the following:



- i. Specific training and knowledge of the HSA, including specific employer funding amounts, member balances, member plan spend to date; and
 - ii. When to transfer calls to the Benefits Administration call center, the State's TPA(s), or the State's CDHP/HSA communications vendor.
- x. The Contractor shall track and provide to the State a quarterly summary of member complaints and their resolution.

A.8. Staffing

- a. The Contractor shall provide and maintain qualified staff to provide services required under this Contract. The Contractor shall ensure that all staff, including the Contractor's employees, independent contractors, consultants, and subcontractors performing services under this requirement, have the experience and qualifications to perform the applicable services.
- b. For its work under this Contract, the Contractor shall not use any person or organization that is on the U.S. Department of Health and Human Services' Office of Inspector General (OIG) exclusions list unless the Contractor receives prior, written approval from the State.
- c. The Contractor shall ensure that all staff receives initial and ongoing training regarding all applicable requirements of this Contract. The Contractor shall ensure that staff providing services under this Contract are specifically oriented and trained regarding their functions, knowledgeable about the Contractor's operations relating to the State plans, and knowledgeable about their functions and how those functions relate to the requirements of this Contract.
- d. The Contractor shall have an ongoing designated, full-time Account Team that can provide daily operational support as well as strategic planning and analysis. All members of the Account Team shall have previous experience working with large employer groups and complex accounts.
- e. The Account Team shall be available for consultation with the State during the hours of 8:00 a.m. to 4:30 p.m. Central Time, Monday through Friday, as required to fulfill the scope of services specified in this Contract. The Account Manager shall also be available via phone and email throughout the workday as well as after hours, including weekends.
- f. For matters designated as urgent by the State (i.e. website malfunction, inability to deposit or withdraw from the HSA, etc.), the Contractor shall provide a response to the State within four (4) hours. Staff members from the respective business unit with final decision making authority shall provide responses.
- g. The Account team shall include an Information Technology Director/Manager, who shall have overall responsibility for the Information Technology operations under the Contract. This individual shall be responsible for coordinating with the State of Tennessee's IT staff and all participating employer IT staff.
- h. The Contractor shall designate a full time Account Manager as a member of the Account Team. The Account Manager shall be a member of the implementation team in order to ensure a seamless transition from implementation to ongoing operations. The Account Manager shall have the responsibility and authority to manage the entire range of services specified in this Contract and shall respond promptly to changes or inquiries. This includes, but is not limited to, researching and resolving problems with employee enrollment, contributions, disbursements, other participant account issues, employer issues, and technical issues.
- i. Ongoing operational meetings shall be conducted on a State-specified schedule, but shall occur no less than weekly unless otherwise directed by the State. At its discretion, the State may allow the Contractor to participate in such meetings by teleconference.



- j. Unless otherwise approved by the State, the Account Manager shall meet with the State in person, at a minimum, annually and more often if required by the State. Any costs incurred by the Contractor as a result of a meeting with the State shall be the responsibility of the Contractor.
- k. The Contractor shall survey the State annually in January to determine the State's satisfaction with the Account Team and report the results of the survey to the State within 60 days of the end of the survey period.
- l. The Contractor agrees that the State may approve or disapprove of any staff and subcontractor assigned to this Contract prior to the proposed assignment. The State may also direct the Contractor to replace staff members and subcontractors providing core services as it deems necessary and appropriate. The decision of the State on these matters shall not be subject to appeal.
- m. Key personnel commitments made in the Contractor's proposal shall not be changed unless prior approved by the State in writing. The Contractor shall notify the State at least fifteen (15) business days in advance, or as soon as the information is available, of proposed personnel changes. The Contractor shall submit proposed personnel substitutions in sufficient detail regarding education and experience to the State to allow evaluation of the impact to the Contract. The decision of the State on these matters shall not be subject to appeal.
- n. If any key position becomes vacant, the Contractor shall provide a replacement with commensurate experience and required professional credentials within sixty (60) days of the vacancy unless the State grants an exception to this requirement in writing.

A.9. Communication

- a. The Contractor shall receive State approval on all materials prior to distribution to members, including generic material that is prepared by the Contractor for use by State and other clients.
- b. The Contractor shall, in consultation with and following written approval by the State, provide materials to members and agency staff, customized for the state, that educate members about how to open and use a HSA and how to use the FSA debit card. At the State's request, such materials shall include the ParTNers for Health "look and feel" and be consistent with the State's CDHP communications and educational campaign led by the State's communications vendor.
- c. The Contractor shall work in conjunction with the State, its Communications team and any applicable contracted vendors to ensure continuity of branding across all plan and member materials, website, and any other communications information. This branding shall include, but is not limited to, use of the ParTNers for Health logo, color scheme and applicable taglines. All uses of these branding elements shall be subject to prior written approval by the State.
- d. Unless otherwise directed by the State, the Contractor shall mail a welcome packet to all CDHP (also known as a HDHP) and FSA enrolled members within ten (10) days of member completion of the HSA and/or FSA enrollment/set-up process. The welcome packet shall include, at a minimum and as applicable, a welcome letter, an overview of how to set up and access the HSA account, investment options, an overview of how to activate the debit card, an overview of qualified medical expenses, the Contractor's website address, and website logon information. Debit cards may be included in the welcome packet or mailed separately.
- e. Annually, no more than two (2) months prior to the State's annual enrollment period, the Contractor shall provide to the State, in electronic format, any enrollment information requested by the State that may be helpful to potential members. Items may include, but not be limited to, a toll-free member services number, website address, website logon information, a confidentiality statement, procedures for accessing services, and other pertinent updates, changes and/or materials.
- f. The Contractor shall mail at least one reminder letter to any member who has not activated their HSA account thirty (30) days after the Contractor's receipt of their enrollment. The letter shall include the information needed by the member to complete the account set-up process.



- g. Unless otherwise specified, the Contractor shall be responsible for all costs related to the design, development, revision, printing, and distribution of all member materials that are required to be produced under the terms of this Contract. The Contractor shall ensure that up-to-date versions of all printed member materials can be downloaded from its website.
- h. Unless approved in advance by the State, the Contractor shall not distribute any promotional materials or gifts to employees or plan members, even if such gifts are of a de minimus value (e.g., magnets, pens, etc.).
- i. The Contractor shall use first class rate for all mailings, unless otherwise directed or prior approved by the State.
- j. The Contractor's system(s) shall possess mailing address standardization functionality in accordance with U.S. Postal Service conventions.
- k. The Contractor shall have the exclusive responsibility to write, edit, and arrange for clearance of materials (such as securing full time use of a stock photograph used in brochures for perpetuity) for any and all member materials in time for the materials to be approved by the State and printed in time to meet required deadlines.
- l. The Contractor shall ensure that its member materials are culturally sensitive and professional in content, appearance, and design.
- m. The Contractor shall, to the extent practicable, use relatively large and legible fonts in its member materials. Additionally, the Contractor shall make maximum use of graphics to communicate key messages. The Contractor shall also prominently display the Contractor's call center telephone number and hours of operation in large, bolded typeface on all member materials.
- n. Unless otherwise prior approved by the State, the Contractor shall design all member materials at the sixth (6.0) grade reading level or lower using the Flesch-Kincaid Index or other suitable metric that the State prior approves. The Contractor shall evaluate materials using the entire text of the materials (except return addresses).
- o. The Contractor shall provide electronic templates of all finalized member materials in a format that the State can easily alter, edit, revise, and update. Absent gross negligence or malfeasance by the Contractor, the Contractor has no liability for errors on other deliverables that the State did not find or correct before giving final approval for the individual materials. However, the Contractor shall produce and distribute corrected versions of the individual materials at the State's direction (refer to Contract Section C.3.c. regarding production and distribution costs).
- p. The Contractor covenants that all materials distributed to members and prepared or produced by the Contractor shall be accurate in all material respects. Unless otherwise directed by the State, the Contractor shall seek and obtain prior written authorization from the State before using or disseminating any general (non-individualized) member communications, notices, and marketing and communication materials.

A.10. Website

- a. The Contractor shall provide a website for accountholders that offers a single point of access for HSA and FSA account information. Unless otherwise approved by the State, the website shall have the following capabilities/information for accountholders (as applicable):
 - i. Real time check of account balance, contributions, withdrawals and investments;
 - ii. Update personal information;
 - iii. Pay medical expenses online;
 - iv. Review lists of eligible expenses;



- v. Account tools and calculators;
 - vi. Frequently asked questions (FAQs) and answers to said questions;
 - vii. Order additional debit cards and/or checks;
 - viii. Transfer funds in and out of the HSA to and from other bank accounts or investment accounts;
 - ix. Make a one-time or recurring contribution to the HSA (current or prior year);
 - x. Set up or change investment options;
 - xi. Select automatic transfers to and from investments;
 - xii. View online tax documents and statements;
 - xiii. Access links to the State's Communications vendor, Third Party Administrators (TPAs), and other sites as defined by the State;
 - xiv. Contact information, including mail and email addresses and member services telephone numbers for the Contractor; and
 - xv. Links to state and federal FSA and HSA tax rules.
- b. The website must be mobile device/smart phone compatible and be fully operational on or before the website go-live date specified in contract section A.20.
 - c. In addition to the Contractor's own website, where plan and member specific information shall be incorporated, the Contractor shall maintain a "splash" page dedicated to and customized for this Contract containing general HSA and FSA plan information that does not require a member to login. The design of the splash page, inclusive of the site map, page layout, color/font scheme and branding, static content and any documents which can be accessed via or downloaded from the website, must be prior approved by the State. Additionally, the Contractor shall obtain prior, written approval from the State for any links from the site to an external website/portal or webpage. The splash page shall be effective on or before the website go-live date specified in contract section A.20.
 - d. The Contractor shall agree to link the splash page to Benefits Administration's websites, other State contracted vendor websites, microsites, content or other web or mobile device enabled video/multimedia tools or apps as determined by the State that are useful or applicable for members (State approved tools from other approved vendors).
 - e. Unless otherwise approved by the State, the Contractor shall update content and/or documents posted to or accessed via the website/portal within five (5) business days of the State's approval of changes to said content and/or documents.
 - f. The Contractor shall grant the State access to the website/portal test environment for the State's review and approval no less than thirty (30) days prior to the launch of the website/portal.
 - g. The Contractor shall host the website/portal on a non-governmental server which shall be located within the United States.
 - h. The Contractor shall ensure that the website/portal meets all of the capacity, availability, performance and security requirements outlined in this contract.
 - i. The Contractor shall obtain and cover the cost of the domain name for the website/portal.
 - j. To ensure accessibility among persons with a disability, the Contractor's website shall comply with Section 508 of the Rehabilitation Act of 1973 (29 USC Section 794d) and implementing regulations at 36 Code of Federal Regulations (CFR) 1194 Parts A-D.
 - k. The Contractor shall:



- i. Have security measures in place that ensure that all data records are transported, stored and accessed in a secure manner. All data, other than HSA account information, is property of the State of Tennessee. The system must meet or exceed the State's information security requirements for access control, authentication, storage, data destruction, system maintenance and patching and must be compliant with best practices for secure application development as defined in ISO/IEC 27000 series. The State of Tennessee Information Security policy is attached to this contract as Attachment E.
 - ii. Utilize best practice authentication methods to prevent access from unauthorized individuals and entities.
 - iii. Provide a system that has the ability to sustain 99.9 percent continuous uptime.
 - iv. Provide a 100 percent secure web-based application that requires only a web-browser and an Internet connection to use with the addition of an Adobe Acrobat web-browser plug-in.
 - v. Maintain a secure host site that is available 24 hours a day, 365 days a year except for maintenance windows.
 - vi. Maintain nightly data backups of all data.
 - vii. Provide adequate server processing capacity to keep user response times within normal latency boundaries.
 - viii. Develop a user access security approval process and manage the approval of user access and permissions.
- i. The State shall have ownership, right, title, and interest in all data stored and generated, both historical and current. The State will allow Contractor access to any data necessary to comply with its obligations under State and Federal law, including record keeping requirements and plan members' right to records relating to their accounts.

A.11. Coordination and Collaboration

- a. At the State's request, the Contractor shall coordinate with other State vendors, including but not limited to, the Communications vendor and the Third Party Administrators (TPA), as necessary to ensure that members and Benefits Administration staff receive appropriate services, training and information and to ensure a consistent message and content on the CDHP/HSA and FSA plan options. This coordination shall include, but is not limited to, making referrals, providing and receiving member information, and attending and participating in meetings.
- b. The Contractor shall participate in meetings and/or conference calls with other vendors as requested by the State to improve coordination of services to members.
- c. At the State's request, the Contractor shall attend the annual State-sponsored vendor summit with representatives from the State, and its related health plan vendors. The purpose of the vendor summit is to identify issues, develop solutions, share information, leverage resources, and discuss and develop policies and procedures as necessary to ensure collaboration among vendors and the State.
- d. If requested by the State, qualified members of the Contractor's staff shall participate in monthly conference calls with Agency Benefits Coordinators (ABCs) and other State staff.

A.12. Data Integration and Technical Requirements

- a. The Contractor shall maintain an electronic data interface with the State's Edison System for the purpose of processing State member enrollment information. The Contractor shall be responsible for providing and installing the hardware and software necessary. When the Contractor requires the exchange of PHI with the State of Tennessee, the State requires the use of second level authentication. This is accomplished using the State's standard software product, which supports Public Key Infrastructure (PKI). The Contractor shall design a solution, in coordination with the State,



to connect to the State's Secure File Transfer Protocol (SFTP) server using a combination of the password and the authentication certificate. The initial sign-on and transmission testing will use a password. Certificate testing may also be performed during the test cycle. Subsequent production sign-on will be done using the authentication certificate. The Contractor will then download the file and decrypt the file in its secure environment. The State of Tennessee uses public key encryption with Advanced Encryption Standard (AES) to encrypt PHI. If the State adopts a different or additional encryption standard or tool in the future, the Contractor shall, with adequate notice, cooperate with the State to maintain the security of protected information according to all applicable State and Federal standards.

- b. Notwithstanding the requirement to maintain enrollment data, the Contractor shall not perform changes to enrollment data without the State's approval. This prohibition shall include, but not necessarily be limited to: initiation, termination, and/or changes of coverage.
- c. Unless otherwise directed by the State, at least one (1) month prior to the applicable go-live date, the Contractor shall complete testing of the transmission, receipt, and loading of the eligibility/enrollment and payroll files from the State. The State shall deliver a test file no later than 60 days prior to go-live. Testing of files from other participating employers shall be on a timeframe agreed upon by the Contractor and the employer.
- d. Unless otherwise directed by the State, at least two (2) weeks prior to the applicable go-live date, the Contractor shall load, test, verify and make available online for use the State's eligibility/enrollment information. The Contractor shall certify, in writing, to the State that the Contractor understands and can fully accept and utilize the eligibility/enrollment and payroll files as provided by the State. Loading and verifying files from other participating employers shall be on a timeframe agreed upon by the Contractor and the employer.
- e. The Contractor shall maintain, in its systems, in-force enrollment records of all individuals covered by a Public Sector Plan sponsored CDHP and FSA.
 - i. To ensure that the State's enrollment records remain accurate and complete, the Contractor shall, unless otherwise directed by the State, retrieve, via a secure medium weekly enrollment files from the State.
 - ii. The Contractor shall complete and submit to the State a Weekly File Transmission Statistics Report within five (5) business days of receipt of the Weekly Enrollment Update. The Contractor shall submit this report via email to designated State staff. (See Contract Attachment C.)
 - iii. The Contractor and/or its subcontractors, shall electronically process one hundred percent (100%) of electronically transmitted enrollment updates, including the resolution of any errors identified during processing, within four (4) business days of receipt of the weekly file. The State and the Contractor shall work to develop a process for responding to invalid or non-processed records.
 - iv. The Contractor and/or its subcontractors shall resolve all enrollment discrepancies as identified by the State or Contractor within one (1) business day of identification.
 - v. The Contractor and/or its subcontractors, with collaboration from the State, shall resolve associated system errors, as identified through enrollment discrepancy resolution, in a timeframe mutually agreed upon with the State. The Contractor shall document in an eligibility system modification log, the system error details, the proposed solution, and the final solution as agreed upon by the State. The Contractor shall update and submit this log quarterly (refer also to Contract Attachment C, Reporting Requirements). Subsequent errors identical in nature may be subject to Liquidated Damages as specified in Attachment B.
 - vi. State Enrollment Data Match: Upon request by the State, not to exceed four (4) times annually, the Contractor shall submit to the State, in a secure manner, its full file of State



members, by which the State may conduct a data match against the State's Edison database. The purpose of this data match will be to determine the extent to which the Contractor is maintaining its database of State members. The State will communicate results of this match to the Contractor, including any Contractor requirements, and associated timeframes, for resolving the discrepancies identified by the data match.

- f. The Contractor shall establish and maintain systems and processes to receive all appropriate and relevant data from entities and vendors providing services to members in order to track member claims information, including accumulations toward deductibles and out-of-pocket maximums and allow online claims payment. This shall include up to daily electronic exchange of claims and member-level deductible and maximum out-of-pocket accumulator data with the TPA vendors, Pharmacy vendor, EAP/BHO vendor, and any other State contracted vendor as needed.
- g. At the State's request, the Contractor shall provide transmittal of member data via secure medium at a frequency determined by the State to any additional third parties including the State's TPA vendors, HM/W vendor, EAP/BHO vendor, PBM vendor, or others as identified by the State.
- h. The Contractor's systems shall conform to future federal and state specific standards for data exchange by the standard's effective date.
- i. The Contractor shall partner with the State and member agencies in the management of current and future data exchange formats and methods and in the development and implementation planning of future data exchange methods not specific to HIPAA or other federal effort.
- j. Within sixty (60) days of notice of termination of this Contract, the Contractor shall transfer to the State all required data and records necessary to administer the plan(s)/program(s), subject to State and Federal confidentiality requirements. The transfer shall be made electronically via secure medium, in a file format to be determined based on the mutual agreement between the State and the Contractor. Upon completion of the transfer of required data and records and any retention requirements mandated by law, the Contractor shall sanitize (wipe) all storage and shred any paper documents that contain confidential member information when all retention requirements have been met.

A.13. Privacy & Confidentiality

- a. The following privacy and confidentiality standards apply to all forms of assistance that the Contractor provides.
- b. The Contractor shall develop, adopt, and implement standards, which are, at a minimum, compliant with the HIPAA statute and the HIPAA privacy and security rules in 45 CFR Part 164, to safeguard the privacy and confidentiality of all information about members. For example, the Contractor shall ensure that it does not have completed documents or other types of forms sitting in public view, left in unsecure boxes or files, or left unattended in any off-site location (e.g., in an automobile, etc.). The Contractor's procedures shall include but not be limited to safeguarding the identity of members as plan members and preventing the unauthorized disclosure of information. The Contractor shall comply with HIPAA as amended by HITECH Act (part of the American Recovery and Reinvestment Act, Public Law 111-5), and all implementing regulations including new amendments when they become effective.
- c. The Contractor shall not use or further disclose PHI other than as permitted or required by HIPAA and the Business Associate Agreement; or as required by law. Use of PHI for treatment, payment, or health care operations may include disclosure only as permitted by HIPAA, including HIPAA's "minimum necessary" standard.
- d. The Contractor shall use appropriate safeguards to prevent the unauthorized use or disclosure of the PHI. Contractor shall promptly (not to exceed 48 hours) report to the State any unauthorized use or disclosure of PHI. Contractor shall comply with the HIPAA Breach Notification Rules found in 45 CFR



§, Section 164.400 et al, and shall cooperate with the State in responding to any unauthorized use or disclosure of PHI related to this contract.

- e. The Contractor shall mitigate, to the extent practicable, any harmful effect that is known to the Contractor of a use or disclosure of PHI by the Contractor in violation of the requirements of the federal privacy rule.
- f. The Contractor shall provide access to PHI in a "designated record set" in order to meet the requirements under 45 CFR §164.524.
- g. The Contractor shall make any amendment(s) to PHI in a "designated record set" pursuant to 45 CFR §164.526.
- h. The Contractor shall document such disclosures of PHI and information related to such disclosures as would be required to respond to a request by an individual for an accounting of disclosures of PHI in accordance with 45 CFR §164.528.
- i. The Contractor shall (i) implement administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of the electronic PHI that it creates, receives, maintains, or transmits, (ii) report to the State any security incident (within the meaning of 45 CFR § 164.304) of which the Contractor becomes aware, and (iii) ensure that any Contractor employee or agent, including any subcontractor, agrees to the same restrictions and conditions that apply to the Contractor with respect to such information.
- j. The Contractor shall not sell Public Sector Plan member or prescriber information or use member or prescriber identified information for advertising, marketing, promotion or any activity intended to influence sales or market share of a medical product or service.
- k. At the request of the State, the Contractor shall offer credit protection at no cost to the member for those times in which a member's PHI is accidentally or inappropriately disclosed.
- l. The Contractor shall comply with all privacy and security requirements of the Health Insurance Portability and Accountability Act of 1996 and the Health Information Technology for Economic and Clinical Health (HITECH) Act.
- m. The Contractor shall have full financial responsibility for any penalties, fines, or other payments imposed or required as a result of the Contractor's non-compliance with or violation of HIPAA or HITECH requirements, and the Contractor shall indemnify the State with respect to any such penalties, fines, or payments.
- n. The Contractor shall assure that all Contractor staff is trained in all HIPAA requirements, as applicable.

A.14. Information Systems

- a. The Contractor's Systems shall have the capability of adapting to any future changes necessary as a result of modifications to the design of the Public Sector Plans or this Contract and its requirements. The Contractor's Systems shall be scalable and flexible so they can be adapted as needed, within negotiated timeframes.
- b. The Contractor shall ensure that its electronic data processing (EDP) and electronic data interchange (EDI) environments (both hardware and software), data security, and internal controls meet all applicable Federal and State standards, including the Health Insurance Portability and Accountability Act of 1996 (HIPAA) and the Health Information Technology for Economic and Clinical Health (HITECH) Act. Said standards shall include but not be limited to the requirements specified under HIPAA for each of the following but only to the extent such requirement is applicable to the services the Contractor provides under this contract:
 - i. Electronic Transactions and Code Sets



- ii. Privacy
 - iii. Security
 - iv. National Provider Identifier
 - v. National Employer Identifier
 - vi. National Individual Identifier
 - vii. Claims attachments
 - viii. National Health Plan Identifier
 - ix. Enforcement
- c. All Contractor systems shall maintain linkages and “parent-child” relationships between initial and related subsequent interactions/transactions/events/activities. Additionally, when the Contractor houses indexed images of documents used by members, employers and subcontractors to transact with the Contractor, the Contractor shall ensure that these documents maintain logical relationships to certain key data such as member identification and employer or subcontractor identification numbers. The Contractor shall also ensure that records associated with a common event, transaction or customer service issue have a common index that will facilitate search, retrieval and analysis of related activities, e.g., interactions with a particular member about the same matter/problem/issue.
- d. Upon the State’s request, the Contractor shall be able to generate a listing of all members and employers that were sent a particular document, the date and time that the document was generated, and the date and time that it was sent to particular members or employers or groups thereof. The Contractor shall also be able to generate a sample of said document.
- e. Retention and Accessibility of Information
- i. The Contractor shall maintain and provide, one (1) month prior to the HSA operational go-live date, a comprehensive information retention plan that is in compliance with state and federal requirements.
 - ii. The Contractor shall maintain information on-line for a minimum of three (3) years, based on the last date of update activity, and update detailed and summary history data monthly for up to three (3) years to reflect adjustments.
 - iii. The Contractor shall provide forty-eight (48) hour turnaround or better on requests for access to information that is between three (3) years and five (5) years old, and seventy-two (72) hour turnaround or better on requests for access to information in machine readable form that is older than five (5) years.
 - iv. If an audit or administrative, civil or criminal investigation or prosecution is in progress or audit findings or administrative, civil or criminal investigations or prosecutions are unresolved, information shall be kept in electronic form until all tasks or proceedings are completed.
- f. All information, with the exception of member health savings account information, whether data or documents, and reports that contain or make references to said information, involving or arising out of this Contract is owned by the State. The Contractor is expressly prohibited from sharing or publishing State information and reports or releasing such information to external entities, affiliates, parent company, or subsidiaries without the prior written consent of the State.
- g. Prior to implementing any major modification to or replacement of the Contractor’s core information systems functionality and/or associated operating environment, the Contractor shall notify the State in writing of the change or modification within a reasonable amount of time (commensurate with the nature and effect of the change or modification) if the change or modification: (a) would affect the Contractor’s ability to perform one or more of its obligations under this Contract; (b) would be visible to State system users, members and providers; (c) might have the effect of putting the Contractor in noncompliance with the provisions or substantive intent of the Plan Documents and/or this Contract; or (d) would materially reduce the benefits payable or services provided to the average member. If so directed by the State, the Contractor shall discuss the proposed change with the State/its designee prior to implementing the change. Subsequent to this discussion, the State may require the



Contractor to demonstrate the readiness of the impacted systems prior to the effective date of the actual modification or replacement.

A.15. System Availability, Business Continuity and Disaster Recovery (BC-DR)

- a. The Contractor shall ensure that critical member and other web-accessible and/or telephone-based functionality and information, including the website described in Section A.10., are available to the applicable System users twenty-four (24) hours a day, seven (7) days a week, except during periods of scheduled System unavailability agreed upon by the State and the Contractor. Unavailability caused by events outside of the Contractor's span of control is outside of the scope of this requirement. Every effort shall be made to schedule maintenance between the hours of midnight and 5:00 a.m. Central Time and it shall be scheduled in advance with notification on the member website/portal. The Contractor shall make efforts to minimize any down-time between 5:00 a.m. and 10:00 p.m. Central Time.
- b. The Contractor shall ensure that the Systems within its span of control that support its data exchanges with the State and the State's vendors are available and operational according to the specifications and schedule associated with each exchange.
- c. Regardless of the architecture of its systems, the Contractor shall develop and be continually ready to invoke a business continuity and disaster recovery (BC-DR) plan. The BC-DR plan shall encompass all information systems supporting this Contract. At a minimum the Contractor's BC-DR plan shall address the following scenarios:
 - i. Central and/or satellite data processing, telecommunications, print and mailing facilities and functions therein, hardware and software are destroyed or damaged;
 - ii. System interruption or failure resulting from network, operating hardware, software, communications infrastructure or operational errors that compromise the integrity of transactions that are active in a live system at the time of the outage;
 - iii. System interruption or failure resulting from network, operating hardware, software, communications infrastructure or operational errors that compromise the integrity of data maintained in a live or archival system; and
 - iv. System interruption or failure resulting from network, operating hardware, software, communications infrastructure or operational errors that does not compromise the integrity of transactions or data maintained in a live or archival system but does prevent access to the system.
- d. The Contractor shall provide the State results of its most recent test of its BC-DR plan one (1) month prior to the HSA operational go-live date.
- e. The Contractor shall periodically, but no less than annually, test its BC-DR plan through simulated disasters and lower level failures in order to demonstrate to the State that it can restore system functions. The Contractor shall submit an annual summary of its BC-DR Results Report to the State (refer to Contract Attachment C, Reporting Requirements).
- f. In the event that the Contractor fails to demonstrate in the tests of its BC-DR plan that it can restore system functions per the standards outlined in this Contract, the Contractor shall submit to the State a corrective action plan that describes how the failure will be resolved. The Contractor shall deliver the corrective action plan within ten (10) business days of the State's request.
- g. In the event of a declared major failure or disaster, as defined in the Contractor's BC-DR plan, the Contractor's critical functionality shall be restored within seventy-two (72) hours of the failure's or disaster's occurrence. The Contractor shall also ensure a Recovery Point Objective (RPO) of eight (8) hours in the event of any data loss.
- h. The Contractor shall maintain a duplicate set of all records relating to this Program in electronic medium, usable by the State and the Contractor for the purpose of disaster recovery. Such duplicate records are to be stored at a secure fire, flood, and theft- protected facility located away from the



storage location of the originals. The Contractor shall update duplicate records, at a minimum, on a daily basis and shall retain said records for a period of sixty (60) days from the date of creation. At the State's request, at the end of the term of this Contract or upon notice of termination of this Contract prior to the term date, the Contractor shall convey the original and the duplicate records medium and the information they contain to the State on or before the date of termination.

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

- a. The Contractor's Systems shall employ an access management function that restricts access to varying hierarchical levels of system functionality and information. The access management function shall:
 - i. Restrict access to information on a "least privilege" basis, e.g., users permitted inquiry privileges only will not be permitted to modify information;
 - ii. Restrict access to specific system functions and information based on an individual user profile, including inquiry only capabilities and the ability to create, change or delete certain data (global access to all functions shall be restricted to specified staff jointly agreed to by the State and the Contractor);
 - iii. Restrict unsuccessful attempts to access system functions to three (3) continuous unsuccessful attempts, with a system function that automatically prevents further access attempts and records these occurrences; and
 - iv. Ensure that authentication credentials are not passed in clear text or otherwise displayed or presented, and also be encrypted at rest.
- b. The Contractor shall make System information available to duly authorized representatives of the State and other state and federal agencies to evaluate, through inspections or other means, the quality, appropriateness and timeliness of services performed.
- c. The Contractor's Systems shall contain controls to maintain information integrity. These controls shall be in place at all appropriate points of processing. The controls shall be tested in periodic and spot audits following a methodology mutually agreed upon by the Contractor and the State.
- d. Audit trails shall be incorporated into all Systems to allow information on source data files and documents to be traced through the processing stages to the point where the information is finally recorded. The audit trails shall:
 - i. Contain a unique log-on or terminal ID, the date, and time of any create/modify/delete action and, if applicable, the ID of the system job that effected the action;
 - ii. Have the date and identification "stamp" displayed on any on-line inquiry;
 - iii. Have the ability to trace data from the final place of recording back to its source data file and/or document;
 - iv. Be supported by listings, transaction reports, update reports, transaction logs, or error logs; and
 - v. Facilitate batch audits as well as auditing of individual records.
- e. The Contractor's Systems shall have inherent functionality that prevents the alteration of finalized records.
- f. The Contractor shall provide for the physical safeguarding of its data processing facilities and the systems and information housed therein. The Contractor shall provide the State with access to data facilities upon request. The physical security provisions shall be in effect for the life of this Contract.
- g. The Contractor shall restrict perimeter access to equipment sites, processing areas, and storage areas through a card key or other comparable system, as well as provide accountability control to record access attempts, including attempts of unauthorized access.



- h. The Contractor shall include physical security features designed to safeguard processor site(s) through required provision of fire retardant capabilities, as well as smoke and electrical alarms, monitored by security personnel.
- i. The Contractor shall put in place procedures, measures and technical security to prohibit unauthorized access to the regions of the data communications network inside of the Contractor's span of control.
- j. Unless the State prior-approves in writing the Contractor's use of alternate mitigating controls, the Contractor shall use Federal Information Processing Standard (FIPS) 140-2 compliant technologies to encrypt all PHI, PII, and other confidential information in motion or rest, including back-up media.
- k. The Contractor shall commission a security risk assessment at least annually and communicate the results to the State as part of an information security plan. The first report shall be provided one (1) month prior to the HSA operational go-live date and annually thereafter. The risk assessment shall also be made available to appropriate state and federal agencies. At a minimum the assessment shall contain the following: identification of loss risk events/ vulnerabilities; analysis of the probability of loss risk and frequency of events; estimation of the impact of said events; identification and discussion of options for mitigating identified risks; cost-benefit analysis of options; recommended options and action plan for their implementation. The assessment shall be conducted in accordance with the following: requirements for administrative, physical, and technical safeguards to protect health data (45 CFR §§164.304 - 318); rules for conducting risk analysis and risk management activities (45 CFR §164.308); requirements for security awareness training (45 CFR §164.308(a)(5)); requirements for entities to have security incident identification, response, mitigation and documentation procedures (45 CFR §164.308(a)(6)).
- l. To maintain the privacy of PHI, the Contractor shall enable Transport Layer Security (TLS) on the mail server used for daily communications between the State and the Contractor. TLS shall be enabled as of the HSA operational go-live date and shall remain in effect throughout the term of the contract.

A.17. Fraud and Abuse

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

A.18. Audits

- a. At any reasonable time the State and/or its authorized representative shall have the right to examine and audit the Contractor services and pricing related to the services being provided by the Contractor to ensure compliance with all applicable requirements. For the purpose of this requirement, the term,



"Contractor," shall include its parent organization, affiliates, subsidiaries, subcontractors, and providers.

- b. The Contractor shall provide access, at any time during the term of this contract and for five (5) years after final contract payment (longer if required by law), to the State and/or its authorized representative to examine and audit Contractor services, payments, and pricing pursuant to this Contract. The State reserves the right to request that documentation be provided for review at the authorized representative's location, the State's location, or at the Contractor's corporate site.
- c. The Contractor shall, at its own cost, provide the State and/or its authorized representative with prompt and complete access to any data, documents, access to systems, and other information necessary to ensure Contractor compliance with all requirements of this Contract.
- d. The Contractor shall provide reasonable cooperation with requests for information, which includes, but is not limited to, the timing of the audit, deliverables, data/information requests and the Contractor's response time to the State's questions during and after the process. The Contractor shall also provide a response to all "findings" received. Such response shall occur within thirty (30) days, or at a later date if mutually determined with the State to be more reasonable based on the number and type of findings.
- e. The State shall not be responsible for time or any costs incurred by the Contractor in association with an audit including, but not limited to, the costs associated with providing data, reports, documentation, systems access, or space.
- f. If the outcome of the audit results in an amount due to the State, then the State will work with the Contractor to negotiate terms of repayment. In the absence of such agreement, the State will deduct one-sixth of the total amount due from the monthly account maintenance fees due to the Contractor pursuant to Section C.3 each month for six months. If the Contractor disagrees with a finding resulting in a payment to the State, the State will review the Contractor's comments, but if the State retains the original audit findings the Contractor will be responsible for any payment to the State.
- g. The Contractor shall refer all media and legislative inquiries to the Division of Benefits Administration, which will have the sole and exclusive responsibility to respond to all such queries. However, the Contractor shall respond directly to audit requests from the Comptroller, to audit requests from divisions within the Department of Finance & Administration, and to subpoenas; in all such instances, the Contractor shall copy the Benefits Administration Division on all correspondence.

A.19. General Administration

- a. Unless prior approved in writing by the State and in compliance with State and Federal law, the Contractor shall not use information gained through this Contract in marketing or advertising, publications, expanding non-State business relationships, or for any pecuniary gain.
- b. Following contract termination, the Contractor shall complete the processing of all HSA and FSA reimbursement requests received by Contractor which were due and payable prior to the contract termination date.

A.20. Due Dates for Project Deliverables/Milestones

Deliverables/Milestones:		Contract Reference(s):	Deliverable Due Dates:
A.2. HSA Account Set-Up and Management			
1.	Weekly eligibility and payroll deduction files	A.2.d.	Weekly after HSA account go-live, unless otherwise directed by the State
2.	Investment opportunities overview	A.2.h.	Prior to HSA account go-live



Deliverables/Milestones:	Contract Reference(s):	Deliverable Due Dates:
3. Debit cards and/or checks	A.2.v.	Within ten (10) days of completion of the HSA enrollment process
4. Enrollment confirmation	A.2.y.	Within ten (10) days of HSA establishment
A.3. FSA Account Set-Up and Management		
5. Weekly eligibility and payroll deduction files	A.3.e.	Weekly after FSA account go-live, unless otherwise directed by the State
6. Enrollment and deduction file transmission	A.3.f.	As determined by the State/Higher Education
7. Enrollment confirmation	A.3.f.	Within ten (10) days of FSA establishment
8. Debit cards	A.3.i.	Within ten (10) days of completion of the FSA enrollment process
9. Card adjudication rate report	A.3.j.	Quarterly
10. Non-allowable claims notification	A.3.m.	Within 30 days of claims receipt
11. Appeals processing	A.3.m.	Within 60 days of appeals receipt
12. Non-discrimination Assistance	A.3.q.	Annually
13. Refund unused funds	A.3.r.	Annually
A.4. Member/Employer Support and Education		
14. Member satisfaction survey and follow up action plan	A.4.e.	Annually
A.5. Implementation		
15. HSA Operational go-live	A.5.a.	September 15, 2015
16. HSA Account go-live	A.5.a.	January 1, 2016
17. FSA Account go-live	A.5.a.	January 1, 2017
18. Kick-off meeting	A.5.b.	Within thirty (30) days of either a) the contract start date or b) the notification of award, as requested by the State
19. Implementation plan	A.5.c.	Within thirty (30) days of the contract start date
20. Operational readiness review	A.5.d.	Within thirty (30) days prior to each go-live
21. Resolution of operational readiness findings	A.5.g.	Prior to the applicable go-live
22. Implementation status meetings	A.5.h.	Twice a week during implementation; Daily for the two (2) weeks prior to, and the first month following, each go-live
23. Implementation performance assessment	A.5.i.	Within sixty (60) days post HSA and FSA account go-live



Deliverables/Milestones:	Contract Reference(s):	Deliverable Due Dates:
A.6. Reporting		
24. Standard HSA/FSA reporting	A.6.c	As available from Contractor
25. Employer summary reports	A.6.d.	Monthly and annually
26. Salary deduction file	A.6.e.	As required by each employer
27. Account and investment statements	A.6.g.	Quarterly
28. Portfolio performance review	A.6.h.	Quarterly
29. Account reports	A.6.i.	As required in the contract
30. Ad-hoc reports	A.6.k.	Within five (5) business days of request; Urgent reports within two (2) business days
A.7. Call Center		
31. Call center open	A.7.c.	At least one (1) week prior to HSA operational go-live
32. Call center performance standards	A.7.k.	Monthly
33. Call center statistics	A.7.l.	Biweekly sixty (60) days after HSA operational go-live; Monthly thereafter
34. Approval of messages	A.7.o.	Prior to HSA operational go-live and as updated
35. Submission of decision tree and menu for approval	A.7.r.	Prior to HSA operational go-live and as updated
36. Member complaints	A.7.x.	Quarterly
A.8. Staffing		
37. Ongoing operational meetings	A.8.i.	Weekly
38. In-person meeting	A.8.j.	Annually
39. Account team survey	A.8.k.	Annually in January
40. Account team survey results	A.8.k.	Within sixty (60) days of the end of the survey period
A.9. Communication		
41. Welcome packet	A.9.d.	Within ten (10) days of member completion of the HSA and/or FSA enrollment/set-up process
42. Enrollment information	A.9.e.	Annually within two (2) months of open enrollment
A.10. Website		
43. Splash page design approval	A.10.a.	Prior to HSA operational go-live and as updated



Deliverables/Milestones:	Contract Reference(s):	Deliverable Due Dates:
44. Website go-live	A.10.a.	September 15, 2015
45. Website updates	A.10.d.	Within five (5) business days of the State's approval
46. Grant access to website test environment	A.10.e.	No less than thirty (30) days prior to September 15, 2015
A.12. Data Integration & Technical Requirements		
47. Completion of eligibility & payroll file testing	A.12.c.	One (1) month prior to HSA account go-live
48. Edison interface/eligibility & payroll file acceptance	A.12.d.	Two (2) weeks prior to HSA account go-live
49. Enrollment files	A.12.e.i.	Weekly
50. File transmission statistics report	A.12.e.ii.	Within five (5) business days of receipt of weekly enrollment update
51. Enrollment updates	A.12.e.iii.	Within four (4) business days of receipt of weekly file
52. Enrollment discrepancies	A.12.e.iv.	Within one (1) business day of identification
53. Eligibility system modification log	A.12.e.v.	Quarterly
54. State Enrollment Data Match	A.12.e.vi.	Up to four (4) times annually, as requested by the State
55. Vendor files	A.12.f.	Up to daily
56. Claims data transmission to third parties	A.12.g.	As directed by the State
57. Transfer of data and records	A.12.j.	Within sixty (60) days of contract termination
A.14. Information Systems		
58. Information Retention Plan	A.14.e.i.	One (1) month prior to HSA operational go-live
A.15. System Availability, Business Continuity and Disaster Recovery (BC-DR)		
59. Business Continuity/Disaster Recovery (BC-DR) Summary Results Report	A.15.d. A.15.e.	One (1) month prior to HSA operational go-live and annually thereafter
60. BC-DR corrective action plan	A.15.f.	Within ten (10) business days of the state's request
61. Duplicate Records	A.15.h.	On or before contract termination date
A.16. System and Information Security and Access Management Requirements		
62. Information integrity methodology and testing	A.16.c.	Periodically throughout the contract term
63. Information Security Plan	A.16.k.	One (1) month prior to HSA operational



Deliverables/Milestones:	Contract Reference(s):	Deliverable Due Dates:
		go-live and annually thereafter
64. Transport Layer Security	A.16.I.	September 15, 2015
A.17. Fraud and Abuse		
65. Fraud and abuse program summary	A.17.c.	Two (2) months prior to HSA operational go-live

A.21. Definitions

- a. **Active Account:** A HSA account for an eligible member enrolled in a state group insurance CDHP option. The account must be completely and properly opened. Closed or transferred accounts are not considered active nor are accounts for members enrolled state group insurance non-CDHP (also known as HDHP) options.
- b. **Affiliate:** A business organization or entity that, directly or indirectly, is owned or controlled by the Contractor, or owns or controls the Contractor, or is under common ownership or control with the Contractor.
- c. **Agency Benefits Coordinator (ABC):** An Agency Benefits Coordinator serves as the liaison between the Public Sector Plans and members. There is at least one ABC in every employer agency/entity.
- d. **Average Speed of Answer:** The average waiting time for a caller before he/she is answered by a service representative.
- e. **Benefits Administration:** The division of the Tennessee Department of Finance & Administration that administers the Public Sector Plans.
- f. **Business Days:** Traditional workdays, including Monday, Tuesday, Wednesday, Thursday, and Friday. State Government Holidays are excluded.
- g. **Consumer Driven Health Plan (CDHP):** A type of medical insurance or plan that typically has a higher deductible and lower monthly premiums. A CDHP may be offered with a Health Savings Account (HSA) or Health Reimbursement Arrangement (HRA).
- h. **Day(s):** Calendar day(s) unless otherwise specified in the Contract.
- i. **EAP/BHO:** Employee Assistance Program/ Behavioral Health Organization.
- j. **Edison:** The State's enterprise resource planning system, which supports human resources, payroll, insurance, contracting, procurement and other agency functions.
- k. **Flexible Spending Arrangement (FSA):** A health flexible spending arrangement (FSA) allows employees to be reimbursed for medical expenses. FSAs are usually funded through voluntary salary reduction agreements with your employer. No employment or federal income taxes are deducted from your contribution. The employer may also contribute.
- l. **FSA Participant:** The employee contributing funds to the FSA
- m. **Health Savings Account (HSA):** A tax-exempt trust or custodial account set up with a qualified HSA trustee to pay or reimburse certain medical expenses incurred.
- n. **HIPAA:** Health Insurance Portability and Accountability Act of 1996, Public Law 104-191 and implementing regulations.



- o. Information System(s): A combination of computing and telecommunications hardware and software that is used in: (a) the capture, storage, manipulation, movement, control, display, interchange and/or transmission of information, i.e., structured data (which may include digitized audio and video) and documents as well as non-digitized audio and video; and/or (b) the processing of information and non-digitized audio and video for the purposes of enabling and/or facilitating a business process or related transaction.
- p. Local Education Agency (LEA): A local education agency pursuant to TCA 49-3-302.
- q. Local Government Agency (LGA): A local government agency pursuant to TCA 8-27-207.
- r. Member: Any person who is enrolled in one the medical benefit options of the Public Sector Plans. For the purposes of this contract, all members will be enrolled in one of the CDHP plan options.
- s. PBM: Pharmacy Benefits Manager
- t. Plan Documents: The State Plan, Local Education Plan, and Local Government Plan Documents which govern coverage of services and eligibility under each plan.
- u. Protected Health Information (PHI): As defined in the HIPAA Privacy Rule, 45 CFR § 160.103.
- v. Public Sector Plans: Benefit plans sponsored by the State, Local Government, and Local Education Insurance Committees.
- w. Section 508: Section 508 of the Rehabilitation Act of 1973 (29 U.S.C. 794d) and implementing regulations at 36 CFR 1194 Parts A-D requires that all Web site content be equally accessible to people with disabilities. This applies to Web applications, Web pages and all attached files. It applies to intranet as well as public-facing Web pages.
- x. Span of Control: Information Technology and telecommunications capabilities that the Contractor itself operates or for which it is otherwise legally responsible according to the terms and conditions of this Contract. The span of control also includes Systems and telecommunications capabilities outsourced by the Contractor.
- y. State: The State of Tennessee.
- z. State, Local Government, and Local Education Insurance Committees: Policy making bodies for the State, Local Government, and Local Education plans established under Tennessee Code Annotated 8-27-101, 8-27-207, and 8-27-301 respectively.
- aa. State Government Holidays: Days on which official holidays and commemorations as defined in *Tennessee Code Annotated 15-1-101, et seq.* are observed.
- bb. Subcontract: An agreement entered into by the Contractor with any other organization or person who agrees to perform any administrative function or service for the Contractor specifically related to securing or fulfilling the Contractor's obligations to the State under the terms of this Contract, when the intent of such an agreement is to delegate the responsibility for any major service or group of services required by this Contract.
- cc. Subcontractor: Any organization or person who provides any function or service for the Contractor specifically related to securing or fulfilling the Contractor's obligations to the State under the terms of this Contract.
- dd. Telecommunication Device for the Deaf (TDD): Special telephone devices with keyboard attachments for use by individuals with hearing impairments who are unable to use conventional phones. Also known as TTY.



Warranty. Contractor represents and warrants that throughout the Term of this Contract ("Warranty Period"), the goods or services provided under this Contract shall conform to the terms and conditions of this Contract. Any nonconformance of the goods or services to the terms and conditions of this Contract shall constitute a "Defect" and shall be considered "Defective." If Contractor receives notice of a Defect during the Warranty Period, then Contractor shall correct the Defect, at no additional charge.

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

If Contractor fails to provide the goods or services as warranted, then Contractor will re-provide the goods or services at no additional charge. If Contractor is unable or unwilling to re-provide the goods or services as warranted, then the State shall be entitled to recover the fees paid to Contractor for the Defective goods or services.

- A.23. Inspection and Acceptance.** The State shall have the right to inspect all goods or services provided by Contractor under this Contract. If, upon inspection, the State determines that the goods or services are Defective, the State shall notify Contractor, and Contractor shall re-deliver the goods or provide the services at no additional cost to the State. If after a period of thirty (30) days following delivery of goods or performance of services the State does not provide a notice of any Defects, the goods or services shall be deemed to have been accepted by the State.

B. TERM OF CONTRACT:

This Contract shall be effective on September 1, 2015 ("Effective Date"), and extend for a period of sixty-four (64) months after the Effective Date ("Term"). The State shall have no obligation for goods or services provided by the Contractor prior to the Effective Date.

C. PAYMENT TERMS AND CONDITIONS:

- C.1. **Maximum Liability.** In no event shall the maximum liability of the State under this Contract exceed Six Million Two Hundred Thousand Dollars (\$6,200,000.00) ("Maximum Liability"). This Contract does not grant the Contractor any exclusive rights. The State does not guarantee that it will buy any minimum quantity of goods or services under this Contract. Subject to the terms and conditions of this Contract, the Contractor will only be paid for goods or services provided under this Contract after a purchase order is issued to Contractor by the State or as otherwise specified by this Contract.
- C.2. **Compensation Firm.** The payment methodology in Section C.3 and the Travel Compensation provided in Section C.4 shall constitute the entire compensation due the Contractor for all goods or services provided under this Contract regardless of the difficulty, materials or equipment required. The payment methodology includes all applicable taxes, fees, overhead, and all other direct or indirect costs incurred or to be incurred by the Contractor.
- C.3. **Payment Methodology.** The Contractor shall be compensated based on the payment methodology for goods or services authorized by the State in a total amount as set forth in section C.1.
- a. The Contractor's compensation shall be contingent upon the satisfactory provision of goods or services as set forth in Section A.
 - b. The Contractor shall be compensated based upon the following payment methodology:
 - i. Total Active HSA Account Based Fee:



Total Active HSA Accounts	Monthly HSA Account Maintenance Fee Per Active Account Per Month				
	To be paid by the State Group Insurance Plans				
	1/1/16 – 12/31/16	1/1/17 – 12/31/17	1/1/18 – 12/31/18	1/1/19 – 12/31/19	1/1/20 – 12/31/20
Below 5,000	\$2.90	\$2.90	\$2.90	\$2.90	\$2.90
5,000 – 9,999	\$2.72	\$2.72	\$2.72	\$2.72	\$2.72
10,000 – 19,999	\$2.54	\$2.54	\$2.54	\$2.54	\$2.54
20,000 – 29,999	\$2.36	\$2.36	\$2.36	\$2.36	\$2.36
30,000 – 49,999	\$2.21	\$2.21	\$2.21	\$2.21	\$2.21
50,000 and Above	\$2.15	\$2.15	\$2.15	\$2.15	\$2.15

ii. FSA Enrollment Level Account Fee:

Total FSA Participants*	Monthly FSA Administration Fee per Participant			
	To be paid by the State Group Insurance Plans			
	1/1/17 – 12/31/17	1/1/18 – 12/31/18	1/1/19 – 12/31/19	1/1/20 – 12/31/20
Below 3,000	\$3.25	\$3.25	\$3.25	\$3.25
3,000 – 4,999	\$3.10	\$3.10	\$3.10	\$3.10
5,000 – 7,499	\$3.00	\$3.00	\$3.00	\$3.00
7,500 – 9,999	\$2.93	\$2.93	\$2.93	\$2.93
10,000 – 14,999	\$2.85	\$2.85	\$2.85	\$2.85
15,000 and above	\$2.70	\$2.70	\$2.70	\$2.70

*January enrollment will be used to determine the FSA enrollment-based fee level annually, and the fee level set in January of each year shall remain constant for the remainder of the calendar year. The product of the monthly fee and the number of participants, not total enrollment levels, will generate the Contractor's total payment.

iii. Member Fees:

Fee Description	Member Fees				
	To be billed to, and paid by, members with an active HSA and/or FSA account				
	1/1/16 – 12/31/16	1/1/17 – 12/31/17	1/1/18 – 12/31/18	1/1/19 – 12/31/19	1/1/20 – 12/31/20
	HSA Fees	HSA and FSA Member Fees			
Manual/Paper Account Set-Up*	\$0.00 / Account	\$0.00 / Account	\$0.00 / Account	\$0.00 / Account	\$0.00 / Account
Debit Card Replacement (first replacement card free)	\$0.00 / Card	\$0.00 / Card	\$0.00 / Card	\$0.00 / Card	\$0.00 / Card



*Assumes online account setup option is available per contract requirement A.2.b.

HSA Only – Member Fees

To be billed to, and paid by, members with an active HSA account

Fee Description	1/1/16 – 12/31/16	1/1/17 – 12/31/17	1/1/18 – 12/31/18	1/1/19 – 12/31/19	1/1/20 – 12/31/20
Checks	\$0.00 / Box				
Non-Sufficient Funds	\$25.00 / Instance				
Excess Contributions	\$0.00 / Instance				
Stop Payment	\$25.00 / Instance				
Overdrafts	\$25.00 / Instance				
Document Copies (checks, duplicate statements, etc.)	\$0.00 / Instance				
ATM Fees: In-network	\$0.00 / Transaction				
ATM Fees: Out-of-network	\$0.00 / Transaction				
Account Closing (excludes accounts closed due to contract expiration or termination)	\$0.00 / Instance				
Wire Transfer (excludes wire transfers resulting from contract expiration or termination)	\$15.00 / Instance				
Check Writing Fee	\$0.00 / Check				
Monthly Investment Fee	\$1.30 / Month	\$0.00 / Month	\$0.00 / Month	\$0.00 / Month	\$0.00 / Month



iv. Investment Portfolio Management

Fee Description	1/1/16 – 12/31/16	1/1/17 – 12/31/17	1/1/18 – 12/31/18	1/1/19 – 12/31/19	1/1/20 – 12/31/20
One time Installation Charge	\$10,000	N/A	N/A	N/A	N/A
Custom Slate Maintenance	\$1,000 / month				

c. State shall reimburse the Contractor for the actual cost of the following in the performance of this Contract, provided that the Contractor provides documentation of actual costs incurred as required by the State.

- i. Postage. In a situation where unanticipated circumstances require notification to plan members, which is not detailed in the terms and conditions of this Contract, the State may request the Contractor to produce and mail such notification to plan members. The State shall reimburse the Contractor only for the actual cost of postage for mailing materials produced at the specific direction of the State and authorized by the State.
- ii. Printing / Production. The State shall reimburse the Contractor an amount equal to the actual net cost of document printing / production as required and authorized by the State as described in Contract Section C.3.c.i. above. Additionally, if error(s) in member materials, approved by the State in writing, are detected after the materials have been mailed, the State will reimburse the Contractor for the production and postage cost of mailing the corrected version.

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

d. The Contractor is prohibited from charging the State or members served by this contract any fees related to the transfer of funds or closing of accounts resulting from contract expiration or termination.

C.4. Travel Compensation. Compensation to the Contractor for travel, meals, or lodging shall be subject to amounts and limitations specified in the current "State Comprehensive Travel Regulations."

The Contractor must include (in addition to other invoice requirements of this Contract) a complete itemization of requested travel compensation and appropriate documentation and receipts as required by the "State Comprehensive Travel Regulations."

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



Seannalyn Brandmeir, Procurement and Contracting Manager
Finance and Administration, Division of Benefits Administration
William R. Snodgrass TN Tower, 19th Floor
312 Rosa L. Parks Ave.
Nashville, TN 37243
seannalyn.brandmeir@tn.gov

- a. Each invoice, on Contractor's letterhead, shall clearly and accurately detail all of the following information (calculations must be extended and totaled correctly):
 - (1) Invoice number (assigned by the Contractor);
 - (2) Invoice date;
 - (3) Contract number (assigned by the State);
 - (4) Customer account name: Department of Finance and Administration, Benefits Administration;
 - (5) Customer account number (assigned by the Contractor to the above-referenced Customer);
 - (6) Contractor name;
 - (7) Contractor Tennessee Edison registration ID number;
 - (8) Contractor contact for invoice questions (name, phone, or email);
 - (9) Contractor remittance address;
 - (10) Description of delivered goods or services provided and invoiced, including identifying information as applicable;
 - (11) Number of delivered or completed units, increments, hours, or days as applicable, of each good or service invoiced;
 - (12) Applicable payment methodology (as stipulated in Section C.3.) of each good or service invoiced;
 - (13) Amount due for each compensable unit of good or service; and
 - (14) Total amount due for the invoice period.
 - b. Contractor's invoices shall:
 - (1) Only include charges for goods delivered or services provided as described in Section A and in accordance with payment terms and conditions set forth in Section C;
 - (2) Only be submitted for goods delivered or services completed and shall not include any charge for future goods to be delivered or services to be performed;
 - (3) Not include Contractor's taxes, which includes without limitation Contractor's sales and use tax, excise taxes, franchise taxes, real or personal property taxes, or income taxes; and
 - (4) Include shipping or delivery charges only as authorized in this Contract.
 - c. The timeframe for payment (or any discounts) begins only when the State is in receipt of an invoice that meets the minimum requirements of this Section C.5.
- C.6. Payment of Invoice. A payment by the State shall not prejudice the State's right to object to or question any payment, invoice, or other matter. A payment by the State shall not be construed as acceptance of goods delivered, any part of the services provided, or as approval of any amount invoiced.
- C.7. Invoice Reductions. The Contractor's invoice shall be subject to reduction for amounts included in any invoice or payment that is determined by the State, on the basis of audits conducted in accordance with the terms of this Contract, to not constitute proper compensation for goods delivered or services provided.
- C.8. Deductions. The State reserves the right to deduct from amounts, which are or shall become due and payable to the Contractor under this or any contract between the Contractor and the State of Tennessee, any amounts that are or shall become due and payable to the State of Tennessee by the Contractor.
- C.9. Prerequisite Documentation. The Contractor shall not invoice the State under this Contract until the State has received the following, properly completed documentation.



- a. The Contractor shall complete, sign, and present to the State an "Authorization Agreement for Automatic Deposit Form" provided by the State. By doing so, the Contractor acknowledges and agrees that, once this form is received by the State, all payments to the Contractor, under this or any other contract the Contractor has with the State of Tennessee, shall be made by automated clearing house.
- b. The Contractor shall complete, sign, and present to the State a "Substitute W-9 Form" provided by the State. The taxpayer identification number in the Substitute W-9 Form must be the same as the Contractor's Federal Employer Identification Number or Tennessee Edison Registration ID.

D. MANDATORY TERMS AND CONDITIONS:

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

The State:

Seannalyn Brandmeir, Procurement and Contracting Manager
Finance and Administration, Division of Benefits Administration
William R. Snodgrass TN Tower, 19th Floor
312 Rosa L. Parks Ave.
Nashville, TN 37243
seannalyn.brandmeir@tn.gov
Telephone # 615-532-4598
FAX # 615-253-8556

The Contractor:

Kathy Stanton, Senior Implementation Manager
Payflex Systems USA, Inc
151 Farmington Avenue
Hartford, CT 06156
Stantonk1@aetna.com
Telephone # 860-345-4439
FAX # 860-975-1499

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

- D.3 Modification and Amendment. This Contract may be modified only by a written amendment signed by all parties and approved by all applicable State officials.
- D.4 Subject to Funds Availability. The Contract is subject to the appropriation and availability of State or federal funds. In the event that the funds are not appropriated or are otherwise unavailable, the State reserves the right to terminate this Contract upon written notice to the Contractor. The State's exercise of its right to terminate this Contract shall not constitute a breach of Contract by the State. Upon receipt of the written notice, the Contractor shall cease all work associated with the Contract. If the State terminates this Contract due to lack of funds availability, the Contractor shall be entitled to compensation



for all conforming goods requested and accepted by the State and for all satisfactory and authorized services completed as of the termination date. Should the State exercise its right to terminate this Contract due to unavailability of funds, the Contractor shall have no right to recover from the State any actual, general, special, incidental, consequential, or any other damages of any description or amount.

- D.5 Termination for Convenience. Either Party may terminate this Contract without cause for any reason. A party's exercise of its right to terminate this Contract for convenience shall not be deemed a breach of contract by either Party. The terminating Party shall give the other Party at least one hundred eighty (180) 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, but in no event shall the State be liable to the Contractor for compensation for any good or service that has not been provided, nor shall the Contractor be relieved of any liability to the State for any damages or claims arising under this Contract.
- D.6 Termination for Cause. If the Contractor fails to properly perform its obligations under this Contract, or if the Contractor materially violates any terms of this Contract ("Breach Condition"), the State shall provide written notice to Contractor specifying the Breach Condition. If within thirty (30) days of notice, the Contractor has not cured the Breach Condition, the State may terminate the Contract and withhold payments in excess of compensation for completed services or provided goods. Notwithstanding the above, the Contractor shall not be relieved of liability to the State for damages sustained by virtue of any breach of this Contract by the Contractor and the State may seek other remedies allowed at law or in equity for breach of this Contract.
- D.7 Assignment and Subcontracting. Neither Party shall assign this Contract or enter into a subcontract for any of the goods or services provided under this Contract without the prior written approval of the other Party. Notwithstanding any use of the approved subcontractors, the Contractor shall be the prime contractor and responsible for compliance with all terms and conditions of this Contract. The State reserves the right to request additional information or impose additional terms and conditions before approving an assignment of this Contract in whole or in part or the use of subcontractors in fulfilling the Contractor's obligations under this Contract.
- D.8 Conflicts of Interest. The Contractor warrants that no part of the Contractor's compensation shall be paid directly or indirectly to an employee or official of the State of Tennessee as wages, compensation, or gifts in exchange for acting as an officer, agent, employee, subcontractor, or consultant to the Contractor in connection with any work contemplated or performed relative to this Contract.
- The Contractor acknowledges, understands, and agrees that this Contract shall be null and void if the Contractor is, or within the past six (6) months has been, an employee of the State of Tennessee or if the Contractor is an entity in which a controlling interest is held by an individual who is, or within the past six (6) months has been, an employee of the State of Tennessee.
- D.9 Nondiscrimination. The Contractor hereby agrees, warrants, and assures that no person shall be excluded from participation in, be denied benefits of, or be otherwise subjected to discrimination in the performance of this Contract or in the employment practices of the Contractor on the grounds of handicap or disability, age, race, creed, color, religion, sex, national origin, or any other classification protected by federal or state law. The Contractor shall, upon request, show proof of nondiscrimination and shall post in conspicuous places, available to all employees and applicants, notices of nondiscrimination.
- D.10 Prohibition of Illegal Immigrants. The requirements of Tenn. Code Ann. § 12-3-309 addressing the use of illegal immigrants in the performance of any Contract to supply goods or services to the state of Tennessee, shall be a material provision of this Contract, a breach of which shall be grounds for monetary and other penalties, up to and including termination of this Contract.
- a. The Contractor hereby agrees that the Contractor shall not knowingly utilize the services of an illegal immigrant in the performance of this Contract and shall not knowingly utilize the services of any subcontractor who will utilize the services of an illegal immigrant in the performance of this Contract. The Contractor shall reaffirm this attestation, in writing, by submitting to the State a completed and signed copy of the document at Contract Attachment A, hereto, semi-annually



during the Term. If the Contractor is a party to more than one contract with the State, the Contractor may submit one attestation that applies to all contracts with the State. All Contractor attestations shall be maintained by the Contractor and made available to state officials upon request.

- b. Prior to the use of any subcontractor in the performance of this Contract, and semi-annually thereafter, during the Term, the Contractor shall obtain and retain a current, written attestation that the subcontractor shall not knowingly utilize the services of an illegal immigrant to perform work under this Contract and shall not knowingly utilize the services of any subcontractor who will utilize the services of an illegal immigrant to perform work under this Contract. Attestations obtained from such subcontractors shall be maintained by the Contractor and made available to state officials upon request.
- c. The Contractor shall maintain records for all personnel used in the performance of this Contract. Contractor's records shall be subject to review and random inspection at any reasonable time upon reasonable notice by the State.
- d. The Contractor understands and agrees that failure to comply with this section will be subject to the sanctions of Tenn. Code Ann. § 12-3-309 for acts or omissions occurring after its effective date.
- e. For purposes of this Contract, "illegal immigrant" shall be defined as any person who is not : (i) a United States citizen; (ii) a Lawful Permanent Resident; (iii) a person whose physical presence in the United States is authorized; (iv) allowed by the federal Department of Homeland Security and who, under federal immigration laws or regulations, is authorized to be employed in the U.S.; or (v) is otherwise authorized to provide services under the Contract.

- D.11 Records. The Contractor shall maintain documentation for all charges under this Contract. The books, records, and documents of the Contractor, for work performed or money received under this Contract, shall be maintained for a period of five (5) full years from the date of the final payment and shall be subject to audit at any reasonable time and upon reasonable notice by the State, the Comptroller of the Treasury, or their duly appointed representatives. The financial statements shall be prepared in accordance with generally accepted accounting principles.
- D.12 Monitoring. The Contractor's activities conducted and records maintained pursuant to this Contract shall be subject to monitoring and evaluation by the State, the Comptroller of the Treasury, or their duly appointed representatives.
- D.13 Progress Reports. The Contractor shall submit brief, periodic, progress reports to the State as requested.
- D.14 Strict Performance. Failure by any Party to this Contract to require, in any one or more cases, the strict performance of any of the terms, covenants, conditions, or provisions of this Contract shall not be construed as a waiver or relinquishment of any term, covenant, condition, or provision. No term or condition of this Contract shall be held to be waived, modified, or deleted except by a written amendment signed by the Parties.
- D.15 Independent Contractor. The parties shall not act as employees, partners, joint venturers, or associates of one another. The Parties are independent contracting entities. Nothing in this Contract shall be construed to create an employer/employee relationship or to allow either Party to exercise control or direction over the manner or method by which the other transacts its business affairs or provides its usual services. The employees or agents of one Party are not employees or agents of the other Party.
- D.16 Patient Protection and Affordable Care Act. The Contractor agrees that it will be responsible for compliance with the Patient Protection and Affordable Care Act ("PPACA") with respect to itself and its employees, including any obligation to report health insurance coverage, provide health insurance coverage, or pay any financial assessment, tax, or penalty for not providing health insurance. The Contractor shall indemnify the State and hold it harmless for any costs to the State arising from Contractor's failure to fulfill its PPACA responsibilities for itself or its employees.



- D.17 Limitation of State's Liability. The State shall have no liability except as specifically provided in this Contract. In no event will the State be liable to the Contractor or any other party for any lost revenues, lost profits, loss of business, decrease in the value of any securities or cash position, time, money, goodwill, or any indirect, special, incidental, punitive, exemplary or consequential damages of any nature, whether based on warranty, contract, statute, regulation, tort (including but not limited to negligence), or any other legal theory that may arise under this Contract or otherwise. The State's total liability under this Contract (including any exhibits, schedules, amendments or other attachments to the Contract) or otherwise shall under no circumstances exceed the Maximum Liability. This limitation of liability is cumulative and not per incident.
- D.18 Limitation of Contractor's Liability. In accordance with Tenn. Code Ann. § 12-3-701, the Contractor's liability for all claims arising under this Contract shall be limited to an amount equal to two (2) times the Maximum Liability amount detailed in Section C.1. and as may be amended, PROVIDED THAT in no event shall this Section limit the liability of the Contractor for intentional torts, criminal acts, fraudulent conduct, or omissions that result in personal injuries or death.
- D.19 Hold Harmless. The Contractor agrees to indemnify and hold harmless the State of Tennessee as well as its officers, agents, and employees from and against any and all claims, liabilities, losses, and causes of action which may arise, accrue, or result to any person, firm, corporation, or other entity which may be injured or damaged as a result of acts, omissions, or negligence on the part of the Contractor, its employees, or any person acting for or on its or their behalf relating to this Contract. The Contractor further agrees it shall be liable for the reasonable cost of attorneys for the State to enforce the terms of this Contract.

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

- D.20 HIPAA and HITECH Compliance. The State and Contractor shall comply with obligations under the Health Insurance Portability and Accountability Act of 1996 (HIPAA), Health Information Technology for Economic and Clinical Health (HITECH) Act under the American Recovery and Reinvestment Act of 2009 (ARRA) and their accompanying regulations, as well as any other relevant laws and regulations regarding privacy.
- a. Contractor warrants to the State that it is familiar with the requirements of HIPAA and HITECH and their accompanying regulations, and shall comply with all applicable HIPAA and HITECH requirements in the course of this Contract including but not limited to the following:
 - (1) Compliance with the Privacy Rule, Security Rule, Notification Rule;
 - (2) The creation of and adherence to sufficient Privacy and Security Safeguards and Policies;
 - (3) Timely Reporting of Violations in Use and Disclosure of PHI; and
 - (4) Time Reporting of Security Incidents.
 - b. Contractor warrants that it will cooperate with the State, including cooperation and coordination with State privacy officials and other compliance officers required by HIPAA and HITECH and its regulations, in the course of performance of the Contract so that both parties will be in compliance with HIPAA and HITECH.
 - c. The Contractor agrees that its duties under this contract qualify it as a "business associate" of the State as that term is defined under HIPAA. Contractor will sign the State's business associate agreement, which is attached as Attachment D. The State, in its discretion may, accept changes to the business associate agreement if it finds that such changes are appropriate, or may determine that HIPAA does not require a business associate agreement.



- d. The Contractor will indemnify the State and hold it harmless for any violation by the Contractor or its subcontractors of HIPAA and HITECH as well as any other relevant laws and regulations regarding privacy. 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. The Contractor may also be liable for damages for failure to comply with this section, including any applicable liquidated damages set forth in Attachment B.

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

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

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

- a. are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any federal or state department or agency;
- b. have not within a three (3) year period preceding this Contract been convicted of, or had a civil judgment rendered against them from commission of fraud, or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, state, or local) transaction or grant under a public transaction; violation of federal or state antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification, or destruction of records, making false statements, or receiving stolen property;
- c. are not presently indicted or otherwise criminally or civilly charged by a government entity (federal, state, or local) with commission of any of the offenses detailed in section b. of this certification; and
- d. have not within a three (3) year period preceding this Contract had one or more public transactions (federal, state, or local) terminated for cause or default.

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

D.24 Force Majeure. "Force Majeure Event" means fire, flood, earthquake, elements of nature or acts of God, wars, riots, civil disorders, rebellions or revolutions, acts of terrorism or any other similar cause beyond the reasonable control of the Party except to the extent that the non-performing Party is at fault in failing to prevent or causing the default or delay, and provided that the default or delay cannot reasonably be circumvented by the non-performing Party through the use of alternate sources, workarounds plans or other means. A strike, lockout or labor dispute shall not excuse either Party from its obligations under this Contract. Except as set forth in this Section, any failure or delay by a Party in the performance of its obligations under this Contract arising from a Force Majeure Event is not a default under this Contract or grounds for termination. The non-performing Party will be excused from performing those obligations directly affected by the Force Majeure Event, and only for as long as the Force Majeure Event continues,



provided that the Party continues to use diligent, good faith efforts to resume performance without delay. The occurrence of a Force Majeure Event affecting Contractor's representatives, suppliers, subcontractors, customers or business apart from this Contract is not a Force Majeure Event under this Contract. Contractor will promptly notify the State of any delay caused by a Force Majeure Event (to be confirmed in a written notice to the State within one (1) day of the inception of the delay) that a Force Majeure Event has occurred, and will describe in reasonable detail the nature of the Force Majeure Event. If any Force Majeure Event results in a delay in Contractor's performance longer than forty-eight (48) hours, the State may, upon notice to Contractor: (a) cease payment of the fees until Contractor resumes performance of the affected obligations; or (b) immediately terminate this Contract or any purchase order, in whole or in part, without further payment except for fees then due and payable. Contractor will not increase its charges under this Contract or charge the State any fees other than those provided for in this Contract as the result of a Force Majeure Event.

- D.25 State and Federal Compliance. The Contractor shall comply with all applicable State and Federal laws and regulations in the performance of this Contract.
- D.26 Governing Law. This Contract shall be governed by and construed in accordance with the laws of the State of Tennessee. The Tennessee Claims Commission or the state or federal courts in Tennessee shall be the venue for all claims, disputes, or disagreements arising under this Contract. The Contractor acknowledges and agrees that any rights, claims, or remedies against the State of Tennessee or its employees arising under this Contract shall be subject to and limited to those rights and remedies available under Tenn. Code Ann. §§ 9-8-101 - 407.
- D.27 Entire Agreement. This Contract is complete and contains the entire understanding between the parties relating to its subject matter, including all the terms and conditions of the Parties' agreement. This Contract supersedes any and all prior understandings, representations, negotiations, and agreements between the parties relating hereto, whether written or oral.
- D.28 Severability. If any terms and conditions of this Contract are held to be invalid or unenforceable as a matter of law, the other terms and conditions of this Contract shall not be affected and shall remain in full force and effect. The terms and conditions of this Contract are severable.
- D.29 Headings. Section headings of this Contract are for reference purposes only and shall not be construed as part of this Contract.
- D.30 Incorporation of Additional Documents. Each of the following documents is included as a part of this Contract by reference. In the event of a discrepancy or ambiguity regarding the Contractor's duties, responsibilities, and performance under this Contract, these items shall govern in order of precedence below:
- a. any amendment to this Contract, with the latter in time controlling over any earlier amendments;
 - b. this Contract with any attachments or exhibits (excluding the items listed at subsections c. through f., below);
 - c. any clarifications of or addenda to the Contractor's proposal seeking this Contract;
 - d. the State solicitation, as may be amended, requesting responses in competition for this Contract;
 - e. any technical specifications provided to proposers during the procurement process to award this Contract; and,
 - f. the Contractor's response seeking this Contract.



E. SPECIAL TERMS AND CONDITIONS:

- E.1. Conflicting Terms and Conditions. Should any of these special terms and conditions conflict with any other terms and conditions of this Contract, the special terms and conditions shall be subordinate to the Contract's other terms and conditions.
- E.2. Contractor Commitment to Diversity. The Contractor shall comply with and make reasonable business efforts to exceed the commitment to diversity represented by the Contractor's Response to RFP 31786-00130 (Attachment 6.2, Section B.15) and resulting in this Contract.

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

- E.3. Liquidated Damages. If the Contractor fails to perform in accordance with any term or provision of this contract, only provides partial performance of any term or provision of the Contract, violates any warranty, or any act prohibited or restricted by the Contract occurs, ("Liquidated Damages Event"), the State may assess damages on Contractor ("Liquidated Damages"). The State shall notify the Contractor of amounts to be assessed as Liquidated Damages. The Parties agree that due to the complicated nature of the Contractor's obligations under this Contract it would be difficult to specifically designate a monetary amount for Contractor's failure to fulfill its obligations regarding the Liquidated Damages Event as these amounts are likely to be uncertain and not easily proven. Contractor has carefully reviewed the Liquidated Damages contained in Attachment B and agrees that these amounts represent a reasonable relationship between the amount and what might reasonably be expected in the event of a Liquidated Damages Event, and are a reasonable estimate of the damages that would occur from a Liquidated Damages Event. The Parties agree that the Liquidated Damages represent solely the damages and injuries sustained by the State in losing the benefit of the bargain with Contractor and do not include any injury or damage sustained by a third party. The Contractor agrees that the Liquidated Damages are in addition to any amounts Contractor may owe the State pursuant to the indemnity provision or any other sections of this Contract.

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

- E.4. Partial Takeover of Contract. The State may, at its convenience and without cause, exercise a partial takeover of any service that the Contractor is obligated to perform under this Contract, including any service which is the subject of a subcontract between Contractor and a third party (a "Partial Takeover"). A Partial Takeover of this Contract by the State shall not be deemed a breach of contract. The Contractor shall be given at least thirty (30) days prior written notice of a Partial Takeover. The notice shall specify the areas of service the State will assume and the date the State will be assuming. The State's exercise of a Partial Takeover shall not alter the Contractor's other duties and responsibilities under this Contract. The State reserves the right to withhold from the Contractor any amounts the Contractor would have been paid but for the State's exercise of a Partial Takeover. The amounts shall be withheld effective as of the date the State exercises its right to a Partial Takeover. The State's exercise of its right to a Partial Takeover of this Contract shall not entitle the Contractor to any actual, general, special, incidental, consequential, or any other damages irrespective of any description or amount.
- E.5. Personally Identifiable Information. While performing its obligations under this Contract, Contractor may have access to Personally Identifiable Information held by the State ("PII"). For the purposes of this Contract, "PII" includes "Nonpublic Personal Information" as that term is defined in Title V of the Gramm-Leach-Bliley Act of 1999 or any successor federal statute, and the rules and regulations thereunder, all as may be amended or supplemented from time to time ("GLBA") and personally identifiable information and other data protected under any other applicable laws, rule or regulation of any jurisdiction relating to disclosure or use of personal information ("Privacy Laws"). Contractor agrees it shall not do or omit to do anything which would cause the State to be in breach of any Privacy Laws. Contractor shall, and shall



cause its employees, agents and representatives to: (i) keep PII confidential and may use and disclose PII only as necessary to carry out those specific aspects of the purpose for which the PII was disclosed to Contractor and in accordance with this Contract, GLBA and Privacy Laws; and (ii) implement and maintain appropriate technical and organizational measures regarding information security to: (A) ensure the security and confidentiality of PII; (B) protect against any threats or hazards to the security or integrity of PII; and (C) prevent unauthorized access to or use of PII. Contractor shall promptly (not to exceed 48 hours) notify State: (1) of any disclosure or use of any PII by Contractor or any of its employees, agents and representatives in breach of this Contract; and (2) of any disclosure of any PII to Contractor or its employees, agents and representatives where the purpose of such disclosure is not known to Contractor or its employees, agents and representatives. The State reserves the right to review Contractor's policies and procedures used to maintain the security and confidentiality of PII and Contractor shall, and cause its employees, agents and representatives to, comply with all reasonable requests or directions from the State to enable the State to verify and/or procure that Contractor is in full compliance with its obligations under this Contract in relation to PII. Upon termination or expiration of the Contract or at the State's direction at any time in its sole discretion, whichever is earlier, Contractor shall immediately return to the State any and all PII which it has received under this Contract and shall destroy all records of such PII.

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

- E.6. Prohibited Advertising or Marketing. The Contractor shall not suggest or imply in advertising or marketing materials that Contractor's goods or services are endorsed by the State. The restrictions on Contractor advertising or marketing materials under this Section shall survive the termination of this Contract.
- E.7. Work Papers Subject to Review. The Contractor shall make all audit, accounting, or financial analysis work papers, notes, and other documentation available for review by the Comptroller of the Treasury or his representatives, upon request, during normal working hours either while the analysis is in progress or subsequent to the completion of this Contract.
- E.8. Confidentiality of Records. Strict standards of confidentiality of records and information shall be maintained in accordance with applicable state and federal law. All material and information, regardless of form, medium or method of communication, provided to the Contractor by the State or acquired by the Contractor on behalf of the State that is regarded as confidential under state or federal law shall be regarded as "Confidential Information." Nothing in this Section shall permit Contractor to disclose any Confidential Information, regardless of whether it has been disclosed or made available to the Contractor due to intentional or negligent actions or inactions of agents of the State or third parties. Confidential Information shall not be disclosed except as required or permitted under state or federal law. Contractor shall take all necessary steps to safeguard the confidentiality of such material or information in conformance with applicable state and federal law.

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

- E.9. Insurance. The Contractor shall carry adequate liability and other appropriate forms of insurance.
 - a. The Contractor shall maintain, at minimum, the following insurance coverage:
 - (1) Comprehensive Commercial General Liability (including personal injury & property damage, premises/operations, independent contractor, contractual liability and completed operations/products) with a bodily injury/property damage combined single limit not less



than one million dollars (\$1,000,000) per occurrence and two million dollars (\$2,000,000) aggregate.

- b. The Contractor shall provide a valid Certificate of Insurance naming the State as an additional insured and detailing Coverage Description; Insurance Company & Policy Number;; Policy Effective Date; Policy Expiration Date; Limit(s) of Liability; and Name and Address of Insured. Certificate shall include evidence of insurer's subrogation rights under the respective policies. Failure to provide required evidence of insurance coverage shall be a material breach of this Contract.

IN WITNESS WHEREOF,

PAYFLEX SYSTEMS USA, INC:

1/7/2016

CONTRACTOR SIGNATURE

DATE

ERIN HATZIKOSTAS, CHIEF OPERATING OFFICER

PRINTED NAME AND TITLE OF CONTRACTOR SIGNATORY (above)

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

1-21-16

LARRY B. MARTIN, CHAIRMAN

DATE



ATTESTATION RE PERSONNEL USED IN CONTRACT PERFORMANCE

SUBJECT CONTRACT NUMBER:	48012
CONTRACTOR LEGAL ENTITY NAME:	PayFlex Systems USA, Inc.
FEDERAL EMPLOYER IDENTIFICATION NUMBER: (or Social Security Number)	91-1774434

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

CONTRACTOR SIGNATURE

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

ERIN HATZIKOSTAS, CHIEF OPERATING OFFICER

PRINTED NAME AND TITLE OF SIGNATORY

1/7/2016

DATE OF ATTESTATION



PERFORMANCE GUARANTEES AND LIQUIDATED DAMAGES

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

1. **Performance Reporting:** The Contractor shall develop a Performance Report Card as a means to measure compliance on a quarterly basis. The Contractor shall provide the quarterly performance report card in a manner acceptable to the State, on or before the 20th day of the month following the reporting quarter. Supporting documentation used to calculate the performance guarantees shall be provided with the Performance Report Card. The Performance Report Card shall include cumulative data over the life of the contract.
2. **Payment of Liquidated Damages:** It is agreed by the State and the Contractor that any liquidated damages assessed by the State shall be due and payable to the State within forty-five (45) calendar days after Contractor receipt of the Invoice containing an assessment of liquidated damages. If payment is not made by the due date, said liquidated damages may be withheld from future payments by the State without further notice.
3. **Maximum Assessment:** The maximum amount of Liquidated Damages payable over any twelve (12) month period shall not exceed twenty percent (20%) of the annual fixed price billings. In the event that a single occurrence subjects the Contractor to Liquidated Damages in multiple subsections of this provision, the State is entitled to assess a single Liquidated Damage selected at the discretion of the State.
4. **Waiver of Liquidated Damages:** The State, in its sole discretion, may elect not to assess Liquidated Damages against the Contractor in certain instances, including but not limited to the following:
 - a. Where the State determines that only inconsequential damage has occurred, unless the deficiency is part of a recurring or frequent pattern of deficiency, with regard to one (1) or more Contract deliverables or requirements
 - b. For performance measures that are resolved based on the Contractor's corrective action plan
 - c. If the failure is not due to Contractor fault (i.e. caused by factors beyond the reasonable control and without any material error or negligence of the Contractor, its staff or subcontractors)
 - d. Where no damage or injury has been sustained by the State or its members
 - e. Where the failure does not result in increased Contract management time or expense
 - f. Where the failure results from the State's failure to perform
 - g. For other reasons at the State's sole discretion
5. **Performance Guarantees:** In the event that the Contractor has failed to meet a performance guarantee that is set out in the Contract, but for which the Liquidated Damage standards are not spelled out in this Attachment, the State may assess liquidated damages at the rate of one hundred dollars (\$100.00) per business day until the guarantee has been met.
6. The Contractor shall pay to the State the indicated total dollar assessment upon notification by the State that an amount is due, through the term of this Contract.
7. Performance guarantees shall be measured specific to the Public Sector Plans. If prior approved by the State in writing, they may be measured on the Contractor's book of business.



PERFORMANCE GUARANTEES

1. Implementation Plan

Guarantee	The Contractor shall provide a project implementation plan that meets the requirements of Contract Section A.5.c. to the State no later than thirty (30) days after the contract start date.
Assessment	Five hundred dollars (\$500) for each day beyond the deadline that the plan is not provided to the State.
Measurement	Measured, reported, reconciled and paid no later than three (3) months after the HSA operational go-live date.

2. Operational Readiness

Guarantee	The Contractor shall resolve all findings identified by the State during its operational readiness review, as required in Contract Section A.5., prior to the applicable go-live date.
Assessment	Five hundred dollars (\$500) per finding if the issue is not resolved prior to the applicable go-live date.
Measurement	Measured, reported reconciled and paid no later than three (3) months after the applicable go-live date.

3. Edison System Interface

Guarantee	Contractor's interface with the Edison System shall be fully operational by the date specified in Contract Section A.12.d.
Assessment	One thousand dollars (\$1,000) per day, for every day beyond the deadline that the interface is not fully operational.
Measurement	Measured and reported beginning the day after the date specified in Contract Section A.12.d. and continuing – as necessary – until the interface is fully operational. (Reconciled and paid upon final recognition of operational status.)

4. Call Center and Other Systems Operational

Guarantee	The Contractor's call center and other systems shall be fully operational no later than the HSA operational go-live date specified in Contract Section A.20.
Assessment	One thousand dollars (\$1,000) for every day beyond the deadline that the call center or other system is not operational.
Measurement	Measured, reported, reconciled and paid no later than three (3) months after the HSA operational go-live date.

5. HSA Operational Go-Live Date

Guarantee	All operational services shall take effect (i.e., "go-live") and be fully operational on the HSA operational go-live date specified in Contract Section A.20.
Assessment	Five thousand dollars (\$5,000) for every day beyond the deadline that services are not fully operational.
Measurement	Measured, reported, reconciled and paid no later than three (3) months after the HSA operational go-live date.

6. HSA Account Go-Live Date

Guarantee	All fully established HSAs shall take effect (i.e., "go-live") and be available for member
-----------	--



	use on the HSA account go-live date specified in Contract Section A.20.
Assessment	Five thousand dollars (\$5,000) for every day beyond the deadline that accounts are not fully operational.
Measurement	Measured, reported, reconciled and paid no later than three (3) months after the HSA account go-live date.
7. FSA Account Go-Live Date	
Guarantee	All FSAs shall take effect (i.e., "go-live") and be available for member use on the FSA account go-live date specified in Contract Section A.20.
Assessment	Five thousand dollars (\$5,000) for every day beyond the deadline that accounts are not fully operational..
Measurement	Measured, reported, reconciled and paid no later than three (3) months after the FSA account go-live date.
8. Average Speed of Answer	
Guarantee	The Contractor's call center shall maintain an average speed of answer of 30 seconds.
Assessment	One hundred dollars (\$100) for each day the guarantee is not met (include all hours the call center is open).
Measurement	The average shall be calculated using the following formula for each hour the call center is open: $\frac{\text{Total wait time for all callers (in seconds)}}{\text{Total number of callers}}$ Measured, reported, reconciled and paid monthly
9. Website	
Guarantee	The Contractor's website shall be available on the internet and fully operational, with the exception of member data/Protected Health Information on or before the date specified in Contract Section A.20.
Assessment	Five hundred dollars (\$500) per day that the guarantee is not met.
Measurement	Measured, reported, reconciled and paid no later than three (3) months after the website go-live date.
10. Welcome Packet Distribution	
Guarantee	Ninety-seven percent (97%) of welcome packets shall be produced and mailed n within ten (10) days of member completion of the HSA and/or FSA enrollment/set-up process.
Assessment	Five thousand dollars (\$5,000) if the guarantee is not met.
Measurement	Measured, reported, reconciled and paid no later than three (3) months after the applicable account go-live date.
11. Debit Card Distribution – Applies only if card is not included in the welcome packet	
Guarantee	Ninety-seven percent (97%) of debit cards shall be produced and mailed within ten (10) days of member completion of the HSA and/or FSA enrollment/set-up process.
Assessment	Five thousand dollars (\$5,000) if the guarantee is not met.
Measurement	Measured, reported, reconciled and paid no later than three (3) months after the applicable account go-live date.
12. Card Adjudication Rates	



Guarantee	At least eighty percent (80%) of all FSA and HSA debit card transactions each month shall automatically adjudicate (require no manual intervention).
Assessment	One thousand two-hundred and fifty dollars (\$1,250) for each quarter that the guarantee is not met.
Measurement	Measured and reported quarterly, reconciled and paid annually.
13. Member Satisfaction Survey	
Guarantee	The level of overall member satisfaction, as measured annually through the member satisfaction survey, shall be equal to or greater than eighty-five percent (85%) in the first year of the Contract, and shall be equal to or greater than ninety percent (90%) in all subsequent year(s) within the contract term.
Assessment	Five thousand dollars (\$5,000) for each year that the guarantee is not met.
Measurement	Measured, reported, reconciled and paid annually.
14. Eligibility Posting	
Guarantee	One hundred percent (100%) of electronically transmitted enrollment updates, including the resolution of any errors identified during processing, shall be processed within four (4) business days of receipt of the weekly file as required in Contract Section A.12.e.iii.
Assessment	One hundred dollars (\$100) per day for the first (1 st) and second (2 nd) business days out of compliance; five hundred dollars (\$500) per business day thereafter.
Measurement	Measured and reported weekly; reconciled and paid quarterly.
15. Eligibility Discrepancies	
Guarantee	Resolve all eligibility discrepancies (any difference of values between the State's database and the Contractor's database) as identified within one (1) business day of notification by the State or identification by the Contractor, as required in Contract Section A.12.e.iv.
Assessment	Per discrepancy, one hundred (\$100) per day for the first (1 st) and second (2 nd) business days out of compliance; five hundred (\$500) per business day thereafter.
Measurement	Measured and reported quarterly; reconciled and paid quarterly.
16. Eligibility System Errors	
Guarantee	Contractor shall document in an eligibility system modification log, all system error details, the proposed solution, and the final solution as agreed upon by the State, as required in Contract Section A.12.e.v.
Assessment	One thousand dollars (\$1,000) for first subsequent error identical in nature. Two-thousand dollars (\$2,000) for all additional errors identical in nature.
Measurement	Measured, reported, reconciled and paid quarterly.
17. Reporting	
Guarantee	The Contractor shall distribute to the State all reports required in the Contract within the time frame specified in the Contract.
Assessment	One hundred dollars (\$100) for each report not delivered to the State within the time frame specified in the Contract.
Measurement	Measured, reported, reconciled and paid after each occurrence.



18. Authorization of Member Communications	
Guarantee	The Contactor shall not distribute any materials to members prior to receiving the express, written authorization by the State for the use of such materials.
Assessment	One thousand dollars (\$1,000) for each instance that the guarantee is not met (i.e., in which the Contractor distributes unauthorized materials to members). The assessment will be per occurrence or bulk mailing rather than per each mailed or distributed piece of information.
Measurement	The State will notify the Contractor of any such occurrence. Any amounts due for the Contractor's noncompliance with this pre-approval provision shall be paid upon request of the State.
19. Privacy, Security, and Confidentiality Breach	
Guarantee	In accordance with Contract Section D.20., the Contractor shall not violate the Privacy and Security Rules (45 CFR Parts 160 and 164) promulgated by the United States Department of Health and Human Services pursuant to the Health Insurance Portability and Accountability Act of 1996 (HIPAA), Public Law 104-191 as amended by Public Law 111-5, Division A, Title XIII (the HITECH Act).
Assessment	<p>For breaches affecting fewer than five hundred (500) members: Two thousand five hundred dollars (\$2,500) for the first violation, five thousand dollars (\$5,000) for the second violation and ten thousand dollars (\$10,000) for the third and any additional violations.</p> <p>For breaches affecting five hundred (500) or more members: Twenty-five thousand dollars (\$25,000) per violation.</p> <p>The assessment will be imposed on a per incident basis meaning regardless of how many members are impacted and the assessment will be levied on the graduated basis detailed above.</p> <p>***In the event Contractor is responsible for Federal Penalties related to a Privacy or HIPAA violation, the State may, at their discretion waive any Liquidated Damages due the State in association with the same violation.***</p>
Measurement	Measured, reported, reconciled and paid after each occurrence.

**REPORTING REQUIREMENTS**

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

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

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

Reports shall include:

1. **Quarterly Performance Report Card**, as detailed at Contract Attachment B (each component to be submitted at the frequency indicated in Contract Attachment B), submitted by secure email, which shall include:
 - a. Status report narrative
 - b. Performance guarantee compliance results
 - c. Supporting detail report for each performance measure
2. **Card Adjudication Rates**, submitted quarterly in compliance with contract section A.3.j.
3. **Summary Reports**, submitted monthly and annually in compliance with contract section A.6.b.
4. **Portfolio Performance Review Report**, submitted annually in compliance with contract section A.6.h.
5. **Account reports**, submitted as requested in compliance with contract section A.6.i.
6. **Ad-Hoc Reports**, submitted as requested in compliance with contract section A.6.k.
7. **Call Center Performance Standards**, submitted monthly in compliance with contract section A.7.k.
8. **Call Center Statistics**, submitted in compliance with contract section A.7.l.
9. **Member Complaints**, submitted quarterly in compliance with contract section A.7.x.
10. **Account Team Satisfaction Report**, submitted annually in compliance with contract section A.8.k.
11. **Weekly File Transmission Statistics Report**, submitted within five (5) business days of receipt of the Weekly Enrollment Update in compliance with contract section A.12.e.ii.
12. **Eligibility System Modification Log**, submitted quarterly in compliance with contract section A.12.e.v.
13. **BC-DR Reports**, submitted one month prior to HSA operational go-live and annually thereafter in compliance with contract sections A.15.d. and A.15.e.
14. **Security Risk Assessment**, submitted one month prior to HSA operational go-live and annually thereafter in compliance with contract section A.16.k.
15. **Other Reports**, as specified in this Contract.



HIPAA BUSINESS ASSOCIATE AGREEMENT COMPLIANCE WITH PRIVACY AND SECURITY RULES

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

BACKGROUND

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

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

LIST OF AGREEMENTS AFFECTED BY THIS BUSINESS ASSOCIATE AGREEMENT:

Contract Name:

Execution Date:

Edison # 48012 – HSA and FSA services

September 1, 2015

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

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

DEFINITIONS

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

- 1.1 "Breach of the Security of the [Business Associate's Information] System" shall have the meaning set out in its definition at T.C.A. § 47-18-2107
- 1.2 "Business Associate" shall have the meaning set out in its definition at 45 C.F.R. § 160.103.
- 1.3 "Covered Entity" shall have the meaning set out in its definition at 45 C.F.R. § 160.103.
- 1.4 "Designated Record Set" shall have the meaning set out in its definition at 45 C.F.R. § 164.501.
- 1.5 "Electronic Protected Health Information" shall have the meaning set out in its definition at 45 C.F.R. § 160.103.
- 1.6 "Genetic Information" shall have the meaning set out in its definition at 45 C.F.R. § 160.103.
- 1.7 "Health Care Operations" shall have the meaning set out in its definition at 45 C.F.R. § 164.501.
- 1.8 "Individual" shall have the same meaning as the term "individual" in 45 CFR § 160.103 and shall include a person who qualifies as a personal representative in accordance with 45 CFR § 164.502(g).



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

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

- 2.1 Business Associate is authorized to use PHI for the purposes of carrying out its duties under the Services Contract. In the course of carrying out these duties, including but not limited to carrying out the Covered Entity's duties under HIPAA, Business Associate shall fully comply with the requirements under the Privacy Rule applicable to "business associates," as that term is defined in the Privacy Rule and not use or further disclose PHI other than as permitted or required by this Agreement, the Service Contracts, or as Required By Law. Business Associate is subject to requirements of the Privacy Rule as required by Public Law 111-5, Section 13404 [designated as 42 U.S.C. 17934] In case of any conflict between this Agreement and the Service Contracts, this Agreement shall govern.
- 2.2 The Health Information Technology for Economic and Clinical Health Act (HITECH) was adopted as part of the American Recovery and Reinvestment Act of 2009. HITECH and its implementing regulations impose new requirements on Business Associates with respect to privacy, security, and breach notification. Business Associate hereby acknowledges and agrees that to the extent it is functioning as a Business Associate of Covered Entity, Business Associate shall comply with HITECH. Business Associate and the Covered Entity further agree that the provisions of HIPAA and HITECH that apply to business associates and that are required to be incorporated by reference in a business associate agreement have been incorporated into this Agreement between Business Associate and Covered Entity. Should any provision not be set forth specifically, it is as if set forth in this Agreement in its entirety and is effective as of the Applicable Effective Date, and as amended.
- 2.3 Business Associate shall use appropriate administrative, physical, and technical safeguards to prevent use or disclosure of PHI other than as provided for by this Agreement, Services Contract(s), or as Required By Law. This includes the implementation of Administrative, Physical, and Technical Safeguards to reasonably and appropriately protect the Covered Entity's PHI against any reasonably anticipated threats or hazards, utilizing the technology commercially available to the Business Associate. The Business Associate shall maintain appropriate documentation of its compliance with the Privacy Rule, including, but not limited to, its policies, procedures, records of training and sanctions of members of its Workforce.
- 2.4 Business Associate shall require any agent, including a subcontractor, to whom it provides PHI received from, maintained, created or received by Business Associate on behalf of Covered Entity or that carries out any duties for the Business Associate involving the use, custody, disclosure, creation of, or access to PHI or other confidential information, to agree, by written contract with Business Associate, to the same restrictions and conditions that apply through this Agreement to Business Associate with respect to such information.



- Business Associate shall mitigate, to the extent practicable, any harmful effect that is known to Business Associate of a use or disclosure of PHI by Business Associate in violation of the requirements of this Agreement.
- 2.6 Business Associate shall require its employees, agents, and subcontractors to promptly report, to Business Associate, promptly (not to exceed 48 hours) upon becoming aware of any use or disclosure of PHI in violation of this Agreement. Business Associate shall report to Covered Entity any use or disclosure of the PHI not provided for by this Agreement. Business Associate will also provide additional information reasonably requested by the Covered Entity related to the breach.
- 2.7 As required by the Breach Notification Rule, Business Associate shall, and shall require its subcontractor(s) to, maintain systems to monitor and detect a Breach of Unsecured PHI, whether in paper or electronic form.
- 2.7.1 Business Associate shall provide to Covered Entity notice of a Potential or Actual Breach of Unsecured PHI promptly (not to exceed 48 hours) upon becoming aware of the Breach.
- 2.7.2 Business Associate shall cooperate with Covered Entity in timely providing the appropriate and necessary information to Covered Entity.
- 2.7.3 Covered Entity shall make the final determination whether the Breach requires notification and whether the notification shall be made by Covered Entity or Business Associate.
- 2.8 If Business Associate receives PHI from Covered Entity in a Designated Record Set, Business Associate shall provide access, at the request of Covered Entity, to PHI in a Designated Record Set to Covered Entity, in order to meet the requirements under 45 CFR § 164.524, provided that Business Associate shall have at least 30 business days from Covered Entity notice to provide access to, or deliver such information.
- 2.9 If Business Associate receives PHI from Covered Entity in a Designated Record Set, then Business Associate shall make any amendments to PHI in a Designated Record Set that the Covered Entity directs or agrees to pursuant to the 45 CFR § 164.526 at the request of Covered Entity or an Individual, and in the time and manner designated by Covered Entity, provided that Business Associate shall have at least 30 business days from Covered Entity notice to make an amendment.
- 2.10 Business Associate shall make its internal practices, books, and records including policies and procedures and PHI, relating to the use and disclosure of PHI received from, created by or received by Business Associate on behalf of, Covered Entity available to the Secretary of the United States Department of Health and Human Services or the Secretary's designee, in a time and manner designated by the Secretary, for purposes of determining Covered Entity's or Business Associate's compliance with the Privacy Rule.
- 2.11 Business Associate shall document disclosures of PHI and information related to such disclosures as would be required for Covered Entity to respond to a request by an Individual for an accounting of disclosure of PHI in accordance with 45 CFR § 164.528.
- 2.12 Business Associate shall provide Covered Entity or an Individual, in time and manner designated by Covered Entity, information collected in accordance with this Agreement, to permit Covered Entity to respond to a request by an Individual for and accounting of disclosures of PHI in accordance with 45 CFR § 164.528, provided that Business Associate shall have at least 30 business days from Covered Entity notice to provide access to, or deliver such information which shall include, at minimum, (a) date of the disclosure; (b) name of the third party to whom the PHI was disclosed and, if known, the address of the third party; (c) brief description of the disclosed information; and (d) brief explanation of the purpose and basis for such disclosure. Business Associate shall provide an accounting of disclosures directly to an individual when required by section 13405(c) of Public Law 111-5 [designated as 42 U.S.C. 17935(c)].
- 2.13 Business Associate agrees it must limit any use, disclosure, or request for use or disclosure of PHI to the minimum amount necessary to accomplish the intended purpose of the use, disclosure, or request in accordance with the requirements of the Privacy Rule.



- 2.13.1 Business Associate represents to Covered Entity that all its uses and disclosures of, or requests for, PHI shall be the minimum necessary in accordance with the Privacy Rule requirements.
- 2.13.2 Covered Entity may, pursuant to the Privacy Rule, reasonably rely on any requested disclosure as the minimum necessary for the stated purpose when the information is requested by Business Associate.
- 2.13.3 Business Associate acknowledges that if Business Associate is also a covered entity, as defined by the Privacy Rule, Business Associate is required, independent of Business Associate's obligations under this Memorandum, to comply with the Privacy Rule's minimum necessary requirements when making any request for PHI from Covered Entity.
- 2.14 Business Associate shall adequately and properly maintain all PHI received from, or created or received on behalf of, Covered Entity
- 2.15 If Business Associate receives a request from an Individual for a copy of the individual's PHI, and the PHI is in the sole possession of the Business Associate, Business Associate will provide the requested copies to the individual and notify the Covered Entity of such action. If Business Associate receives a request for PHI in the possession of the Covered Entity, or receives a request to exercise other individual rights as set forth in the Privacy Rule, Business Associate shall notify Covered Entity of such request and forward the request to Covered Entity. Business Associate shall then assist Covered Entity in responding to the request.
- 2.16 Business Associate shall fully cooperate in good faith with and to assist Covered Entity in complying with the requirements of the Privacy Rule.

3 OBLIGATIONS AND ACTIVITIES OF BUSINESS ASSOCIATE (Security Rule)

- 3.1 Business Associate shall fully comply with the requirements under the Security Rule applicable to "business associates," as that term is defined in the Security Rule. In case of any conflict between this Agreement and Service Agreements, this Agreement shall govern.
- 3.2 Business Associate shall implement administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of the electronic PHI that it creates, receives, maintains, or transmits on behalf of the covered entity as required by the Security Rule and Public Law 111-5. This includes specifically, but is not limited to, the utilization of technology commercially available at the time to the Business Associate to protect the Covered Entity's PHI against any reasonably anticipated threats or hazards. The Business Associate understands that it has an affirmative duty to perform a regular review or assessment of security risks, conduct active risk management and supply best efforts to assure that only authorized persons and devices access its computing systems and information storage, and that only authorized transactions are allowed. The Business Associate will maintain appropriate documentation to certify its compliance with the Security Rule.
- 3.3 Business Associate shall ensure that any agent, including a subcontractor, to whom it provides electronic PHI received from or created for Covered Entity or that carries out any duties for the Business Associate involving the use, custody, disclosure, creation of, or access to PHI supplied by Covered Entity, to agree, by written contract (or the appropriate equivalent if the agent is a government entity) with Business Associate, to the same restrictions and conditions that apply through this Agreement to Business Associate with respect to such information.
- 3.4 Business Associate shall require its employees, agents, and subcontractors to report to Business Associate within five (5) business days, any Security Incident (as that term is defined in 45 CFR § 164.304) of which it becomes aware. 45 CFR 164.314(a)(2)(C) requires that business associate shall report to the covered entity any security incident of which it becomes aware, including breaches of unsecured protected health information as required by 164.410. Business Associate shall promptly report any Security Incident of which it becomes aware to Covered Entity. Provided however, that such reports are not required for attempted, unsuccessful Security Incidents, including trivial and routine incidents such as port scans,



Attempts to log-in with an invalid password or user name, denial of service attacks that do not result in a server being taken off-line, malware, and pings or other similar types of events.

- 3.5 Business Associate shall make its internal practices, books, and records including policies and procedures relating to the security of electronic PHI received from, created by or received by Business Associate on behalf of, Covered Entity available to the Secretary of the United States Department of Health in Human Services or the Secretary's designee, in a time and manner designated by the Secretary, for purposes of determining Covered Entity's or Business Associate's compliance with the Security Rule.
- 3.6 Business Associate shall fully cooperate in good faith with and to assist Covered Entity in complying with the requirements of the Security Rule.
- 3.7 Notification for the purposes of Sections 2.8 and 3.4 shall be in writing made by email/fax, certified mail or overnight parcel immediately upon becoming aware of the event, with supplemental notification by facsimile and/or telephone as soon as practicable, to:

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

With a copy to:

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

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

Payflex
 Director of Compliance
 10802 Farnam Drive
 Suite 100
 Omaha, NE 68154
 Phone: (402) 758-7824
 Facsimile: (402) 231-2310
 jprotector@payflex.com

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

4. PERMITTED USES AND DISCLOSURES BY BUSINESS ASSOCIATE

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



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

- 4.3 Except as otherwise limited in this Agreement, Business Associate may disclose PHI for the proper management and administration of the Business Associate, provided that disclosures are Required By Law, or provided that, if Business Associate discloses any PHI to a third party for such a purpose, Business Associate shall enter into a written agreement with such third party requiring the third party to: (a) maintain the confidentiality, integrity, and availability of PHI and not to use or further disclose such information except as Required By Law or for the purpose for which it was disclosed, and (b) notify Business Associate of any instances in which it becomes aware in which the confidentiality, integrity, and/or availability of the PHI is breached promptly (not to exceed 48 hours) upon becoming aware.
- 4.4 Except as otherwise limited in this Agreement, Business Associate may use PHI to provide data aggregation services to Covered Entity as permitted by 45 CFR § 164.504(e)(2)(i)(B).
- 4.5 Business Associate may use PHI to report violations of law to appropriate Federal and State Authorities consistent with 45 CFR 164.502(j)(1).
- 4.6 Business Associate shall not use or disclose PHI that is Genetic Information for underwriting purposes. Moreover, the sale, marketing or the sharing for commercial use or any purpose construed by Covered Entity as the sale, marketing or commercial use of member's personal or financial information with affiliates, even if such sharing would be permitted by federal or state laws, is prohibited.
- 4.7 Business Associate shall enter into written agreements that are substantially similar to this Business Associate Agreement with any Subcontractor or agent which Business Associate provides access to Protected Health Information.
- 4.8 Business Associates shall implement and maintain information security policies that comply with the HIPAA Security Rule.

5. OBLIGATIONS OF COVERED ENTITY

- 5.1 Covered Entity shall provide Business Associate with the Notice of Privacy Practices that Covered Entity produces in accordance with 45 CFR § 164.520, as well as any changes to such notice. Covered Entity shall notify Business Associate of any limitations in its notice that affect Business Associate's use or disclosure of PHI.
- 5.2 Covered Entity shall provide Business Associate with any changes in, or revocation of, permission by an Individual to use or disclose PHI, if such changes affect Business Associate's permitted or required uses.
- 5.3 Covered Entity shall notify Business Associate of any restriction to the use or disclosure of PHI that Covered Entity has agreed to in accordance with 45 CFR § 164.522, to the extent that such restriction may affect Business Associate's use of PHI.

6. PERMISSIBLE REQUESTS BY COVERED ENTITY

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

7. TERM AND TERMINATION

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



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

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

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

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

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

7.3 Effect of Termination.

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

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

8. MISCELLANEOUS

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

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

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

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

8.5 Notices and Communications. All instructions, notices, consents, demands, or other communications required or contemplated by this Agreement shall be in writing and shall be delivered by hand, by facsimile



transmission, by overnight courier service, or by first class mail, postage prepaid, addressed to the respective party at the appropriate facsimile number or address as set forth below, or to such other party, facsimile number, or address as may be hereafter specified by written notice.

COVERED ENTITY:
State of Tennessee
Department of Finance and Administration
Benefits Administration

ATTN: HIPAA Privacy & Security Officer
312 Rosa L. Parks Avenue
1900 W.R.S. Tennessee Tower
Nashville, TN 37243-1102
Facsimile: (615) 253-8556

BUSINESS ASSOCIATE:
Payflex Systems USA, Inc
Jeff Protector
Director of Compliance
10802 Farnam Drive
Suite 100
Omaha, NE 68154
Phone: (402) 758-7824
Facsimile: (402) 231-2310
jprotector@payflex.com

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

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

- 8.6 **Strict Compliance.** No failure by any Party to insist upon strict compliance with any term or provision of this Agreement, to exercise any option, to enforce any right, or to seek any remedy upon any default of any other Party shall affect, or constitute a waiver of, any Party's right to insist upon such strict compliance, exercise that option, enforce that right, or seek that remedy with respect to that default or any prior, contemporaneous, or subsequent default. No custom or practice of the Parties at variance with any provision of this Agreement shall affect, or constitute a waiver of, any Party's right to demand strict compliance with all provisions of this Agreement
- 8.7 **Severability.** With respect to any provision of this Agreement finally determined by a court of competent jurisdiction to be unenforceable, such court shall have jurisdiction to reform such provision so that it is enforceable to the maximum extent permitted by applicable law, and the Parties shall abide by such court's determination. In the event that any provision of this Agreement cannot be reformed, such provision shall be deemed to be severed from this Agreement, but every other provision of this Agreement shall remain in full force and effect.
- 8.8 **Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of Tennessee except to the extent that Tennessee law has been pre-empted by HIPAA.
- 8.9 **Compensation.** There shall be **no** remuneration for performance under this Agreement except as specifically provided by, in, and through, existing administrative requirements of Tennessee State government and services contracts referenced herein.
- 8.10 **Security Breach** A violation of HIPAA or the Privacy or Security Rules constitutes a breach of this Business Associate Agreement and a breach of the Service Contract(s) listed on page one of this agreement, and shall be subject to all available remedies for such breach.

IN WITNESS WHEREOF,



Jeff Protextor

Jeff Protextor, Director of Compliance

1/14/16

Date:

Larry B. Martin

Larry B. Martin, Commissioner of Finance & Administration

1-21-16

Date:

Document Approval Status

SetID:	SHARE	Contract ID:	000000000000000000048012
Vendor:	PayFlex Systems USA Inc		

Review/Edit Approvers

Agency Approvals

Approved [View/Hide Comments](#)

Agency Approvals

Approved Travis G Johnson Document Approval 1 02/17/16 - 4:36 PM	▶	Approved Felenceo M Hill Document Approval 2 02/17/16 - 5:00 PM
--	---	---

CPO Level 1 & 2 Approvals

Approved Sharon L Pope Document Approval 3 02/23/16 - 11:44 AM
--

Comments

Comptroller Approvals

Approved [View/Hide Comments](#)

Comptroller Approvals

Approved Mary Anne J Queen Document Approval - Comptrolle 02/26/16 - 10:52 AM

Comments

Comptroller Special Appr

Approved [View/Hide Comments](#)

Rule Exceptions

Approved Mary Anne J Queen Document Approval - Comptrolle 02/26/16 - 10:52 AM

Comments

CPO Final Contract Approval

Approved [View/Hide Comments](#)

CPO Final Contract Approval

Approved Pamela Pate Document Approval 3 02/26/16 - 11:03 AM
--

Comments

Comments

[Return to Document Management](#)