



# CONTRACT

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

<b>Begin Date</b> January 1, 2020	<b>End Date</b> December 31, 2022	<b>Agency Tracking #</b> 34513-35719	<b>Edison Record ID</b> 64945
<b>Contractor Legal Entity Name</b> Stellarware Corporation			<b>Edison Vendor ID</b> 236410

**Goods or Services Caption (one line only)**  
New hire reporting and employer maintenance services

<b>Contractor</b> <input checked="" type="checkbox"/> Contractor	<b>CFDA #</b> 93.563
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**Funding ---**

FY	State	Federal	Interdepartmental	Other	TOTAL Contract Amount
2020	\$53,550.00	\$103,950.00	\$0.00	\$0.00	\$157,500.00
2021	\$108,840.39	\$211,278.39	\$0.00	\$0.00	\$320,118.78
2022	\$112,377.70	\$218,144.96	\$0.00	\$0.00	\$330,522.66
2023	\$116,315.41	\$225,788.75	\$0.00	\$0.00	\$342,104.16
2024	\$120,677.24	\$234,255.82	\$0.00	\$0.00	\$354,933.06
2025	\$61,449.15	\$119,283.63	\$0.00	\$0.00	\$180,732.78
<b>TOTAL:</b>	<b>\$573,209.89</b>	<b>\$1,112,701.55</b>	<b>\$0.00</b>	<b>\$0.00</b>	<b>\$1,685,911.44</b>

**Contractor Ownership Characteristics:**

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

Woman Business Enterprise (WBE)

Tennessee Service Disabled Veteran Enterprise (SDVBE)

Disabled Owned Business (DSBE)

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

Government     Non-Minority/Disadvantaged     Other    **For Profit Corporation**

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

<input checked="" type="checkbox"/> Competitive Selection	This contract was awarded through an RFP process
<input type="checkbox"/> Other	Describe the selection process used and submit a Special Contract Request.

<b>Budget Officer Confirmation:</b> 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.  <i>Winfield Shiers</i>	<i>CPO Use - FA</i>
<b>Speed Code (optional)</b> HS00000229	<b>Account Code (optional)</b> 70803000

**BETWEEN THE STATE OF TENNESSEE,  
DEPARTMENT OF HUMAN SERVICES, CHILD SUPPORT  
AND  
STELLARWARE CORPORATION**

This Contract, by and between the State of Tennessee, Department of Human Services ("State,") and Stellarware Corporation ("Contractor"), is for the provision of New Hire Reporting and Employer Maintenance services, as further defined in the "SCOPE." State and Contractor may be referred to individually as a "Party" or collectively as the "Parties" to this Contract.

The Contractor is a For-Profit Corporation.  
Contractor Place of Incorporation or Organization: Massachusetts  
Contractor Edison Registration ID # 236410

**A. SCOPE:**

- A.1. The Contractor shall provide all goods or services and deliverables as required, described, and detailed below and shall meet all service and delivery timelines as specified by this Contract.
- A.2. Definitions. For purposes of this Contract, definitions shall be as follows and as set forth in the Contract:
- a. "Call Center" means a location established and staffed by the Contractor by which the Contractor provides a toll-free telephone number during the operational hours specified in Section A.25 to receive and process incoming calls.
  - b. "EPP Report" means the Employer Participation Project Report which OCSE provides to the State on a quarterly basis. The EPP Report lists employers which potentially failed to comply with new hire reporting requirements.
  - c. "E-IWO" means electronic income withholding.
  - d. "FEIN" means federal employer Identification number.
  - e. "FOB" means free on board.
  - f. "IRS" means the Internal Revenue Service.
  - g. "Key Personnel" means individuals assigned to the roles described in Section A.34.a and A.34.b of this Contract.
  - h. "MINCA" means maintenance income assignment.
  - i. "Multistate Employers" means employers that conduct business in multiple states but who choose to consolidate their new hire reporting in Tennessee.
  - j. "NHRP" means the New Hire Reporting and Employer Maintenance.
  - k. "OCSE" means the Federal Office of Child Support Enforcement.
  - l. "Payroll Processing Address" means the address of the location from which an employer distributes payroll checks. "Payroll Processing Address" also means the address of the location at which automated clearinghouse transactions are processed.
  - m. "PDF" means portable document format.
  - n. "TCSES" means the Tennessee Child Support Enforcement System, operated by the Department of Human Services containing data and functions for the recording of child or spousal support data and for collection, distribution, and disbursement of child and spousal support payments.
  - o. "TCSES Employer Identifier" means the unique identification number assigned to each employer in TCSES.
  - p. "TIFF" means tagged image file format.
  - q. "VPN" means virtual private network.
- A.3. Solution Used by Contractor. The Contractor shall provide the services required by this Contract by via access to TCSES or, upon the State's written instruction and at no additional

cost to the State, using any other successor software or solution used by the State.

- A.4. Comprehensive Services. The Contractor shall provide a comprehensive suite of services relating to new hire reporting, as required by 42 U.S.C. § 653a and Tenn. Code Ann. §§ 36-5-1101 through 36-5-1108. The Contractor shall maintain, update, and correct at least the following data points within TCSES or its successor system
- a. Employer's name;
  - b. Employer's address;
  - c. Employer's FEIN;
  - d. The complete Payroll Processing Address;
  - e. Employer's contact phone number and/or e-mail address; and
  - f. TCSES Employer Identifier.
- A.5. Daily Records Transfer. The Contractor shall establish a compatible database of new hire records and shall transmit an electronic file of new hire records daily to be loaded into TCSES or its successor system. The State shall own the data in the Contractor's database, and the Contractor shall provide the State a copy of the data upon request once per month during the Term. The Contractor shall maintain the ability to transmit, per day, a minimum of three hundred thousand (300,000) records of individuals who have recently been hired.
- A.6. Employer Maintenance Email Activities. The Contractor shall perform the employer maintenance email activities as specified below:
- a. If income withholding documents have been sent to the incorrect employer or incorrect employer location, contact the employer and advise the employer to forward the corrected income withholding documents. In such instances, the Contractor shall correct the data in TCSES to reflect the correct employer information as required by Section A.4 of this Contract;
  - b. Respond to inquiries associated with Section A.8.a of this Contract within twenty-four (24) hours;
  - c. Respond to emails from local child support offices within twenty-four (24) hours of receipt, providing all information requested; and
  - d. Process completed employment W9 and termination information from employers within two (2) business days of receipt.
- A.7. Adherence to State's Interpretation. The Contractor shall adhere to the State's interpretation of any statutory or regulatory requirements for new hire reporting.
- A.8. Information Receipt Processes. The Contractor shall accept and process incoming information in accordance with the requirements of this Section.
- a. The Contractor shall receive and accept employee information about new hires from Tennessee employers and also from Multistate Employers. The Contractor shall receive this information on an IRS Form W-4, or at the employer's option, an alternate form containing the same data as IRS Form W-4. If an employer fails to submit the W-4 form to the Contractor within the timeframes required by Tenn. Code Ann. § 36-5-1104, the Contractor shall report the failure to the State, notifying the State of the delinquency and all supporting details in order to facilitate the State's collection of the statutory civil penalties available at Tenn. Code Ann. § 36-5-1107.
  - b. The Contractor shall receive employee information about new hires from employers via facsimile transmission, first-class mail, telephone, or electronically. The Contractor shall load all such information received into the Contractor's database.

- A.9. Data Entry Processes. The Contractor shall enter into the new hire database the following information, when available, from IRS Form W-4 and other records, both where such information is received from Tennessee employers and likewise where such information is received from Multistate Employers:
- a. Employee's name;
  - b. Employee's residential address;
  - c. Employee's social security number and/or tax identification number;
  - d. Employer's name;
  - e. Employer's address;
  - f. Employer's FEIN;
  - g. Employee's date of hire;
  - h. Payroll processing complete address;
  - i. If employee has left employment;
  - j. Employee's date of birth;
  - k. Employee's gender code;
  - l. Employee's work state;
  - m. Whether the employee received an earned income tax credit; and
  - n. Employer's contact phone number and/or e-mail address.
- A.10. Follow-up Tasks. No later than two (2) business days after receiving employee new hire information, the Contractor shall contact employers when new hire records are incorrect, incomplete, illegible and/or rejected by the OCSE and request the missing or corrected data prior to transmission of the data to the State. Contractor shall identify additional steps it will take to ensure the receipt of complete and accurate new hire records.
- A.11. Timeliness Standard for New Hire Records. The Contractor shall enter new hire employee records into the Contractor's own database within two (2) business days after receipt of the completed record from the employer.
- A.12. Additional Timeliness Standards. The Contractor shall date and time stamp any letters of inquiry or other correspondence received from employers, and shall review and respond to such inquiries for matters under their purview. For correspondence received that requires a State response, the Contractor shall submit the inquiry electronically within forty-eight (48) hours of receipt along with any additional information needed for the State to respond.
- A.13. Use of State Information Technology Resources.
- a. The Contractor shall use TCSES or its successor system as the exclusive computer system for all employer maintenance operations. The Contractor agrees to: input necessary data; use such system as directed by the State; and designate specific staff as needed to maintain adequate TCSES system support. Further, the Contractor agrees to use a secure connection of the State's choosing.
  - b. The Contractor shall comply with the State's Enterprise Information Security Policies. This document is found at the following URL:  
<https://www.tn.gov/content/dam/tn/finance/documents/Enterprise-Information-Security-Policies-v2-3-ISO-27002-12-21-2018-Public-FINAL-with-Sigs.pdf>
- A.14. TCSES Tasks. The Contractor shall examine and edit TCSES employer information directly via online access to TCSES or its successor system in order to ensure that all employers maintain a unique assigned employer number. Without limiting the Contractor's obligations established elsewhere in this Contract, the Contractor shall:
- a. Research and update TCSES employer information and match newly-hired, recalled or re-hired employees to employers directly via online access to the TCSES application or its successor system;

- b. Contact employers directly, by phone or as otherwise appropriate, to obtain correct employment information, including but not limited to: legal address, physical address, worker's compensation address, employment address, FEIN, and payroll address. The Contractor shall enter this information into TCSES or its successor system to ensure records are correct;
- c. Update and/or correct all clients' employer detail on TCSES screens to close invalid employer numbers and connect clients' documents and profile to the accurate and appropriate valid employer number;
- d. Update employer records in TCSES and add the correct FEIN for each employer, in order to accurately reflect the data contained in the bi-monthly E-IWO report that the State receives from Federal Case Registry division of the Social Security Administration;
- e. Add maintenance information to each employer in TCSES, including the following information:
  - i. Employer name with local and/or corporate addresses;
  - ii. Employer phone numbers;
  - iii. Employer payroll point of contact information;
  - iv. Name if doing business under another name);
  - v. All actions taken to correct employer information; and
  - vi. Unique TCSES member identification number for each non-custodial parent corrected as a result of the maintenance.

A.15. The Contractor shall perform all employer maintenance activities on TCSES or its successor system so as to ensure that employers in TCSES are coded as verified and able to use ("USABLE") in TCSES by the fifteenth day of each month during the Term. The Contractor shall meet the following timeliness requirements:

- a. The State will send the Contractor the daily non-matched employer electronic report and the MINCA electronic report. No later than twenty-four (24) hours after the State sends the MINCA electronic report, the Contractor shall perform any activities necessary to render all unusable employers usable in TCSES. Each report may include duplicate non-custodial parents or employers if each have multiple cases.

A.16. Tracking of New Hire Reporting Requirements. Without limiting the Contractor's obligations established elsewhere in this Contract, the Contractor shall develop a method to verify and track employer compliance with federal and State new hire reporting requirements as set forth below.

- a. No later than 45 days after the Effective Date, the Contractor shall provide the State a proposal explaining the method the Contractor intends to use. Upon the State's written approval, the Contractor shall implement the tracking method.
- b. Under any tracking method proposed by the Contractor, the Contractor shall consider an employer to be non-compliant with new hire reporting requirements if the employer fails to report in accordance with Tenn. Code Ann. § 36-5-1104.
- c. The Contractor shall report to the State all employers that the Contractor identifies as noncompliant with federal and State new hire reporting requirements as part of the Administrative Report described in Section A.30 of this Contract. The Contractor shall include copies of all correspondence and records of contact with the employer.

A.17. At no additional cost to the State, the Contractor shall meet all state and federal performance standards and requirements pertaining to new hire reporting, including without limitation those

requirements established by 42 U.S.C. § 653a; Section 3401d of the IRS Code of 1986, [26 United States Code § 3401]; 45 C.F.R. §§ 303.32, 303.100, 303.108, and 308.2; and Tenn. Code Ann. Sections 36-5-1101 *et seq.*, as those authorities may be amended from time to time during the Term.

A.18. Notification and Outreach.

- a. No later than fourteen (14) days after the Effective Date, the Contractor shall notify Tennessee employers to direct their new hire reporting to the Contractor effective January 1, 2020. No later than thirty (30) days after the Effective Date, the Contractor shall develop and submit for the State's approval an employer outreach program. Upon the State's written approval, the Contractor shall implement the outreach program. The Contractor shall not modify the outreach program or activities except upon the State's written approval. The State may issue written directives to the Contractor requiring the Contractor to modify its outreach program. No later than thirty (30) days after the State's issuance of such written directives and at no additional cost to the State, the Contractor shall comply with the same. The State may provide assistance regarding employer contact information. Any such assistance provided by the State in no way relieves the Contractor of the Contractor's responsibility to identify employers and notify them of new hire reporting requirements as interpreted by the State.
- b. The Contractor shall ensure that its employee outreach program meets all of the following criteria:
  - i. Informs employers, contractors, or their contracted payroll company conducting business within the State of Tennessee of new hire reporting requirements;
  - ii. Provides contact information for the Contractor's Call Center; and
  - iii. Notifies employers that the law provides for civil penalties in the event an employer fails to comply with new hire reporting requirements.

A.19. The Contractor shall ensure that all brochures, pamphlets, notices, electronic notifications, and/or press releases state that the Tennessee Department of Human Services is funding the new hire reporting operation, and any complaints, comments or recommendations should be reported to the Department of Human Services at 1-800-838-6911. The Contractor shall not issue, distribute, or publicize any brochure, pamphlet, notice, electronic notification, or press release pertaining to this Contract except upon the State's prior written approval.

A.20. Location. Unless otherwise directed by the State, the Contractor's primary facility for performance under this Contract and Contractor's staff shall be located in the State of Tennessee within two hundred (200) miles and less than three (3) hours driving distance of the State's office location at 505 Deaderick Street in Nashville, Tennessee. With the prior written approval of the State, the Contractor may utilize a remote or secondary location that is not in compliance with this geographical restriction. All performance standards, reporting, training, and quality assurance requirements of this Contract shall apply to all Contractor facilities and staff, whether employees or subcontractors of the Contractor. Under no circumstances shall the Contractor transmit data to or conduct business under this Contract at any location outside of the continental United States.

A.21. Call Center. The Contractor shall provide sufficient staff at its Call Center to comply with the requirements set forth below in this Section. The Contractor's Call Center staff shall provide information and assistance to employers and to State staff. For all standards measured in percentages under this Section, calculations for said percentages shall be made using the following standard: less than five-tenths (.5) of a percentage point will round down to the nearest percentage point and five-tenths (.5) and over will round up to the nearest percentage point. The Contractor shall ensure that its Call Center complies with all standards set forth below, and failure to meet any of these standards may result in Liquidated Damages as described in Attachment B:

- a. Technical Performance Standards.

- i. Daily Maximum Speed of Answer. Each day, the Call Center shall answer one hundred percent (100%) of non-abandoned calls within three (3) minutes, or one hundred eighty (180) seconds. Calls answered in less than one hundred eighty (180) seconds but placed on hold within the first sixty (60) seconds of answer shall not be used to contribute to this performance standard.
  - ii. Daily Abandonment Rate. The Call Center shall maintain an average daily abandonment rate of five percent (5%) or less, excluding calls abandoned before thirty (30) seconds.
  - iii. Daily Average Speed of Answer. The Call Center shall maintain a Daily Average Speed of Answer (ASA) of sixty (60) seconds or less. Calls answered in less than sixty (60) seconds but placed on hold within the first sixty (60) seconds of answer shall not be used to contribute to this performance standard.
  - iv. Blocked Call Rate. The Call Center shall maintain a daily Blocked Call Rate of one percent (1 %) or less at all times, without exception.
- b. Service Standards. The Call Center shall offer telephonic assistance in accordance with inbound call procedures as provided by the State and as the State may revise from time to time. Contractor's staff and related technologies shall support warm transfers, i.e. transferring a caller to another person through a live call by asking the caller to wait on hold, getting the person the caller wishes to be transferred to on the phone, taking the caller off of hold, and then announcing the caller to the other person before disconnecting from the call with the caller and other person. The Call Center shall fully assist callers in a single call as completely and consistently as possible and without transferring the caller whenever possible. The Contractor shall provide technical assistance to answer employers' ongoing questions regarding new hire reporting and employer maintenance.
  - c. Language. The Call Center shall support inbound calls in English, Arabic, and Spanish. The Contractor shall establish and operate a third party translation service that supports additional languages. For purposes of this Contract, "Individuals with Limited English Proficiency" ("LEP") means individuals who do not speak English as their primary language and who have a limited ability to read, write, speak, or understand English.
    - i. For the hours of operation specified in Section A.25, the Contractor shall staff the Call Center with a sufficient number of bilingual staff with tested oral and written fluency in English, Arabic, and Spanish to provide support to Arabic and Spanish speaking callers.
    - ii. At no cost to the caller and for the hours of operation specified in Section A.25, the Contractor shall equip the Application Processing Center with real time, third party telephonic interpreter service to for callers who are individuals with Limited English Proficiency but whose native language is a language other than Spanish or Arabic.
  - d. Accessibility for Individuals with Hearing and/or Speech Disabilities. At no cost to the caller and for the hours of operation specified in Section A.25, the Contractor shall provide the Call Center with a telecommunications relay service ("TRS") in order to serve individuals with hearing and/or speech disabilities. Unless otherwise directed in writing by the State, the Contractor shall use the Tennessee Relay Service ("TNRS") offered by the Tennessee Regulatory Authority ("TRA") as its TRS provider. The Contractor shall ensure that these services are provided at no additional cost to the State.
- A.22. Complaints. The Contractor shall plan and implement employer and employee complaint processing and resolution procedures and provide these procedures to the State. The Contractor shall review these procedures annually and provide the State with any updated versions. The Contractor shall notify the State within twenty-four (24) hours of any complaints against the Contractor and advise the State of the resolution of the complaint.

- A.23. The Contractor shall cooperate fully with any data collection and evaluation activities or audits carried out by Tennessee or the federal government in connection with the services performed under this Contract.
- A.24. The Contractor shall not grant media interviews or issue press releases relative to activities carried out under the terms of this Contract without the written permission of the Department of Human Services, Child Support Division.
- A.25. Hours of Operation. The Contractor shall ensure that offices providing services under the terms of this Contract remain open and staffed on all days that the State is open and staffed. The Contractor shall provide a point of contact during the State business day (Monday through Friday from 8:00 a.m. to 4:30 p.m. CT), excluding holidays officially recognized by the State or weather emergencies declared by the Governor.
- A.26. The Contractor shall comply with State telecommunications protocols, existing file standards utilized in the file transfer interfaces using a Secure File Transfer Process ("SFTP"), and in the access to State systems as dictated by the State.
- A.27. Computers and Peripheral Equipment.
- a. The State will provide the Contractor the required computers to access TCSES or its successor system as well as Microsoft Office to utilize the States external programs. The Contractor shall not install additional software on devices connected to the State network unless approved in advance and in writing by the State.
  - b. The Contractor shall utilize the computers and software furnished by the State to provide child support enforcement services. Further, it is the State's intention that only State supplied equipment shall be used by the Contractor to access the State network.
  - c. The Contractor shall supplement any equipment provided by the State as deemed necessary by the Contractor, at the Contractor's expense. The Contractor shall ensure that Contractor-supplied equipment is compliant with the technical environment described by the Tennessee Information Resources Architecture.
  - d. In the event that an operating system is an integral part of the Contractor-supplied equipment, the Contractor agrees to maintain Operating Systems at current, manufacturer supported versions.
  - e. The Contractor agrees to maintain Contractor-supplied equipment so that it will run on a current, manufacturer-supported Operating System. The Contractor shall make sure that the Contractor-supplied equipment is at all times fully compatible with a manufacturer-supported Operating System; the State shall not be required to run an Operating System that is no longer supported by the manufacturer.
  - f. If the Contractor-supplied equipment requires middleware or database software, Contractor shall maintain middleware and database software versions that are at all times fully compatible with current versions of the Operating System and equipment, to ensure that security vulnerabilities are not introduced. All software provided under this Section is subject to the provisions of Section E.5.
- A.28. EPP Tasks.
- a. No later than five (5) business days after receiving the quarterly Federal EPP report, the Contractor shall submit to the State a Non-Compliant Employers Report listing non-compliant employers as matched against the EPP report. The Non-Compliant Employers Report shall include in the following order: the employers' FEIN, employers' employers' name, address line 1, address line 2, city, state, zip code+4; warning notice date(s).



- b. No later than five (5) business days after receiving the quarterly Federal EPP report, the Contractor shall submit to the State an Employees Not Reported by Employer Report. The Employees Not Reported by Employer Report shall include, in the following order: the employers' FEIN; employers' name; address line 1; address line 2; city, state; zip code+4; warning notice date(s), and the employees' SSN; employees' first name; employees' middle initial; and employees' last name. The employees listed are linked to the employer.
- c. No later than ten (10) business days after receiving the quarterly Federal EPP report, the Contractor shall send a warning notice to potentially non-compliant employers via first-class mail, as mandated by federal regulations. This notice shall inform employers of their legal obligations to provide the new hires information to New Hire and the penalty under State law for failure to report on a timely basis.
- d. On a monthly basis, the Contractor shall identify employers who have an incident of non-compliance after having received a warning notice and provide a list of such employers to the State by the fifteenth (15<sup>th</sup>) of each month following the month that the incident of non-compliance occurred. The list shall include the name and address of the employer, the date the warning notice was mailed to the employer, and the details of the ensuing incident of non-compliance (including the name of employee, method used to determine non-compliance, hire date if known, and date reported if any).

A.29. Contract Services Transition. Upon termination of this Contract, for whatever reason (expiration or termination), the Contractor shall assist the State to ensure an orderly transfer of responsibility and/or continuity of those services required under the terms of the Contract to an organization designated by the State.

- a. The Contractor shall deliver, FOB destination, all records, documentation, reports, data, hard copy and electronic files, recommendations, etc., which were required to be produced under the terms of the Contract to the State and/or the State's designee promptly and with due diligence after receipt of the written request. No later than the date set forth in the State's written request, the Contractor shall deliver electronic files in a TIFF, PDF, or other format as may be prescribed by the State.
- b. The Contractor shall discontinue providing the service or accepting new assignments under the terms of this Contract, on the date specified by the State, in order to ensure the completion of such service prior to the termination of the Contract.
- c. The Contractor shall, upon request of the State, help to provide an understanding of the State New Hire program for any potential future Contractor.
- d. At the conclusion of the Term or as otherwise directed by the State, the Contractor shall destroy all confidential data acquired in the performance of this contract (including any copies such as backups) in accordance with the current version of NIST Special Publication 800-88. The Contractor also shall sanitize all Contractor-supplied processing equipment used in the performance of this contract, including multifunction print devices in accordance with Section E.2.g.(4) and the current version of NIST publication 800-88. The Contractor shall provide a written confirmation of destruction to the State within ten (10) business days after destruction.

A.30. Administrative Reporting. The Contractor shall report to the State on the Contractor's performance as required by this Section.

- a. No later than thirty (30) days after the Effective Date, the Contractor shall develop and propose a method for quality assurance of data and tracking timeliness and accuracy of deliverables under this Contract. The State will review the proposed method and will approve the same or reject it and provide the Contractor an explanation of necessary changes. Throughout the Term, the Contractor shall comply with any written instructions the State may

issue regarding modification to the administrative report format, substance, etc.

- b. No later than sixty (60) days after the Effective Date, the Contractor shall submit the first administrative report in accordance with the method approved by the State. Thereafter, the Contractor shall submit the administrative report on a monthly basis using the same method. The Contractor shall submit the administrative report no later than the fifteenth (15th) day of the month following the reported month. The Contractor shall submit the administrative report to the State by email to **ChildSupport.ContractDHS@tn.gov**.

A.31. The Contractor shall provide any special project support needed to analyze, plan, implement, operate and manage special services that may be needed to meet the diverse needs of the State. Support would include but not limited to: technical support with reporting, call or email campaigns, and participation surveys.

A.32. Meeting Attendance. The Contractor and its staff and subcontractors shall attend meetings, make presentations and participate in teleconferences as requested by the State. Failure of the Contractor's Key Personnel to attend meetings with the State may result Liquidated Damages as set forth in Attachment B.

A.33. Workforce Requirements. The Contractor shall provide an organization of dedicated staff that shall be responsible for each of the functions detailed in the Contract. The Contractor shall provide and allocate sufficient numbers of trained personnel, including but not limited to clerical, program, technical, and management staff, to ensure efficient completion of all responsibilities set forth in this Contract. Contractor shall, at a minimum, meet the following staffing requirements:

- a. The Contractor shall prepare, as part of its initial Staffing Plan, and thereafter maintain a current organization chart that depicts all administrative, functional, and programmatic reporting relationships of staff that perform services under the Contract, including any subcontractors of the Contract, and submit the chart to the State for review and approval whenever a change to such organizational chart is proposed.
- b. The Contractor shall prepare, as part of its initial Staffing Plan, and thereafter maintain current, detailed job descriptions for each staff and subcontractor position that will be providing services under the Contract, and submit said descriptions in advance to the State for review and approval whenever changes to such job descriptions are proposed.
- c. The Contractor shall ensure that all persons, including independent contractors, subcontractors and consultants assigned by it to perform services under the Contract shall, at all times, have the necessary credentials and be fully qualified and trained, as required and specified in this Contract, to perform the services required herein.
- d. The Contractor shall determine the appropriate staffing, technical and telephonic solutions for the Call Center, but, if the Contractor is fails to meet performance standards under this Contract, it shall comply with requests from the State to adjust staffing levels and technical and telephonic solutions as needed to comply with contractual standards. The Contractor shall utilize the most efficient operations and work assignments to maximize the use of its staff during low inbound call volume periods.
- e. The Contractor shall staff the Call Center with individuals who have the appropriate skills to meet or exceed contractual standards and provide callers with immediate and accurate information. In addition, the Contractor shall fully train all Call Center staff in Call Center operations, processes and procedures as well as the State's policies, procedures and processes relating to this service area.
- f. The Contractor shall use proactive recruitment and retention practices to maintain the capability of responding quickly to staff turnover and attrition, absenteeism, poorly performing

personnel, and increases in workload volume. The Contractor shall meet the performance standards specified in Sections A.8, A.9, A.10, A.11, A.12, A.14 and A.28. The Contractor shall make every effort to retain qualified staff and minimize attrition.

- A.34. Key Personnel. The Contractor shall submit to the State for prior review and approval the names, titles, and resumes of candidates proposed by the Contractor for initial engagement of Key Personnel and whenever a change in Key Personnel is proposed. If, during the term of this Contract, any Key Personnel should leave the Contractor's employment or the State requests that a specific Key Personnel no longer provide services under this Contract, the Contractor shall fill the vacant Key Personnel position, within thirty (30) days from the date of the Key Personnel leaving his/her position with the Contractor or within thirty (30) days of the State requesting replacement, with a replacement that is satisfactory to the State. Until a qualified and acceptable replacement is available, Contractor shall temporarily fill such Key Personnel position, within three (3) business days of a vacancy occurring, with a qualified Contractor corporate staff resource that shall perform the Key Personnel duties at the Contractor's location in Tennessee if the State so requests. Failure to timely provide or replace Key Personnel may result in Liquidated Damages as set forth in Attachment B. All of the following Key Personnel positions shall be filled with personnel who are dedicated one hundred percent (100%) to the services required under this Contract:
- a. Project Manager – "Project Manager" means the individual responsible for all Contractor functions and operations under this Contract. The Contractor's Project Manager shall work directly with the State's project lead or such other individual designated in writing by the State. The Contractor's Project Manager shall also be responsible for managing changes to Call Center systems and processes in response to written directives issued by the State. Additionally, this position shall be responsible for managing employer outreach and notification functions, maintenance and updating of employer and employee data, and other requirements set forth in this Contract.
  - b. Information Technology Lead – "Information Technology Lead" or "IT Lead" means the individual responsible for assisting the State and the Contractor with technical matters relating to the performance of this Contract and troubleshooting technical issues. Additionally, the Contractor's IT Lead shall serve as the liaison between the State and the Contractor for all technical maintenance, data governance, data quality, data analytics, and such other similar functions as may be necessary during the Term.
- A.35. The State will provide access to State applications and e-mail accounts, as approved by the State and utilizing State standard software, policies, and procedures. The Contractor will use the State email accounts for all day-to-day correspondence with the State and employers.
- A.36. The State will provide mandatory TCSES Employer Maintenance training to Contractor's lead staff, and shall provide TCSES user guides to support new hire reporting. The Contractor shall ensure that its staff complete any such training required by the State.
- A.37. Nondisclosure. The Contractor shall, as directed by the State and at no additional cost to the State, coordinate with, facilitate the prompt exchange of information between, and work collaboratively with any and all third party contractors engaged by the State and state agencies. If required in order for the Contractor to proceed with any part of the Scope of Services which involves sharing or obtaining information of a confidential, proprietary, or otherwise valuable nature with or from a third party contractor engaged by the State, the Contractor shall sign mutually agreeable documents, including but not limited to Nondisclosure Agreements (Nondisclosure Documents), which are reasonably necessary to maintain cooperation and collaboration among and with any and all third party contractors engaged by the State and state agencies in the performance of the Contract. All information the Contractor may receive, have disclosed to it, or which otherwise becomes known to the Contractor during the performance of this Contract from any third party contractor engaged by the State, which the third party contractor considers to be propriety or confidential in nature pursuant to a Nondisclosure Document entered into between the Contractor and the third party contractor, shall be governed by such Nondisclosure Document.

A.38. Control Memorandum Process.

- a. The Control Memorandum (“CM”) process shall be utilized by the State to clarify Contract requirements, issue instruction to the Contractor, document action required of the Contractor, or request information from the Contractor. In addition, the CM process shall be used by the State to impose assessments of damages, either actual or liquidated. This process will be used to address issues or matters that do not require a contract amendment. Each CM must be in writing and indicate the date on which it was issued. CMs may provide relevant history, background, and other pertinent information regarding the issue(s) being addressed in the CM. Each CM will establish a deadline or timeframe for the Contractor’s reply or other action. All CMs submitted to the Contractor must be signed and approved by the State’s Project Director (or his/her designee). When the CM pertains to damages, either actual or liquidated, the State may issue consecutive CMs, as may be necessary or appropriate.
- b. A CM may include one (1) or more of the five (5) components of the CM process described below:
  - i. On Request Report – a request directing the Contractor to provide information by the time and date set out in the CM.
  - ii. Control Directive (CD) – instructions that require the Contractor to complete, within a designated timeframe, one (1) or more deliverables or to perform any other request from the State that is within the scope of the Contract. The CD may include a Corrective Action Plan. A CD may also provide clarification of certain Contract terms. Once a CM/CD has been issued, it shall be considered to be incorporated into this Contract.
  - iii. Notice of Potential Damages (Actual or Liquidated) (NPD) – notification to the Contractor that the State has determined that a potential Contract performance or compliance failure exists and that the State is contemplating assessing damages. The NPD shall identify the Contract provision(s) on which the State determination rests.
  - iv. Notice of Calculation of Potential Damages (Actual or Liquidated) (NCPD) – notification to the Contractor that provides a calculation of the amount of potential damages that the State is contemplating assessing against the Contractor. NPDs and NPCDs may be issued consecutively or simultaneously.
  - v. Notice of Intent to Assess Damages (Actual or Liquidated) (NIAD) – notification to the Contractor that the State is assessing damages and specifying whether the damages, due to a performance or compliance failure, are actual damages or Liquidated Damages and setting out the performance or compliance failure underlying each intended damage assessment. The NIAD shall identify the NPD and NCPD upon which it is based. The NIAD shall specify the total amount and type of damages, whether actual or liquidated, that the State intends to assess. Following the issuance of an NIAD, the State may elect to withhold damages from payments due to Contractor. The State may not issue a NIAD without first issuing a NPD and a NPCD. The State may not obtain both Liquidated Damages and Actual Damages for the same occurrence of a Contract performance or compliance failure.
- c. Damages for failure to comply with CM. The Contractor shall fully comply with all CMs. Failure to do so may result in the State pursuing recovery of damages, as defined in Section E.9., including Liquidated Damages as listed in Contract Attachment B, a corrective action plan, and/or termination of the Contract.
- d. Appeal of Damages by Contractor. Contractor may appeal either the basis for NPD or calculation of NCPD potential damages, either actual or liquidated. To do so, the Contractor shall submit to the State’s Project Director (or his/her designee) a written response to the NPD and/or NCPD

within ten (10) business days of receipt of a CM which includes a NPD or a NCPD. The State's Project Director (or his/her designee) shall review the appeal and provide notice of his/her determination to the Contractor through a CM. If the Contractor disagrees with the State's Project Director's (or his/her designee) initial appeal determination or the State's Project Director (or his/her designee) is unable to resolve the appeal, the Contractor may submit a written request to the State's Project Director (or his/her designee) that the matter be escalated to senior management of the Agency. Contractor shall submit such a request for escalation within ten (10) business days of its receipt of the initial appeal determination from the State's Project Director (or his/her designee) or of notification by the State's Project Director that he/she is unable to resolve the appeal. The State's senior management shall provide written notice of its final determination to the Contractor within ten (10) days of the receipt of the appeal from the Contractor. Upon appeal or escalation, the State shall not increase the amount of the potential damages.

A.39. Problem Notification and Corrective Action Plan. The Contractor shall proactively notify the State of any developing situation that may negatively impact its performance under this Contract. At the point at which the Contractor discovers or reasonably should have known of any problem that is reasonably likely to jeopardize the Contractor's ability to perform any function as required in this Contract, the Contractor shall notify the applicable State staff (as well as the State's designated general contact for this Contract) in person, via phone, or by email within one (1) hour if the problem is discovered within the business day and no later than 9:00 a.m. CT the following business day if the problem occurs after close of business. The Contractor shall, at a minimum, take the following steps with regard to each such developing problem:

- a. Corrective Action Plan. Unless otherwise directed by the State, the Contractor shall within three (3) business days of a problem's occurrence deliver comprehensive written documentation, including a Corrective Action Plan that describes how the Contractor shall determine the root cause of the issue, remedy the immediate operational challenges, and prevent this or similar problems from occurring again.
- b. The Contractor shall treat any known or suspected occurrence of "dead air" in which a caller is unable to talk with Contractor's staff because of telephony or connectivity issues as a reportable problem under this Section. The Contractor shall also report all other reportable problems under this Section within one (1) business day, unless otherwise directed in writing by the State, with reportable problems to include but are not limited to, any complaints from callers regarding blocked calls, inaccurate IVR functionality, blocked faxes, incomplete faxes, customer complaints specifically about the Contractor's technology and related performance, and such other events as the State may direct in writing.

## **B. TERM OF CONTRACT:**

- B.1. This Contract shall be effective for the period beginning on January 1, 2020 ("Effective Date") and ending on December 31, 2022 ("Term"). The State shall have no obligation for goods delivered or services provided by the Contractor prior to the Effective Date.
- B.2. This Contract may be renewed upon satisfactory completion of the Term. The State reserves the right to execute two (2) one-year renewal options under the same terms and conditions, at the State's sole option. In no event, however, shall the maximum Term, including all renewals or extensions, exceed a total of sixty (60) months.

## **C. PAYMENT TERMS AND CONDITIONS:**

- C.1. Maximum Liability. In no event shall the maximum liability of the State under this Contract exceed one million six hundred eighty-five thousand nine hundred eleven dollars and forty-four cents (\$1,685,911.44) ("Maximum Liability"). This Contract does not grant the Contractor any exclusive rights. The State does not guarantee that it will buy any minimum quantity of goods or services under this Contract. Subject to the terms and conditions of this Contract, the Contractor will only be paid for goods or services provided under this Contract after a purchase order is issued to Contractor by the State or as otherwise specified by this Contract.

- C.2. Compensation Firm. The payment methodology in Section C.3. of this Contract shall constitute the entire compensation due the Contractor for all goods or services provided under this Contract regardless of the difficulty, materials or equipment required. The payment methodology includes all applicable taxes, fees, overhead, and all other direct and indirect costs incurred or to be incurred by the Contractor.
- C.3. Payment Methodology. The Contractor shall be compensated based on the payment methodology for goods or services authorized by the State in a total amount as set forth in Section C.1.
- a. The Contractor's compensation shall be contingent upon the satisfactory provision of goods or services as set forth in Section A.
  - b. The Contractor shall be compensated based upon the following payment methodology:

<b>Goods or Services Description</b>	<b>Amount</b> (per compensable increment)
Contract Year 1 (January 1, 2020 – December 31, 2020)	\$ 26,250.00 per month
Contract Year 2 (January 1, 2021 – December 31, 2021)	\$ 27,103.13 per month
Contract Year 3 (January 1, 2022 – December 31, 2022)	\$ 27,983.98 per month
Contract Year 4 (January 1, 2023 – December 31, 2023)	\$ 29,033.38 per month
Contract Year 5 (January 1, 2024 – December 31, 2024)	\$ 30,122.13 per month

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

[CSVendor.Invoices.DHS@TN.GOV](mailto:CSVendor.Invoices.DHS@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: Tennessee Department of Human Services, Division of Child Support Services;
  - (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 the "Authorization Agreement for Automatic Deposit Form" provided by the State. By doing so, the Contractor acknowledges and agrees that, once this form is received by the State, payments to the Contractor, under this or any other contract the Contractor has with the State of Tennessee, may be made by ACH; and
- b. The Contractor shall complete, sign, and return to the State the State-provided W-9 form. The taxpayer identification number on the W-9 form must be the same as the Contractor's Federal Employer Identification Number or Social Security Number referenced in the Contractor's Edison registration information.

**D. MANDATORY TERMS AND CONDITIONS:**

D.1. Required Approvals. The State is not bound by this Contract until it is duly approved by the Parties and all appropriate State officials in accordance with applicable Tennessee laws and regulations. Depending upon the specifics of this Contract, this may include approvals by the Commissioner of Finance and Administration, the Commissioner of Human Resources, the Comptroller of the Treasury, and the Chief Procurement Officer. Approvals shall be evidenced by a signature or electronic approval.

D.2. Communications and Contacts. All instructions, notices, consents, demands, or other communications required or contemplated by this Contract shall be in writing and shall be made by

certified, first class mail, return receipt requested and postage prepaid, by overnight courier service with an asset tracking system, or by email or facsimile transmission with recipient confirmation. All communications, regardless of method of transmission, shall be addressed to the respective Party at the appropriate mailing address, facsimile number, or email address as stated below or any other address provided in writing by a Party.

The State:

Krista Gray, Program Manager - Contracts Management Department  
of Human Services  
505 Deaderick Street. 16<sup>th</sup> Floor James  
K. Polk Building  
[Krista.Gray@tn.gov](mailto:Krista.Gray@tn.gov)  
[ChildSupport.ContractDHS@tn.gov](mailto:ChildSupport.ContractDHS@tn.gov)  
Telephone # 615-313-4742  
FAX # 615-524-3044

The Contractor:

George French, President  
Stellarware Corporation  
140 North Franklin Street, Suite 2-1  
Holbrook, MA 02343  
[gfrench@stellarware.com](mailto:gfrench@stellarware.com)  
Telephone # (781) 986-1400  
FAX # (781) 622-9013

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

- D.3. Modification and Amendment. This Contract may be modified only by a written amendment signed by all Parties and approved by all applicable State officials.
- D.4. Subject to Funds Availability. The Contract is subject to the appropriation and availability of State or federal funds. In the event that the funds are not appropriated or are otherwise unavailable, the State reserves the right to terminate this Contract upon written notice to the Contractor. The State's exercise of its right to terminate this Contract shall not constitute a breach of Contract by the State. Upon receipt of the written notice, the Contractor shall cease all work associated with the Contract. If the State terminates this Contract due to lack of funds availability, the Contractor shall be entitled to compensation for all conforming goods requested and accepted by the State and for all satisfactory and authorized services completed as of the termination date. Should the State exercise its right to terminate this Contract due to unavailability of funds, the Contractor shall have no right to recover from the State any actual, general, special, incidental, consequential, or any other damages of any description or amount.
- D.5. Termination for Convenience. The State may terminate this Contract for convenience without cause and for any reason. The State shall give the Contractor at least thirty (30) days written notice before the termination date. The Contractor shall be entitled to compensation for all conforming goods delivered and accepted by the State or for satisfactory, authorized services completed as of the termination date. In no event shall the State be liable to the Contractor for compensation for any goods neither requested nor accepted by the State or for any services neither requested by the State nor satisfactorily performed by the Contractor. In no event shall the State's exercise of its right to terminate this Contract for convenience relieve the Contractor of any liability to the State for any damages or claims arising under this Contract.
- D.6. Termination for Cause. If the Contractor fails to properly perform its obligations under this Contract in a timely or proper manner, or if the Contractor materially violates any terms of this Contract ("Breach Condition"), the State shall have the right to immediately terminate the Contract and



withhold payments in excess of compensation for completed services or provided goods. Notwithstanding the above, the Contractor shall not be relieved of liability to the State for damages sustained by virtue of any Breach Condition and the State may seek other remedies allowed at law or in equity for breach of this Contract.

D.7. Assignment and Subcontracting. The Contractor shall not assign this Contract or enter into a subcontract for any of the goods or services provided under this Contract without the prior written approval of the State. Notwithstanding any use of the approved subcontractors, the Contractor shall be the prime contractor and responsible for compliance with all terms and conditions of this Contract. The State reserves the right to request additional information or impose additional terms and conditions before approving an assignment of this Contract in whole or in part or the use of subcontractors in fulfilling the Contractor's obligations under this Contract.

D.8. Conflicts of Interest. The Contractor warrants that no part of the Contractor's compensation shall be paid directly or indirectly to an employee or official of the State of Tennessee as wages, compensation, or gifts in exchange for acting as an officer, agent, employee, subcontractor, or consultant to the Contractor in connection with any work contemplated or performed under this Contract.

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

D.9. Nondiscrimination. The Contractor hereby agrees, warrants, and assures that no person shall be excluded from participation in, be denied benefits of, or be otherwise subjected to discrimination in the performance of this Contract or in the employment practices of the Contractor on the grounds of handicap or disability, age, race, creed, color, religion, sex, national origin, or any other classification protected by federal or state law. The Contractor shall, upon request, show proof of nondiscrimination and shall post in conspicuous places, available to all employees and applicants, notices of nondiscrimination.

D.10. Prohibition of Illegal Immigrants. The requirements of Tenn. Code Ann. § 12-3-309 addressing the use of illegal immigrants in the performance of any contract to supply goods or services to the state of Tennessee, shall be a material provision of this Contract, a breach of which shall be grounds for monetary and other penalties, up to and including termination of this Contract.

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

- d. The Contractor understands and agrees that failure to comply with this section will be subject to the sanctions of Tenn. Code Ann. § 12-3-309 for acts or omissions occurring after its effective date.
  - e. For purposes of this Contract, "illegal immigrant" shall be defined as any person who is not: (i) a United States citizen; (ii) a Lawful Permanent Resident; (iii) a person whose physical presence in the United States is authorized; (iv) allowed by the federal Department of Homeland Security and who, under federal immigration laws or regulations, is authorized to be employed in the U.S.; or (v) is otherwise authorized to provide services under the Contract.
- D.11. Records. The Contractor shall maintain documentation for all charges under this Contract. The books, records, and documents of the Contractor, for work performed or money received under this Contract, shall be maintained for a period of five (5) full years from the date of the final payment and shall be subject to audit at any reasonable time and upon reasonable notice by the State, the Comptroller of the Treasury, or their duly appointed representatives. The financial statements shall be prepared in accordance with generally accepted accounting principles.
- D.12. Monitoring. The Contractor's activities conducted, and records maintained pursuant to this Contract shall be subject to monitoring and evaluation by the State, the Comptroller of the Treasury, or their duly appointed representatives.
- D.13. Progress Reports. The Contractor shall submit brief, periodic, progress reports to the State as requested.
- D.14. Strict Performance. Failure by any Party to this Contract to require, in any one or more cases, the strict performance of any of the terms, covenants, conditions, or provisions of this Contract shall not be construed as a waiver or relinquishment of any term, covenant, condition, or provision. No term or condition of this Contract shall be held to be waived, modified, or deleted except by a written amendment signed by the Parties.
- D.15. Independent Contractor. The Parties shall not act as employees, partners, joint venturers, or associates of one another. The Parties are independent contracting entities. Nothing in this Contract shall be construed to create an employer/employee relationship or to allow either Party to exercise control or direction over the manner or method by which the other transacts its business affairs or provides its usual services. The employees or agents of one Party are not employees or agents of the other Party.
- D.16. Patient Protection and Affordable Care Act. The Contractor agrees that it will be responsible for compliance with the Patient Protection and Affordable Care Act ("PPACA") with respect to itself and its employees, including any obligation to report health insurance coverage, provide health insurance coverage, or pay any financial assessment, tax, or penalty for not providing health insurance. The Contractor shall indemnify the State and hold it harmless from any costs to the State arising from Contractor's failure to fulfill its PPACA responsibilities for itself or its employees.
- D.17. Limitation of State's Liability. The State shall have no liability except as specifically provided in this Contract. In no event will the State be liable to the Contractor or any other party for any lost revenues, lost profits, loss of business, decrease in the value of any securities or cash position, time, goodwill, or any indirect, special, incidental, punitive, exemplary or consequential damages of any nature, whether based on warranty, contract, statute, regulation, tort (including but not limited to negligence), or any other legal theory that may arise under this Contract or otherwise. The State's total liability under this Contract (including any exhibits, schedules, amendments or other attachments to the Contract) or otherwise shall under no circumstances exceed the Maximum Liability. This limitation of liability is cumulative and not per incident.
- D.18. Limitation of Contractor's Liability. In accordance with Tenn. Code Ann. § 12-3-701, the Contractor's

liability for all claims arising under this Contract shall be limited to an amount equal to two (2) times the Maximum Liability amount detailed in Section C.1. and as may be amended, PROVIDED THAT in no event shall this Section limit the liability of the Contractor for: (i) intellectual property or any Contractor indemnity obligations for infringement for third-party intellectual property rights; (ii) any claims covered by any specific provision in the Contract providing for liquidated damages; or (iii) any claims for intentional torts, criminal acts, fraudulent conduct, or acts or omissions that result in personal injuries or death.

- D.19. Hold Harmless. The Contractor agrees to indemnify and hold harmless the State of Tennessee as well as its officers, agents, and employees from and against any and all claims, liabilities, losses, and causes of action which may arise, accrue, or result to any person, firm, corporation, or other entity which may be injured or damaged as a result of acts, omissions, or negligence on the part of the Contractor, its employees, or any person acting for or on its or their behalf relating to this Contract. The Contractor further agrees it shall be liable for the reasonable cost of attorneys' fees, court costs, expert witness fees, and other litigation expenses for the State to enforce the terms of this Contract.

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

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

- a. Contractor warrants to the State that it is familiar with the requirements of the Privacy Rules, and will comply with all applicable requirements in the course of this Contract.
- b. Contractor warrants that it will cooperate with the State, including cooperation and coordination with State privacy officials and other compliance officers required by the Privacy Rules, in the course of performance of the Contract so that both parties will be in compliance with the Privacy Rules.
- c. The State and the Contractor will sign documents, including but not limited to business associate agreements, as required by the Privacy Rules and that are reasonably necessary to keep the State and Contractor in compliance with the Privacy Rules. This provision shall not apply if information received or delivered by the parties under this Contract is NOT "protected health information" as defined by the Privacy Rules, or if the Privacy Rules permit the parties to receive or deliver the information without entering into a business associate agreement or signing another document.
- d. The Contractor will indemnify the State and hold it harmless for any violation by the Contractor or its subcontractors of the Privacy Rules. This includes the costs of responding to a breach of protected health information, the costs of responding to a government enforcement action related to the breach, and any fines, penalties, or damages paid by the State because of the violation.

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

contrary, the Contractor agrees that if it is later determined that the true nature of the working relationship between the Contractor and the State under this Contract is that of “employee/employer” and not that of an independent contractor, the Contractor, if a retired member of TCRS, may be required to repay to TCRS the amount of retirement benefits the Contractor received from TCRS during the Term.

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

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

- D.24. Force Majeure. “Force Majeure Event” means fire, flood, earthquake, elements of nature or acts of God, wars, riots, civil disorders, rebellions or revolutions, acts of terrorism or any other similar cause beyond the reasonable control of the Party except to the extent that the non-performing Party is at fault in failing to prevent or causing the default or delay, and provided that the default or delay cannot reasonably be circumvented by the non-performing Party through the use of alternate sources, workaround plans or other means. A strike, lockout or labor dispute shall not excuse either Party from its obligations under this Contract. Except as set forth in this Section, any failure or delay by a Party in the performance of its obligations under this Contract arising from a Force Majeure Event is not a default under this Contract or grounds for termination. The non-performing Party will be excused from performing those obligations directly affected by the Force Majeure Event, and only for as long as the Force Majeure Event continues, provided that the Party continues to use diligent, good faith efforts to resume performance without delay. The occurrence of a Force Majeure Event affecting Contractor’s representatives, suppliers, subcontractors, customers or business apart from this Contract is not a Force Majeure Event under this Contract. Contractor will promptly notify the State of any delay caused by a Force Majeure Event (to be confirmed in a written notice to the State within one (1) day of the inception of the delay) that a Force Majeure Event has occurred, and will describe in reasonable detail the nature of the Force Majeure Event. If any Force Majeure Event results in a delay in Contractor’s performance longer than forty-eight (48) hours, the State may, upon notice to Contractor: (a) cease payment of the fees for the affected obligations until Contractor resumes performance of the affected obligations; or (b) immediately terminate this Contract or any purchase order, in whole or in part, without further payment except for fees then due and payable. Contractor will not increase its charges under this Contract or charge the State any fees other than

those provided for in this Contract as the result of a Force Majeure Event.

- D.25. State and Federal Compliance. The Contractor shall comply with all State and federal laws and regulations applicable to Contractor in the Contractor's performance of this Contract.
- D.26. Governing Law. This Contract shall be governed by and construed in accordance with the laws of the State of Tennessee, without regard to its conflict or choice of law rules. The Tennessee Claims Commission or the state or federal courts in Tennessee shall be the venue for all claims, disputes, or disagreements arising under this Contract. The Contractor acknowledges and agrees that any rights, claims, or remedies against the State of Tennessee or its employees arising under this Contract shall be subject to and limited to those rights and remedies available under Tenn. Code Ann. §§ 9-8-101 - 408.
- D.27. Entire Agreement. This Contract is complete and contains the entire understanding between the Parties relating to its subject matter, including all the terms and conditions of the Parties' agreement. This Contract supersedes any and all prior understandings, representations, negotiations, and agreements between the Parties, whether written or oral.
- D.28. Severability. If any terms and conditions of this Contract are held to be invalid or unenforceable as a matter of law, the other terms and conditions of this Contract shall not be affected and shall remain in full force and effect. The terms and conditions of this Contract are severable.
- D.29. Headings. Section headings of this Contract are for reference purposes only and shall not be construed as part of this Contract.
- D.30. Incorporation of Additional Documents. Each of the following documents is included as a part of this Contract by reference. In the event of a discrepancy or ambiguity regarding the Contractor's duties, responsibilities, and performance under this Contract, these items shall govern in order of precedence below:
- a. any amendment to this Contract, with the latter in time controlling over any earlier amendments;
  - b. this Contract with any attachments or exhibits (excluding the items listed at subsections c. through f., below), which includes Attachments A, and B;
  - c. any clarifications of or addenda to the Contractor's proposal seeking this Contract;
  - d. the State solicitation, as may be amended, requesting responses in competition for this Contract;
  - e. any technical specifications provided to proposers during the procurement process to award this Contract; and
  - f. the Contractor's response seeking this Contract.
- D.31. Iran Divestment Act. The requirements of Tenn. Code Ann. § 12-12-101, *et seq.*, addressing contracting with persons as defined at Tenn. Code Ann. §12-12-103(5) that engage in investment activities in Iran, shall be a material provision of this Contract. The Contractor certifies, under penalty of perjury, that to the best of its knowledge and belief that it is not on the list created pursuant to Tenn. Code Ann. § 12-12-106.
- D.32. Insurance. Contractor shall maintain insurance coverage as specified in this Section. The State reserves the right to amend or require additional insurance coverage, coverage amounts, and endorsements required under this Contract. Contractor's failure to maintain or submit evidence of insurance coverage, as required, is a material breach of this Contract. If Contractor loses insurance coverage, fails to renew coverage, or for any reason becomes uninsured during the Term, Contractor shall immediately notify the State. All insurance companies providing coverage must be: (a) acceptable to the State; (b) authorized by the Tennessee Department of Commerce and Insurance ("TDCI"); and (c) rated A- / VII or better by A.M. Best. All coverage must be on a primary basis and noncontributory with any other insurance or self-insurance carried by the State. Contractor agrees to name the State as an additional insured on any insurance policy with the exception of workers' compensation (employer liability) and professional liability (errors and omissions) insurance. All

policies must contain an endorsement for a waiver of subrogation in favor of the State. Any deductible or self insured retention ("SIR") over fifty thousand dollars (\$50,000) must be approved by the State. The deductible or SIR and any premiums are the Contractor's sole responsibility. The Contractor agrees that the insurance requirements specified in this Section do not reduce any liability the Contractor has assumed under this Contract including any indemnification or hold harmless requirements.

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

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

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

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

a. Commercial General Liability ("CGL") Insurance

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

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

b. Workers' Compensation and Employer Liability Insurance

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

c. Automobile Liability Insurance

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

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

- 1) The Contractor shall maintain technology professional liability (errors & omissions)/cyber liability insurance appropriate to the Contractor's profession in an amount not less than two million dollars (\$2,000,000) per occurrence or claim and five million dollars (\$5,000,000) annual aggregate, covering all acts, claims, errors, omissions, negligence, infringement of intellectual property (including copyright, patent and trade secret); network security and privacy risks, including but not limited to unauthorized access, failure of

security, information theft, damage to destruction of or alteration of electronic information, breach of privacy perils, wrongful disclosure and release of private information, collection, or other negligence in the handling of confidential information, and including coverage for related regulatory fines, defenses, and penalties.

- 2) Such coverage shall include data breach response expenses, in an amount not less than two million dollars (\$2,000,000) and payable whether incurred by the State or Contractor, including but not limited to consumer notification, whether or not required by law, computer forensic investigations, public relations and crisis management firm fees, credit file or identity monitoring or remediation services and expenses in the performance of services for the State or on behalf of the State hereunder.

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

D.34. Confidentiality of Records. Strict standards of confidentiality of records and information shall be maintained in accordance with applicable state and federal law. All material and information, regardless of form, medium or method of communication, provided to the Contractor by the State or acquired by the Contractor on behalf of the State that is regarded as confidential under state or federal law shall be regarded as "Confidential Information." Nothing in this Section shall permit Contractor to disclose any Confidential Information, regardless of whether it has been disclosed or made available to the Contractor due to intentional or negligent actions or inactions of agents of the State or third parties. Confidential Information shall not be disclosed except as required or permitted under state or federal law. Contractor shall take all necessary steps to safeguard the confidentiality of such material or information in conformance with applicable state and federal law.

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

## **E. SPECIAL TERMS AND CONDITIONS:**

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

E.2. Confidentiality of Records The Contractor agrees that strict standards of confidentiality of records shall be maintained in accordance with State and Federal law and regulations (Reference TCA Sections 71-1-131, 71-3-119, 45-10-101 et seq., 45-10-118, and 50-7-701, 45 Code of Federal Regulations Sections 205.50, 303.21, and 307.13; 26 U.S.C. Section 6103(l); 42 U.S.C. Sections 653, and 1320b-7), and all other applicable State and Federal laws regulations and any and all data-sharing agreements between the Tennessee Department of Human Services and the Federal Government, specifically including, but not limited to, the SDS-BENDEX-SVES for 1137 and/or Child Support Benefit Programs Data Matching Agreement between the Social Security Administration and the Tennessee Department of Human Services.

- a. All material and information provided to the Contractor by the State or acquired by the Contractor on behalf of the State from any non-public source whether verbal, written, electronic data, magnetic tape, cards or otherwise shall be regarded as confidential information in accordance with the provisions of State and Federal law and ethical standards and shall not be disclosed, except as otherwise permitted by law, regulation or court order, and all necessary steps shall be taken by the Contractor to safeguard the confidentiality of such material or information in conformance with Federal and State law and ethical standards.
- b. The Contractor further agrees that any information provided by the State relative to applicants or recipients of public assistance is to be used only for the administration of this



Contract or in any investigation, prosecution, or criminal, administrative or civil proceeding conducted pursuant to this Contract. The Contractor agrees to provide safeguards to restrict the use or disclosure of any information concerning such applicants or recipients to purposes stated in this Section.

- c. The safeguards so provided shall also prohibit disclosure to any legislator, legislative or other committee or legislative body, investigator, attorney, or prosecutor of any information which identifies by name or address any such applicant or recipient, except as otherwise permitted by law.
- d. The Contractor agrees that any Federal or State tax related information will be treated as confidential as set forth in this Section, and will be used solely for purposes of administering the child support program, unless otherwise required by law.
- e. It shall be the Contractor's responsibility to ensure that any destruction of confidential information, as described in this Section, will be accomplished in a manner consistent with State policy and Federal regulations pertaining to the destruction of private or confidential data. Confidential information shall be destroyed completely by a method that assures complete obliteration, removal, or destruction to preclude recognition or reconstruction of the confidential information.
- f. The Contractor's obligations under this Section do not apply to information: in the public domain; entering the public domain but not from a breach by the Contractor of this Contract; previously possessed by the Contractor without written obligations to the State to protect it; acquired by the Contractor without written restrictions against disclosure from a third party which, to the Contractor's knowledge, is free to disclose the information; independently developed by the Contractor without the use of the State's information; or, disclosed by the State to others without restrictions against disclosure.
- g. In performance of this Contract, the Contractor agrees to comply with and assume responsibility for compliance by his or her employees and approved subcontractors with the following requirements regarding Federal Tax Information (FTI):
  - (1) All work will be done under the supervision of the Contractor or the Contractor's employees and approved subcontractors.
  - (2) Any return or return information made available in any format shall be used only for the purpose of carrying out the provisions of this Contract. Information contained in such material will be treated as confidential and will not be divulged or made known in any manner to any person except as may be necessary in the performance of this Contract. Disclosure to anyone other than an officer, employee or approved subcontractor of the Contractor is prohibited.
  - (3) All returns and return information will be accounted for upon receipt and properly stored before, during, and after processing. In addition, all related output will be given the same level of protection as required for the source material.
  - (4) The Contractor certifies that the data processed during the performance of this Contract will be completely purged from all data storage components of his or her computer facility; no output will be retained by the Contractor at the time the work is completed. If immediate purging of all data storage components is not possible, the Contractor certifies that any IRS data remaining in any storage component will be safeguarded to prevent unauthorized disclosures.
  - (5) Any spoilage or any intermediate hard copy printout that may result during the processing of IRS data will be given to the State or its designee. When this is not possible, the Contractor will be responsible for the destruction of the spoilage or any

intermediate hard copy printouts, and will provide the State or its designee with a statement containing the date of destruction, description of material destroyed, and the method used.

- (6) All computer systems processing, storing, or transmitting Federal tax information must meet the requirements defined in IRS Publication 1075. To meet functional and assurance requirements, the security features of the system must have the following minimum requirements: a security policy, accountability, assurance, and documentation. All security features must be available and activated to protect against unauthorized use of and access to Federal tax information.
  - (7) No work involving Federal tax information furnished under this Contract will be subcontracted without prior written approval from the State.
  - (8) The Contractor will maintain a list of staff having authorized access. Such list will be provided to the State upon request and, upon request, to the IRS reviewing office.
  - (9) The State will have the right to void the Contract if the Contractor fails to provide the safeguards described above.
- h. Criminal /Civil Sanctions: Each officer or employee of any person to whom returns or return information is or may be disclosed will be notified in writing by such person that returns or return information disclosed to such officer or employee can be used only for a purpose and to the extent authorized herein, and that further disclosure of any such returns or return information for a purpose or to an extent unauthorized herein constitutes a felony punishable upon conviction by a fine of as much as five thousand dollars (\$5,000.00) or imprisonment for as long as five (5) years, or both, together with the costs of prosecution. Such person shall also notify each such officer and employee that any such unauthorized further disclosure of returns or return information may also result in an award of civil damages against the officer or employee in an amount not less than one thousand dollars (\$1,000.00) with respect to each instance of unauthorized disclosure. These penalties are prescribed by IRC Sections 7213 and 7431 and set forth at 26 CFR 301.6103(n)-1.

Each officer or employee of any person to whom returns or return information is or may be disclosed shall be notified in writing by such person that any return or return information made available in any format shall be used only for the purpose of carrying out the provisions of this Contract. Information contained in such material shall be treated as confidential and shall not be divulged or made known in any manner to any person except as may be necessary in the performance of the Contract. Inspection by or disclosure to anyone without an official need to know constitutes a criminal misdemeanor punishable upon conviction by a fine of as much as one thousand dollars (\$1,000.00) or imprisonment for as long as one (1) year, or both, together with the costs of prosecution. Such person shall also notify each officer and employee that any such unauthorized inspection or disclosure of returns or return information may also result in an award of civil damages against the officer or employee in an amount equal to the sum of the greater of one thousand dollars (\$1,000.00) for each act of unauthorized inspection or disclosure with respect to which such defendant is found liable or the sum of the actual damages sustained by the plaintiff as a result of such unauthorized inspection or disclosure plus in the case of a willful inspection or disclosure which is the result of gross negligence, punitive damages, plus the costs of the action. These penalties are prescribed by IRC Section 7213A and 7431.

Additionally, it is incumbent upon the Contractor to inform its officers and employees of the penalties for improper disclosure imposed by the Privacy Act of 1974, 5 U.S.C. 552a. Specifically, 5 U.S.C. 552a(l)(1), which is made applicable to Contractors by 5 U.S.C. 552a(m)(1), provides that any officer or employee of a Contractor, who by virtue of his/her employment or official position, has possession of or access to agency records which contain individually identifiable information, the disclosure of which is prohibited by the

Privacy Act or regulations established thereunder, and who knowing that disclosure of the specific material is prohibited, willfully disclosed the material in any manner to any person or agency not entitled to receive it, shall be guilty of a misdemeanor and fined not more than five thousand dollars (\$5,000.00).

- i. Inspection: The IRS and the State shall have the right to send its officers and employees into the offices and plants of the Contractor for inspection of the facilities and operations provided for the performance of any work under this Contract. On the basis of such inspection, specific measures may be required in cases where the Contractor is found to be non-compliant with Contract safeguards.
- j. The Contractor agrees, and understands, that access to FTI must be preceded by certification that all personnel of the Contractor and its subcontractors understand security policy and procedures for safeguarding IRS information. Training provided prior to initial certification, and annually thereafter, must include, but not be limited to, Incident Response policy and procedures for reporting unauthorized disclosures and data breaches. Further, the Contractor agrees that all personnel of the Contractor, and all personnel of subcontractors performing services under this Contract for the Contractor, authorized to handle Federal tax related information will sign, annually, an IRS Confidentiality Form, to be provided by the State, with the original signed forms to be maintained by the Contractor, along with a current list of its employees, and those of its subcontractors, performing services under this Contract. These IRS Confidentiality Forms, and the list of Contractor's employees and those of its subcontractors performing services under this Contract, shall be made available to the State and the IRS upon request. (Reference Attachment A).
- k. It is expressly understood and agreed the obligations set forth in this Section shall survive the termination of this Contract.

E.3. Printing Authorization. The Contractor agrees that no publication coming within the jurisdiction of Tenn. Code Ann. §§ 12-7-101, *et. seq.*, shall be printed pursuant to this Contract unless a printing authorization number has been obtained and affixed as required by Tenn. Code Ann. § 12-7-103 (d).

E.4. Intellectual Property Indemnity. The Contractor agrees to indemnify and hold harmless the State of Tennessee as well as its officers, agents, and employees from and against any and all claims or suits which may be brought against the State concerning or arising out of any claim of an alleged patent, copyright, trade secret or other intellectual property infringement. In any such claim or action brought against the State, the Contractor shall satisfy and indemnify the State for the amount of any settlement or final judgment, and the Contractor shall be responsible for all legal or other fees or expenses incurred by the State arising from any such claim. The State shall give the Contractor notice of any such claim or suit, however, the failure of the State to give such notice shall only relieve Contractor of its obligations under this Section to the extent Contractor can demonstrate actual prejudice arising from the State's failure to give notice. This Section shall not grant the Contractor, through its attorneys, the right to represent the State of Tennessee in any legal matter, as provided in Tenn. Code Ann. § 8-6-106.

E.5. Software License Warranty. Contractor grants a license to the State to use all software provided under this Contract in the course of the State's business and purposes.

E.6. Software Support and Maintenance Warranty. Contractor shall provide to the State all software upgrades, modifications, bug fixes, or other improvements in its software that it makes generally available to its customers.

E.7. Extraneous Terms and Conditions. Contractor shall fill all orders submitted by the State under this Contract. No purchase order, invoice, or other documents associated with any sales, orders, or supply of any good or service under this Contract shall contain any terms or conditions other than as set forth in the Contract. Any such extraneous terms and conditions shall be void, invalid and unenforceable against the State. Any refusal by Contractor to supply any goods or services under this Contract conditioned upon the State submitting to any extraneous terms and conditions shall be a

material breach of the Contract and constitute an act of bad faith by Contractor.

E.8. Transfer of Ownership of Custom Software Developed for the State.

a. Definitions.

- (1) "Contractor-Owned Software," shall mean commercially available software the rights to which are owned by Contractor, including but not limited to commercial "off-the-shelf" software which is not developed using State's money or resources.
- (2) "Custom-Developed Application Software," shall mean customized application software developed by Contractor for the State under this Contract intended to function with the Contractor-Owned Software or any Work Product provided under this Contract.
- (3) "Rights Transfer Application Software," shall mean any pre-existing application software and documentation owned or supplied by Contractor or a third party necessary for the use, functioning, support, or maintenance of the Contractor-Owned Software, the Custom-Developed Application Software, Third Party Software, and any Work Product provided to State.
- (4) "Third-Party Software," shall mean software supplied by Contractor under this Contract or necessary for the functioning of any Work Product not owned by the State or the Contractor.
- (5) "Work Product," shall mean all deliverables such as software, software source code, documentation, planning, etc., that are created, designed, developed, or documented by the Contractor for the State under this Contract. Work Product shall include Rights Transfer Application Software.

b. Rights and Title to the Software

- (1) All right, title and interest in and to the Contractor-Owned Software shall at all times remain with Contractor, subject to any license or transfer of rights or ownership granted under this Contract. Contractor grants the State a perpetual non-exclusive license to the Contractor-Owned Software to be used solely with the Custom-Developed Application Software and the Work Product.
- (2) Contractor shall provide the source code in the Custom-Developed Application Software, Work Product and the Contractor-Owned Software, with all subsequent modifications, enhancements, bug-fixes or any other changes in the source code of the Work Product and the Contractor-Owned Software and all other code and documentation necessary for the Custom-Developed Application Software to be installed and function as intended and as set forth in this Contract, to the State.
- (3) Contractor may lease or sell the Custom-Developed Application Software to third parties with the written permission of the State, which permission may be conditioned on the State receiving royalties from such sales or licenses.
- (4) All right, title and interest in and to the Custom-Developed Application Software, and to modifications thereof made by State, including without limitation all copyrights, patents, trade secrets and other intellectual property and other proprietary rights embodied by and arising out of the Custom-Developed Application Software, shall belong to State. To the extent such rights do not automatically belong to State, Contractor hereby assigns, transfers, and conveys all right, title and interest in and to the Custom-Developed Application Software, including without limitation the copyrights, patents, trade secrets, and other

intellectual property rights arising out of or embodied by the Custom-Developed Application Software. Contractor and its employees, agents, contractors or representatives shall execute any other documents that State or its counsel deem necessary or desirable to document this transfer or allow State to register its claims and rights to such intellectual property rights or enforce them against third parties.

(5) All right, title and interest in and to the Third-Party Software shall at all times remain with the third party, subject to any license or other rights granted to the State under this Contract or otherwise.

c. The Contractor may use for its own purposes the general knowledge, skills, experience, ideas, concepts, know-how, and techniques obtained and used during the course of performing under this Contract. The Contractor may develop for itself, or for others, materials which are similar to or competitive with those that are produced under this Contract.

E.9. **Liquidated Damages.** In the event of a Contract performance or compliance failure by the Contractor, the State may, but is not obligated to address such Contract performance or compliance failure and/or assess damages (“Liquidated Damages”) in accordance with Attachment B of the Contract. The State shall notify the Contractor of any amounts to be assessed as Liquidated Damages via the Control Memorandum process specified in Contract Section A.38. 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 a Contract performance or compliance failure, as these amounts are likely to be uncertain and not easily proven. Contractor has carefully reviewed the Liquidated Damages contained in Contract Attachment Reference and agrees that these amounts represent a reasonable relationship between the amount and what might reasonably be expected in the event of a Contract performance or compliance failure, are a reasonable estimate of the damages that would occur from a Contract performance or compliance failure, and are not punitive. The Parties agree that although the Liquidated Damages represent the reasonable estimate of the damages and injuries sustained by the State due to the Contract performance or compliance failure, they 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 as a result of a Contract performance or compliance failure before availing itself of any other remedy. In the event of multiple Contract performance or compliance failures, the Parties recognize that the cumulative effect of these Contract performance failures may exceed the compensation provided by Liquidated Damages. The State may choose to avail itself of any other remedy available under this Contract or at law or equity. The Parties further recognize that the State may not obtain both Liquidated Damages and Actual Damages for the same occurrence of a Contract performance or compliance failure.

Without regard to whether the State has imposed Liquidated Damages or pursued any other remedy due to any action or inaction by the Contractor, the State may impose a corrective action plan or similar measure through a Control Memorandum. Such measure is neither punitive nor related to any damages the State might suffer.

E.10 **Contractor Hosted Services Confidential Data, Audit, and Other Requirements.**

a. “Confidential State Data” is defined as data deemed confidential by State or Federal statute or regulation. The Contractor shall protect Confidential State Data as follows:

(1) The Contractor shall ensure that all Confidential State Data is housed in the continental United States, inclusive of backup data.

- (2) The Contractor shall encrypt Confidential State Data at rest and in transit using the current version of Federal Information Processing Standard (“FIPS”) 140-2 validated encryption technologies.
- (3) The Contractor and the Contractor’s processing environment containing Confidential State Data shall either (1) be in accordance with at least one of the following security standards: (i) International Standards Organization (“ISO”) 27001; (ii) Federal Risk and Authorization Management Program (“FedRAMP”); or (2) be subject to an annual engagement by a CPA firm in accordance with the standards of the American Institute of Certified Public Accountants (“AICPA”) for a System and Organization Controls for service organizations (“SOC”) Type II audit. The State shall approve the SOC audit control objectives. The Contractor shall provide proof of current ISO certification or FedRAMP authorization for the Contractor and Subcontractor(s), or provide the State with the Contractor’s and Subcontractor’s annual SOC Type II audit report within 30 days from when the CPA firm provides the audit report to the Contractor or Subcontractor. The Contractor shall submit corrective action plans to the State for any issues included in the audit report within 30 days after the CPA firm provides the audit report to the Contractor or Subcontractor.

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

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

b. Minimum Requirements

- (1) The Contractor and all data centers used by the Contractor to host State data, including those of all Subcontractors, must comply with the State’s Enterprise Information Security Policies as amended periodically. The State’s Enterprise Information Security Policies document is found at the following URL:

<https://www.tn.gov/finance/strategic-technology-solutions/strategic-technology-solutions/sts-security-policies.html>.

- (2) The Contractor agrees to maintain the Application so that it will run on a current, manufacturer-supported Operating System. "Operating System" shall mean the software that supports a computer's basic functions, such as scheduling tasks, executing applications, and controlling peripherals.
- (3) If the Application requires middleware or database software, Contractor shall maintain middleware and database software versions that are at all times fully compatible with current versions of the Operating System and Application to ensure that security vulnerabilities are not introduced.

c. Comptroller Audit Requirements

Upon reasonable notice and at any reasonable time, the Contractor and Subcontractor(s) agree to allow the State, the Comptroller of the Treasury, or their duly appointed representatives to perform information technology control audits of the Contractor and all Subcontractors used by the Contractor. Contractor will maintain and cause its Subcontractors to maintain a complete audit trail of all transactions and activities in connection with this Contract. Contractor will provide to the State, the Comptroller of the Treasury, or their duly appointed representative's access to Contractor and Subcontractor(s) personnel for the purpose of performing the information technology control audit.

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

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

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

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

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

**IN WITNESS WHEREOF,**

**STELLARWARE CORPORATION:**



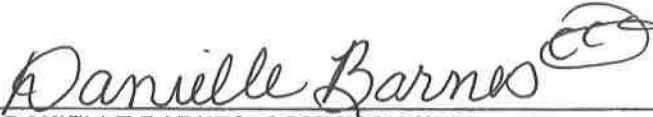
GEORGE FRENCH, PRESIDENT

11/22/2019

DATE

04-01-19 FA  
RFS# 34513-35719

DEPARTMENT OF HUMAN SERVICES:



DANIELLE BARNES, COMMISSIONER

11-25-19

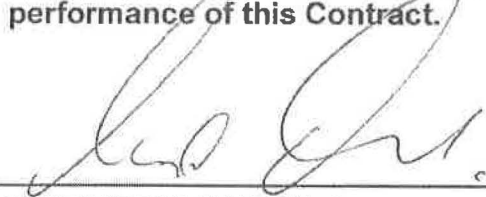
DATE



## ATTESTATION RE PERSONNEL USED IN CONTRACT PERFORMANCE

SUBJECT CONTRACT NUMBER:	
CONTRACTOR LEGAL ENTITY NAME:	Stellarware Corporation
EDISON VENDOR IDENTIFICATION NUMBER:	236410

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



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**CONTRACTOR SIGNATURE**

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

George French, President

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**PRINTED NAME AND TITLE OF SIGNATORY**

11/22/2019

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**DATE OF ATTESTATION**

**ATTACHMENT B**

**LIQUIDATED DAMAGES**

In the event of a Contract performance or compliance failure by Contractor and such Contract performance or compliance failure is not included in the following table with an associated Liquidated Damage amount, the parties hereby agree that the State may choose one of the following courses of action in order to obtain redressability for such Contract performance or compliance failure: (1) the State may assess actual damages resulting from the Contract performance or compliance failure against the Contractor in the event that such actual damages are known or are reasonably ascertainable at the time of discovery of such Contract performance or compliance failure or (2) if such actual damages are unknown or are not reasonably ascertainable at the time of discovery of the Contract performance or compliance failure, the State may (a) require the Contractor to submit a corrective action plan to address any such Contract performance or compliance failure and (b) assess liquidated damages against Contractor for an amount that is reasonable in relation to the Contract performance or compliance failure as measured at the time of discovery of the Contract performance or compliance failure. In the event that the State chooses to assess a Liquidated Damage for a Contract performance or compliance failure according to the immediately preceding sentence, in no event shall such Liquidated Damage be in excess of \$1,000 for any single Contract performance or compliance failure.

The State may elect to apply the following liquidated damages remedies in the event the Contractor fails to perform its obligations under this Contract in a proper and/or timely manner. Upon determination by the State that the Contractor has failed to meet any of the requirements of this Contract in a proper and/or timely manner, the State will notify the Contractor in writing of the performance or compliance failure and of the potential liquidated damages to be assessed.

All liquidated damages remedies set forth in the following table may, at the State's election, be retroactive to the date of the initial occurrence of the failure to comply with the terms of the Contract as set forth in the notice of performance or compliance failure from the State and may continue until such time as the State's Deputy Commissioner, or the Deputy Commissioner's representative, determines the performance or compliance failure has been cured.

If liquidated damages are assessed, the State shall reduce the amount of any payment due to the Contractor in the next invoice by the amount of damages. In the event that damages due exceed the amount the State is to pay to Contractor in a given payment, the State shall invoice Contractor for the amount exceeding the amount payable to Contractor, and such excess amount shall be paid by Contractor within thirty (30) calendar days of the invoice date. In situations where the Contractor wishes to dispute any liquidated damages assessed by the State, the Contractor must submit a written notice of dispute, including the reasons for disputing the liquidated damages, to the State's Deputy Commissioner or the Deputy Commissioner's representative within thirty (30) calendar days of issuance of the notice by the State containing the total amount of damages assessed against the Contractor. If the Contractor fails to timely dispute a liquidated damages assessment as set forth herein, such failure shall constitute a bar to the Contractor seeking to have the assessment amount overturned in a forum or court of competent jurisdiction.

Liquidated damages will apply to the Contract performance or compliance failures listed below. Contractor acknowledges that the actual damages likely to result from Contract performance or compliance failures are difficult to estimate and may be difficult for the State to prove. The parties intend that the Contractor's payment of assessed liquidated damages will compensate the State for breach of the Contractor's obligations under this Contract. Liquidated damages do not serve as punishment for any breach by the Contractor.

<b>Liquidated Damages Event</b>	<b>Liquidated Damages Amount</b>	<b>Method used to estimate the Liquidated Damages Amount</b>
<i>Enter event giving rise to the liquidated damages (attach contract and include contract section references to describe Contractor's required activity or</i>	<i>Enter assessed monetary amount if the Liquidated Damages Event occurs (e.g., one thousand dollars (\$1,000.00) for each day beyond the deadline that any service</i>	<i>Explain how the liquidated damages amount was selected. Reminder: assessment amounts should be a reasonable estimate of the damages that would occur from the Liquidated</i>

<i>deliverable as applicable)</i>	<i>deliverable is not completed).</i>	<i>Damages Event.</i>
<p><b><u>Liquidated Damage Event 1:</u></b></p> <p>Failure to ensure that all personnel of the Contractor and of any subcontractors authorized to handle Federal Tax related information sign an IRS Confidentiality Form annually. (Reference Section E.2.j.)</p>	<p>Five hundred dollars (\$500.00) per person per failure</p>	<p>Failure to comply with 1075 Safeguarding Requirements will result in state and federal audit findings and/or loss of federal funding and/or incentives for the agency.</p> <p>IRC Sec.7431 of the 1075 defines damages, equal or greater to \$1,000 for each act of unauthorized inspection or disclosure.</p>
<p><b><u>Liquidated Damage Event 2:</u></b></p> <p>Failure to maintain New Hire Reporting as defined in sections A.8., A.9., A.10., A.16., A.17. and A.28.</p>	<p>Three Hundred and thirty-five dollars (\$335.00) per incident.</p>	<p>Non-compliance of required reporting will result in audit findings and/or loss of federal funding, and incentives.</p> <p>45 CFR Part 305.2 – Program Performance Measures, Standards, Financial Incentives and Penalties.</p> <p>Assessment of Liquidated Damage Amounts are in compliance with CFR Part 305.61 – Penalty for failure to meet IV-D Requirements</p>
<p>Failure to ensure that all Employer Maintenance activities on TCSES or its replacement system remain current as defined in Section A.4., A.6., A.14. and A.15.</p>	<p>Three Hundred and thirty-five dollars (\$335.00) per incident.</p>	<p>Non-compliance of required reporting by employers will result in audit findings and/or loss of federal funding, and incentives.</p> <p>42 U.S. Code § 653a - State Directory of New Hires</p> <p>45 CFR Part 305.2 – Program Performance Measures, Standards, Financial Incentives and Penalties.</p>
<p><b><u>Liquidated Damage Event 3:</u></b></p> <p>Failure to monitor and report non-compliant employers as required in Section A.28.</p>	<p>Three Hundred and thirty-five dollars (\$335.00) per incident.</p>	<p>Non-compliance of required reporting by employers will result in audit findings and/or loss of federal funding, and incentives.</p> <p>42 U.S. Code § 653a - State Directory of New Hires</p> <p>TN Code § 36-5-1107</p>