



**GREATER NASHVILLE
REGIONAL COUNCIL**

Fiscal Intermediary for Self-Directed HCBS

**OPTIONS for Community Living, Older
Americans Act, and the National Family
Caregiver Support Program**

**Request for Proposals
RFP-2022-09**

Greater Nashville Regional Council

220 Athens Way, Suite 200 | Nashville, Tennessee 37228 | Phone: (615) 862-8828 | Fax: (615) 862-8840

GNRC.org

RFP Summary

About GNRC

The Greater Nashville Regional Council (GNRC or Regional Council) is a public body corporate and politic created by the Tennessee Development District Act of 1965 and further empowered by Title 64, Chapter 7, Part 1, Tennessee Code Annotated (TCA), as amended (the Act). GNRC's mission is to assist local communities and state agencies in the development of plans and programs that guide growth and development in the most desirable, efficient, and cost-effective manner, while ensuring the continued long-term livability of the region. GNRC is governed by a regional body comprised of city mayors, county mayors/ executives, state legislators, appointments representing business/industry, and appointments representing minority populations.

GNRC is designated by the Tennessee Commission on Aging and Disability (TCAD) as the Area Agency on Aging and Disability (AAAD) for thirteen counties in Middle Tennessee to provide programs, services, advocacy, inter-agency linkages and coordination, and information-sharing opportunities to improve the quality of life for older or disabled Middle Tennesseans. The AAAD delivers a range of federal and state programs through GNRC's professional social workers and counselors who work in partnership with local agencies and private-sector organizations. Find out more at GNRC.org.

About this Solicitation

GNRC is seeking proposals from agencies/organizations capable of providing financial intermediary functions for self-directed in-home services.

GNRC intends to contract with a minimum of one service provider capable of providing the services described in this RFP.

Important Dates and Deadlines

RFP issued 3/24/2022, **Written questions** accepted through 4/22/2022, **Proposals due** by 2 p.m. CDT, 5/6/2022

Inquiries and Contact Information

All inquiries should be directed in writing to rfp@gnrc.org with a subject line that includes the RFP number.

Amendments to this Solicitation

Any doubt as to the requirements of this RFP or any apparent omission or discrepancy should be presented in writing to the contact person identified in section 3.1 of this document. The appropriate action will be taken as necessary, and GNRC may issue a written amendment to the RFP. Oral statements or instructions will not constitute an amendment to this RFP. Amendments will be posted online at GNRC.org/Procurement along with the original RFP document.

Non-Discrimination

GNRC does not discriminate on the basis of race, color, national origin, limited English proficiency, gender, gender identity, sexual orientation, age, religion, creed or disability in admission to, access to, or operations of its programs, services, or activities. Discrimination against any person in recruitment, examination, appointment, training, promotion, retention, discipline or any other employment practices because of non-merit factors is prohibited. Any person who believes that discrimination has occurred by GNRC, its contractors, grant sub-recipients, or consultants may file a written complaint with the GNRC Non-Discrimination

Coordinator. Complaints may also be filed with the state or federal agency involved, and with the Tennessee Human Rights Commission.

Complaints must be filed within 180 days of the alleged discrimination. Complaints should be directed to Grant Kehler, Title VI and Non-Discrimination Coordinator, 220 Athens Way, Suite 200, Nashville, TN 37228, phone number 615-862-8828.

GNRC adheres firmly to principles of nondiscrimination. Additionally, GNRC is actively seeking services from minority-owned, women-owned, and Tennessee services-disabled owned businesses, as well as small businesses. All such businesses are encouraged to apply, whether or not official designations have been obtained.

ADA Accommodations

The Americans with Disabilities Act of 1990 prohibits discrimination against individuals with disabilities in employment, transportation, public accommodation, communications, and governmental activities. If you need any reasonable accommodation related to this RFQ, please provide our ADA coordinator with as much advance notice as possible. Requests or complaints should be directed to ADA Coordinator Grant Kehler by phone at 615-862-3519 or via mail to 220 Athens Way, Suite 200, Nashville, TN 37225.

Limited English Proficiency (LEP) Policy

It is the policy of the GNRC to take reasonable steps to provide timely and meaningful access for LEP individuals coming in contact with the GNRC and its programs. Individuals needing assistance with translation services may contact Avaza Language Services Corporation at 615-534-3405 or 800-482-8282, 24 hours a day and 7 days a week.

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Section 1. Background

1.1 About the GNRC

The Greater Nashville Regional Council (GNRC or Regional Council) is a public body corporate and politic initially created by the Tennessee Development District Act of 1965 and further empowered by Title 64, Chapter 7, Part 1, Tennessee Code Annotated (TCA), as amended (the Act). GNRC is owned by and operated on behalf of its local government membership comprised county governments in the counties of Cheatham, Davidson, Dickson, Houston, Humphreys, Montgomery, Robertson, Rutherford, Stewart, Sumner, Trousdale, Williamson, and Wilson, Tennessee, and all incorporated municipalities and metropolitan governments located within these counties.

GNRC is governed by a regional body comprised of city mayors, county mayors/ executives, state legislators, appointments representing business/industry, and appointments representing minority populations. The Regional Council's Executive Board convenes monthly to enact the adopted Annual Work Program and Budget on behalf of the membership and oversee the GNRC's programs and services carried out by its staff.

1.2 About the Project

GNRC is designated by the Tennessee Commission on Aging and Disability (TCAD) as the Area Agency on Aging and Disability (AAAD) for thirteen counties in Middle Tennessee to provide programs, services, advocacy, inter-agency linkages and coordination, and information-sharing opportunities to improve the quality of life for older or disabled Middle Tennesseans. The AAAD delivers a range of federal and state programs through GNRC's professional social workers and counselors who work in partnership with local agencies and private-sector organizations.

GNRC is seeking proposals from provider agencies/organizations capable of providing fiscal intermediary functions for older adults, adults with disabilities, and their caregivers who wish to hire their own caregiver to provide in-home services.

Service Area

The planning and service area for GNRC includes Cheatham, Davidson, Dickson, Houston, Humphreys, Montgomery, Robertson, Rutherford, Stewart, Sumner, Trousdale, Williamson, and Wilson Counties. GNRC seeks to contract with a minimum of one fiscal intermediary for the region.

The selected provider(s) may also provide goods or services and deliverables for participants who are referred to GNRC from other programs or vendors and will be compensated in full for good or services and deliverables rendered to such participants.

Funding Source & Program

Funding sources include State of Tennessee Options for Community Living funds, federal Older Americans Act Title IIIB Supportive Services funds, and federal Older Americans Act Title IIIE Family Caregiver funds. Following is a brief description of each program:

- Tennessee's **Options for Community Living Program** is designed to enable consumers to live independently in their homes by providing a limited amount of services such as homemaker services, personal care services and/or home delivered meals. With the assistance of these limited services, along with the support of family and others, the consumer may be able to avoid or prolong admission into institutional care.

- The **Older Americans Act (OAA) Title IIIB** provides an array of supportive services for persons aged 60 and over. Services are designed to allow older persons to reside in the community and in their own homes with the maximum amount of dignity for as long as possible. Title IIIB services are targeted to older individuals with the greatest economic need, with particular attention to low-income minority individuals, those with the greatest social needs and those residing in rural areas. For the purpose of this RFP, the Older Americans Act funding will be used to provide funding for in-home services such as homemaker, chore, personal care, minor home modifications, personal emergency response systems, and adult day care.
- The **National Family Caregiver Support Program (NFCSP) Title IIIIE** provides an infrastructure of program resources and assistance for family caregivers, grandparents, and older individuals who are relative caregivers through the designated AAAD, its service providers and other appropriate consumer organizations. In accordance with program directives, information, assistance, and counseling can be provided to any caregiver, but respite and supplemental services are limited to caregiver support for older individuals who are unable to perform at least two activities of daily living, or, due to a cognitive or other mental impairment require substantial supervision. Priority is to be given to older individuals and families with the greatest social and economic need, with particular attention to low-income older individuals and older individuals caring for persons with severe disabilities.
- **Self-direction** is a model of service delivery which affords participants more choice and control in the delivery of home and community based services. Supported by the fiscal intermediary, a person assessed by the AAADs as eligible would hire their own personal attendant(s) or other services, whose job duties may include housekeeping, laundry, cooking, personal care and transportation. The goal is to avoid institutionalization and related higher costs. Fiscal intermediary functions are related to the performance of payroll, accounts payable, and related tasks.

Section 2. Scope of Project

2.1 Provider Requirements

The GNRC is seeking entities with experience in providing fiscal intermediary functions. The following General Requirements apply to all providers delivering services under the OAA and should be considered a minimum set of requirements:

1. The Offeror must submit a signed and dated original, one (1) copy, and an electronic copy of the entire proposal to be received no later than the date specified.
2. Offerors that neglect to accurately fill out and return the complete proposal by the designated deadline, including required signatures, certifications and proof of licenses shall be disqualified from this process.
3. Acceptance of a Provider Application and subsequent approval of the provider does not guarantee selection by eligible consumers or reimbursement of services by an AAAD.
4. The service provider must be willing to enter into a contract with the GNRC, attached as Attachment C.
5. Service providers may expend federal and state funds only for those services for which they have received authorization through a contract with GNRC.
6. Each service provider must have procedures to protect the confidentiality of information collected about consumers. The procedures must ensure that no information about a consumer is obtained or disclosed by a service provider in a form that identifies the person without the “informed written consent” of that person or of his or her legal representative. Disclosure may be allowed by court order, or for program quality assurance by authorized federal, state, or AAAD staff so long as access is in conformity with the Privacy Act of 1974. All consumer information must be maintained in controlled access files. (Exception: A written release of information when making a referral for Adult Protective Services is not required.)
7. Each service provider shall have sufficient insurance to indemnify loss of federal, state and local resources due to casualty or fraud. For more information about insurance requirements, see Attachment D.
8. The service provider must respond to requests for information from TCAD and AAADs.
9. The service provider must comply with all federal, state, and local civil rights rules and regulations.

2.2 Requested Services

The provider(s) selected through this RFP will provide all of the services identified in this section and outlined in Attachment B. The contracting period is July 1, 2022, to June 30, 2026.

For a detailed scope of requested services, see the Detailed Scope of Services, provided as Attachment B to this RFP.

Financial Administration

Including payroll services, payment of invoices for self-directed services, and tax filings.

Reimbursement of Pre-Authorized Services

Reimbursement of actual cost of pre-authorized services made by the Contractor on behalf of the participants, including authorized payroll services and payment of invoices for self-directed services

Section 3. Instructions to Offerors

3.1 Pre-Proposal Inquiries

All inquiries should be directed in writing to rfp@gnrc.org by the end of the day on April 22, 2022. The email must include a subject line that contains the RFP number. Answers will be provided in writing and made available to all potential Offerors. All questions and answers compiled through April 22 will be posted online at GNRC.org/Procurement as an addendum to the solicitation. Any correspondence related to the RFP should refer to the appropriate RFP number, page, and paragraph number.

3.2 Submission Requirements

One electronic copy (PDF format) and one hard copy of the proposal with an original, authorized signature must be received at GNRC, 220 Athens Way, Suite 200, Nashville, TN, 37228 on or before 2 p.m. CDT, May 6, 2022. The proposal must be clearly marked "Attention: RFP 2022-02" on the outside surface of the package. A copy should be maintained for the Offeror's records.

Proposals should include all typed, completed forms included with this RFP. There are no page limits or specific formatting requirements, but Offerors are encouraged to be mindful of the level of effort involved in reviewing proposals.

3.3 Proposal Contents

The following items must be submitted with each proposal. Failure to include ANY of these items may result in a proposal being rejected.

Cover Letter

The Offeror must provide a cover letter signed by an authorized individual submitting the proposal on behalf of their provider agency/organization. This letter must include the following:

- A statement that the accompanying proposal is in response to this RFP,
- A statement that the Offeror is willing, if selected, to execute a contract with GNRC, and
- A statement identifying the individual(s) authorized to finalize a contract on behalf of the Offeror.

Application

Include a completed application form, provided as Attachment A to this RFP. The application must include the appropriate signatures.

Identification of Virtual Office

If your office address is a virtual office, please identify the physical location where your files are kept. This is the location that must be made available for audit purposes.

Request for Taxpayer ID Number and Certification

Include a completed IRS Form W-9.

Governing Body

Provide a description of the structure and responsibilities of the entity's governing body. Include the following:

- A list of the present membership of the Board of Directors or other governing body of the Offeror, including each member's:
 - Name

- Address
- Sex
- Race
- Disability status
- A description of the method used for selecting and replacing board members.

Financial Capacity

Describe the Offeror’s financial management capacity. Include, at minimum, the following information:

- Most recently completed audited financial statements of Offeror.
 - If not available, provide the following:
 - IRS tax reporting forms/tax return is appropriate for the Offeror.
 - A current written bank reference, in the form of a standard business letter, indicating that the Offeror's business relationship with the financial institution is in positive standing.
 - Two current written positive credit references in the form of standard business letters from vendors with which the Offeror has done business, or documentation of a positive credit rating determined by an accredited credit bureau within the last six months.
- A copy of the Offeror’s business status (i.e., 501(c), Business License, etc.).
- A copy of a valid certificate of insurance indicating liability insurance in an amount sufficient to cover any potential liability arising as a result of a contract pursuant to this RFP.
- A copy of the verification of Workers Compensation Insurance.

Organizational Chart

Provide an organizational chart showing the single organization unit responsible for delivering proposed service(s).

Licenses, Certifications, Permits, and Accreditation

Provide copies of all required licenses, certifications, permits, and accreditation required by the State and/or Federal governments. Include the most recent PSSA or other licensing entity’s monitoring report.

Service Delivery

Explain, in detailed narrative format, the Offeror’s plan for service delivery including:

- A description of daily operations
- A description of quality assurance measures taken by the Offeror
- The Offeror’s plan for providing services during emergencies
- A timeline for implementation, including the number of days between being notified of a new consumer and start of service
- The Offeror’s policy and process for conducting and maintaining documentation on criminal background checks for staff and volunteers involved in service delivery related to this Application.

Experience

Describe within two pages the Offeror’s organizational experience in providing financial intermediary functions.

Personnel

Identify the key personnel who will be involved with the program.

Contingency Plan

If you are a sole proprietor or single-member entity, please provide a brief (1-2 sentence) description of any contingency plans for your organization in the event you were unable to work.

Pricing

The Offeror must include information regarding 1) expected rate per participant per month for financial administration, and 2) any additional expected costs (program onboarding, etc). There are no specific formatting requirements for the cost proposal, so long as it provides the requested information.

Corrections, Amendments, and Clarifications

Include signed copies of all corrections, amendments, and clarifications to this RFP. Such corrections, amendments, and clarifications will be posted to GNRC.org/Procurement alongside the original RFP document.

3.4 Terms and Conditions

Accuracy of Information

Failure to provide complete and accurate information in an offer to this solicitation may result in your proposal being deemed non-responsive. GNRC may institute debarment proceedings against the Offeror and/or terminate any contract or purchase order that has been awarded based on inaccurate information.

Validity of Proposals

All proposals shall be valid for a period of 120 days from the closing date of the solicitation unless another timeframe is agreed to by all parties. Submission of proposals does not afford rights to the Offeror nor obligate GNRC in any manner.

Preparation Costs

GNRC will not be liable for any costs incurred by an Offeror in the preparation of its response to a solicitation, nor for the presentation of its proposal and/or participation in any clarifications, discussions, negotiations, or protests.

Ambiguity, Conflicts, and Irregularities

Offeror is responsible for clarifying any ambiguity, conflict, discrepancy, omission, or other error in this solicitation prior to submitting their offer, or it shall be waived. Claims of ambiguity after submission of the offer shall not serve as grounds for a protest.

If an Offeror discovers any ambiguity, conflict, discrepancy, omission, or other error in the solicitation, they shall immediately request modification or clarification in writing via email to the address of the person identified on the cover page. Required modifications or clarifications will be issued by solicitation amendment.

GNRC reserves the right to waive minor irregularities in proposals provided that such action is in the best interest of GNRC. Any such waiver shall not modify any remaining solicitation requirements or excuse the Offeror from full compliance with the solicitation specifications and other contract requirements if the Offeror is awarded a contract.

Acceptance Period

Offeror must indicate acceptance of the final version of this solicitation as amended. A response to a Request for Proposal is an offer to contract GNRC based upon the terms, conditions, scope of project, and specifications contained in this Request for Proposal. Proposals are an irrevocable offer for 90 days after the proposal opening time and date.

Standard Contracting Terms

GNRC's sample contract terms for services are attached to this solicitation as Attachment C. Contract terms appearing in brackets may not apply to all contracts. The Offeror must be willing to accept the standard terms and conditions. Any desired exceptions to the terms and conditions must be identified in the proposal cover letter. If no exceptions to the contract are stated, they might not be granted after the contract is awarded.

Contract exceptions may result in the rejection of the proposal as non-responsive; if, in the sole evaluation of GNRC, the requested changes are unacceptable.

Offeror's Rights

All materials submitted in response to this RFP become the property of GNRC upon delivery and are to be appended to any formal documentation, which would further define or expand the contractual relationship between the GNRC and the Offeror.

Section 4. Selection Process

4.1 Proposal Opening

Proposals will be opened at 2:30 p.m. on May 6, 2022, by the GNRC executive director or his/her designee at the primary office location of GNRC (220 Athens Way, Suite 200, Nashville, TN 37228).

4.2 Proposal Evaluation

Proposals will be evaluated on the following criteria:

WEIGHT	CRITERION
2 points	Minority or Women Owned Business
1 point	Documentation of all required licenses to provide services
1 point	Organizational information provided
1-3 points	Record of accurate and timely billing
1 point	Staff Adequacy (as measured by missed visit track record)
1-3 points	Offeror has been providing services to consumers for more than 1 year
1 point per county	Multiple county proposal
1 point	Offeror has the capacity to reach all areas of the county they are proposing to serve
3 points	Proposal would fill existing gap in services
5 points	Only RFP to fill an existing gap in services

4.3 Oral Interviews

Based upon the evaluation of the written proposals, the GNRC may request representatives from the highest-ranking proposals to participate in an in-person or telephone interview in order to answer questions.

4.4 Solicitation Outcomes

GNRC is not obligated to contract with anyone as a result of this solicitation.

Notwithstanding any other provision of this RFP, the GNRC, expressly reserves the right to:

- Waive any immaterial defect or informality,
- Reject any or all proposals, or portions thereof,
- Make changes to or reissue this Request for Proposal,
- Modify the number and types of data to be collected to meet budgetary limitations, or
- Cancel the Solicitation.

4.5 Protests

Controversies or disputes concerning protest of qualifications of bidders, suspension from bidding, the invitation to bid process, and any stay of award prior to the actual award shall be resolved as follows:

- Vendors may document their position and protest in writing and request reevaluation within ten days of the bid opening or award, whichever is applicable.
- The GNRC staff members responsible for superintending the particular procurement shall review the protest and provide a memorandum to the Program Director and Executive Director.

- All relevant levels of administration shall review the reevaluation and make written comments regarding their thoughts and recommendations.
- The Executive Director or designee shall review the reevaluation, make a determination, and notify the Vendor of the decision. If the reevaluation does not resolve the disagreement, the Vendor may request evaluation of the record, including the written protest documentation, through a hearing with the Executive Director.
- The Executive Director shall issue a letter to the bidder as to findings and decisions. The evaluation by the Executive Director shall be submitted to the Executive Committee for review. This process shall constitute the final determination of GNRC.

Attachment A. Application

APPLICATION AND CERTIFICATION – Fiscal Intermediary

Contract Period: July 1, 2022 – June 30, 2026

Applicant Organization Name: _____

Mailing Address: _____

Office Address: _____

If the applicant organization has multiple offices, attach a complete list.

Contact (Name & Title): _____

E-Mail Address: _____

Telephone: _____ Fax: _____

Fiscal Contact (Name & #): _____

Date of Application: _____

Employer ID #: _____

Place of Establishment: _____

Date Established: _____

Indicate the status of your agency (check all that apply):

- | | |
|---|---|
| <input type="checkbox"/> single purpose agency (only serving 60+) | <input type="checkbox"/> multipurpose agency |
| <input type="checkbox"/> minority owned/operated | <input type="checkbox"/> women owned/operated |
| <input type="checkbox"/> small business | <input type="checkbox"/> faith-based organization |
| <input type="checkbox"/> none of the above | |

Assurances and Certifications

By signing this application, the Applicant (also referred to sometimes in the RFP as Offeror, provider, fiscal intermediary, or vendor), represents, warrants, agrees to, and certifies each of the following:

- The provider organization has completed this Application independent of any outside influence which may result in it receiving privileged information about this RFP. **This certification is made under penalty of perjury.**
- This proposal factually represents the administrative capabilities and proposed services of the Applicant, and that if the organization is approved, the Applicant will abide by the terms and conditions of the Provider Contract.
- The organization is in compliance with the specific Service Description and Standards required by the State of Tennessee for each proposed service activity and described in Section 2.2 of the RFP.
- The organization has written policies regarding the following:
 - Personnel Policies
 - Non-discrimination in Hiring Policy
 - Non-discrimination in Service Delivery Policy

- ADA Compliance Policy
 - Drug Free Workplace Policy
 - Affirmative Action Policy
 - Confidentiality Policy
 - Civil Rights Compliance Policy (Title VI and VII)
 - Certification Regarding Lobbying
- The organization has secured all required licenses, certifications, permits, and accreditation (as required by the State and/or Federal governments).
 - The organization will provide such other and further assurances as may be requested by the AAAD or TCAD.
 - The person signing on behalf of the organization is fully authorized to do so and to legally bind the organization thereby.

Authorization For Submission

(Name of Applicant Organization)

submits this application as part of its response to the Request for Proposals solicited by the Greater Nashville Regional Council. This application and all materials provided in response to the RFP will become part of any contract should the Applicant’s proposal be approved.

Executive Director / CEO / President

Date

Name and Title

Chair, Governing Body

Date

Name and Title

Attachment B. Detailed Scope of Services

DETAILED SCOPE OF SERVICES – Fiscal Intermediary

- 1 The Fiscal Intermediary 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.
2. **Overview.** The Fiscal Intermediary shall provide the fiscal intermediary functions for self-directed Home and Community Based Services (HCBS) for persons assessed by an Area Agency on Aging and Disability (“AAAD”) to need HCBS and who choose to participate in self-direction of HCBS.

Self-direction is a model of service delivery which affords participants more choice and control in the delivery of home and community based services. Supported by the fiscal intermediary, a person assessed by the AAADs as eligible would hire their own personal attendant(s) or other services, whose job duties may include housekeeping, laundry, cooking, personal care and transportation. The goal is to avoid institutionalization and related higher costs. Fiscal intermediary functions are related to the performance of payroll, accounts payable, and related tasks.

Costs under the contract would be: 1) pass-through costs for direct services as authorized by individualized budgets, and 2) administrative costs for the fiscal intermediary. Pass-through costs for the Options Self-Directed HCBS are not more than \$5,000 annually for services and \$95 per month/per individual for administrative costs.

It is estimated that 30 clients will be served annually with a maximum of 500 annually.

The Fiscal Intermediary may also provide goods or services and deliverables for participants who are referred to GNRC from other programs or vendors. Fiscal Intermediary will be compensated in full for good or services and deliverables rendered to such participants pursuant to the terms of this current contract.

- 3 **Services.** Before the Fiscal Intermediary may begin performing the fiscal intermediary services for Options Self-Direction, the Fiscal Intermediary must obtain a referral from the AAAD authorizing the service. The following tasks are required:
 - a. Assist each participant (employer) obtain a separate federal employer identification number (FEIN) from the Internal Revenue Service (IRS) for the sole purpose of withholding, filing and depositing certain federal employment tax forms and making federal tax payments. This FEIN should only be used for processing wages and federal forms and taxes of the individual employers (participants) it represents as agent. The FEIN shall not be used for processing wages and related federal forms and taxes of workers of a parent organization or subentity. A reporting agent uses this separate FEIN when performing FEA services on behalf of the participant;
 - b. Have a system in place for preparing and submitting appropriate signed IRS Forms including the Employer Appointment of Agent form for each participant it serves and for maintaining all relevant documentation on file; and
 - c. Have a system in place for filing, renewing and revoking appropriate IRS Forms for Tax Information Authorization for each participant it serves and for maintaining copies of the Form in each participant file.

4. **Service Authorization and Initiation.** The Fiscal Intermediary shall:
 - a. Through the PPL Web Portal, up-date the participant's Options Counselor of the status of completing required functions necessary to initiate self-direction;
 - b. Once potential workers are identified, verify that a potential worker meets all applicable qualifications; and
 - c. Notify the AAAD when all requirements have been fulfilled and the date that the participant is ready to begin self-direction.
5. The Fiscal Intermediary shall have a comprehensive fiscal intermediary management system in place to submit claims to GNRC and pay workers for those services that have been authorized by the AAAD through the Fiscal Intermediary's web-based interface. As a payroll agent for the participant, the Fiscal Intermediary is not the employer of the participant's worker and will not be held responsible for non-pay-roll related employment issues related to the workers.
6. The Fiscal Intermediary shall provide a web-based interface for GNRC, the AAADs and the participants/representatives to review information on the services authorized and reimbursed.
7. **Participant Enrollment Packet.** The Fiscal Intermediary shall have a system in place for developing and producing for workers an employment packet on all relevant forms and documents including required IRS forms. The Fiscal Intermediary shall have a system in place for collecting and processing all required forms and information contained in the enrollment packet and for maintaining copies in each participant's file.
8. **Worker Qualifications and Enrollment.** The Fiscal Intermediary shall ensure that workers meet the following requirements prior to delivering self-directed services:
 - a. Pass a background check which includes criminal background check and verification that the person's name does not appear on the State abuse registry or on national or State sex offender registries, and licenses verification, as applicable.
9. The Fiscal Intermediary shall have a system in place to process criminal background checks on prospective workers (selected by a participant), withholding the cost of the background check from the participant's budget and for maintaining copies of the documentation in the worker's file.
10. **Monitoring and Oversight.** The Fiscal Intermediary shall:
 - a. Monitor service utilization and worker payments
 - b. Monitor to ensure compliance with the Fair Labor Standards Act and all other applicable federal and state law and regulation; and
 - c. Provide a web portal for GNRC and AAADs to review and monitor participant status at any time.
 - d. Arrange for a quarterly management meeting with GNRC.
11. The Fiscal Intermediary shall implement internal auditing processes to demonstrate compliance with requirements of this contract and keep current with all federal and state laws and regulations applicable to fiscal intermediary. .
12. **Reporting.** All reports shall be made available to GNRC via a web portal that provides the current detail on authorized services and expenditures. Upon request, the Fiscal Intermediary shall assist

GNRC in retrieving reports from the web portal; also upon request, the Fiscal Intermediary shall provide reports to enrollees or their authorized representatives.

13. **Customer Service.** The Fiscal Intermediary shall operate a toll-free telephone line for participants/representatives and workers to use for questions on accessing the web portal in order to submit hours worked.
 - a. The toll-free line shall handle callers with Limited English Proficiency or who are hearing impaired.
 - b. The Fiscal Intermediary shall communicate effectively with all participants/representatives including those who are culturally diverse and have a variety of disabilities. Participants/representatives and customer service representatives shall have the ability to access interpreter services when needed.
14. **Staffing Requirements.** The Fiscal Intermediary shall have sufficient staff with relevant experience and qualifications to fulfill all specified requirements per the terms of the contract. The Fiscal Intermediary shall possess and maintain an applicable State of Tennessee business license and be approved by the IRS to be a fiscal intermediary.
15. **Record Management and Retention.** The Fiscal Intermediary shall have in place the following Record Management and Retention process:
 - a. Establish and maintain a recordkeeping system for managing participant/representative and worker files in a secure and confidential manner as required by federal and state statutes and regulations, including meeting all Health Insurance Portability and Accountability Act of 1996 (HIPAA) requirements, when applicable.
 - b. Maintain current and archived participant/representative, worker and Fiscal Intermediary files of all forms and documents needed to comply with federal, state, and local (if applicable) payments of income, FICA and unemployment tax, and worker's compensation insurance payments, if applicable, and all other reporting requirements of employers for the required period
 - c. Establish and maintain a document disaster recovery plan for electronic and hard copy files if management information systems are disabled and for continuation of payment of workers, independent contractors, and other entities, as applicable.
16. **Payroll Processing.** The Fiscal Intermediary shall have in place the following procedures and policies for payroll processing:
 - a. Establish the accounting and information system necessary for processing and paying workers, on the participants' behalves, as specified in the authorization of self-directed services and establish the reporting function and the internal controls necessary to track and manage these functions in an effective and timely manner. This includes ensuring that payment to workers is only made for eligible HCBS authorized by the AAAD.
 - b. Develop and implement a twice-monthly payment schedule for workers or as otherwise agreed upon with GNRC.
 - c. Obtain necessary documentation from the participant/representative to ensure that services were provided prior to paying workers.
 - d. Compute, withhold, deposit and file federal and state income tax withholding, FICA, FUTA and Tennessee unemployment insurance taxes per state and federal periodicity requirements on the workers' and participants/employees' behalves.

- e. Manage the application of all garnishments, levies and liens on workers' payroll checks in an accurate and timely manner and maintain the relevant documentation in the Fiscal Intermediary's files. In calculating the proper amount of income of a worker subject to garnishment, levy or lien, the Fiscal Intermediary shall be allowed to aggregate the total income that a worker receives from multiple participants, including if no participant is listed as the employer of record on the garnishment, levy or lien. The Fiscal Intermediary has the right to charge an administrative fee to workers for these services
 - f. Submit to GNRC a list of checks reportable under the State's Unclaimed Property Act each year.
 - g. Refund over-collected FICA to applicable individual-employers (or State or county government) and workers in accordance with the Dec. 18. 2000 IRS letter and maintain the relevant documentation in the Fiscal Intermediary's files
 - h. Prepare, file and distribute IRS Forms W-2 for participant's workers per IRS instructions for agents, for electronic filing when processing 250 or more IRS Forms W-2 and maintain the relevant documentation in the Fiscal Intermediary's files. The Fiscal Intermediary has the right to charge an administrative fee to workers for the replacement of lost W-2's
 - i. Prepare, file, and distribute IRS Forms W-3 in the aggregate for all participants the agent represents per IRS instructions and maintain the relevant documentation in the Fiscal Intermediary's files
 - j. Pay workers, on the participants' behalves, for authorized services rendered within authorized timeframes and have a system in place for processing workers' direct deposit and for maintaining the relevant documentation in the Fiscal Intermediary's files.
17. **Claiming and Payment for Self-Directed Services.** For reimbursement of authorized services, the Fiscal Intermediary shall:
- a. Only bill for services that have been authorized by the AAAD through the Fiscal Intermediary's web-based interface.
 - b. Submit all claims for services rendered timely in accordance with requirements agreed to with the GNRC.
 - c. Track receipt of service funds in its financial information system.
 - d. Maintain a dedicated bank account for the deposit of service funds.
 - e. Be reimbursed via ACH deposit.
18. For reimbursement of fiscal intermediary administrative services, the Fiscal Intermediary shall submit an administrative invoice monthly per GNRC prescribed requirements, which includes at a minimum the number of current participants and new participants.
19. **GNRC Obligations to the Fiscal Intermediary.** The Fiscal Intermediary will receive an approved budget for each participant that shall receive services under this contract from the AAAD Options Counselor. The budget will list the authorized monthly utilization and the authorized rate of payment.
20. GNRC will reimburse the Fiscal Intermediary for fiscal intermediary payments of authorized services.
21. GNRC will provide a single point of contact to discuss and resolve management issues.
22. GNRC acknowledges that the Fiscal Intermediary is providing a single system for use at all AAADs.

23. **Administrative Requirements.** The Fiscal Intermediary shall be responsible for the following:
- a. **Accounting System**
The Fiscal Intermediary shall establish and maintain an accounting system in accordance with generally accepted accounting principles. The accounting system shall maintain records pertaining to the tasks defined in the contract and any other costs and expenditures made under the contract. Accounting records and procedures are subject to GNRC approval
 - b. **Availability of Records**
 1. Ensure within its own organization and pursuant to any agreement the Fiscal Intermediary may have with any other subcontractor, that GNRC representatives shall have immediate and complete access to all records pertaining to services provided to enrollees.
 2. In the event of termination of the contract between GNRC and the Fiscal Intermediary for any reason, the Fiscal Intermediary shall immediately make available, to GNRC, or its designated representative, in a usable form, any or all records related to the Fiscal Intermediary's activities undertaken pursuant to the contract, subject to applicable protection of the Fiscal Intermediary's proprietary information for any pre-existing work product . The provision of such records shall be at no expense to GNRC.
 - c. **Auditing Requirements/Records Maintained for 5 Years**
The Fiscal Intermediary and its providers, subcontractors and other entities receiving monies originating by or through GNRC shall maintain books, records, documents, and other evidence pertaining to services rendered, equipment, staff, financial records, medical records, and the administrative costs and expenses incurred pursuant to this contract during the contract period and five years thereafter. If records need to be sent to GNRC, the Fiscal Intermediary shall bear the expense of delivery. Prior approval of the disposition of Fiscal Intermediary, subcontractor or provider records must be requested and approved by GNRC in writing.
 - d. **Safeguarding Participant Information**
The Fiscal Intermediary shall ensure that all material and information, in particular, information related to participants or potential participants, which is provided to or obtained by or through the Fiscal Intermediary's performance under this contract, whether verbal, written, tape, or otherwise, shall be treated as confidential information to the extent confidential treatment is provided under state and federal laws. All material and information, regardless of form, medium or method of communication, provided to the Fiscal Intermediary by the AAAD or GNRC or acquired by the Fiscal Intermediary pursuant to this contract shall be regarded as confidential information in accordance with the provisions of the state and federal law and ethical standards and shall not be disclosed, and all necessary steps shall be taken by the Fiscal Intermediary to safeguard the confidentiality of such material or information in conformance with state and federal law and ethical standards. The Fiscal Intermediary shall comply with all state and federal law regarding information security and confidentiality of information. In the event of a conflict among these requirements, the Fiscal Intermediary shall comply with the most restrictive requirement. The use or disclosure of information concerning participant/potential participants shall be limited to purposes directly connected with the administration of this contract and shall be in compliance with federal and state law.

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

Fiscal Intermediary represents and warrants that GNRC is authorized to possess and use all equipment, materials, software, and deliverables provided under this Contract.

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

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

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

Attachment C. Sample Contract Terms

FEE FOR GOODS OR SERVICES CONTRACT TEMPLATE (FA)



CONTRACT

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

Begin Date	End Date	Agency Tracking #	Edison Record ID
Contractor Legal Entity Name			Edison Vendor ID

Goods or Services Caption (one line only)

Contractor <input checked="" type="checkbox"/> Contractor	CFDA #
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Funding —	State	Federal	Interdepartmental	Other	TOTAL Contract Amount
FY					
TOTAL:					

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:

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

- Competitive Selection Describe the competitive selection process used
- Other Describe the selection process used and submit a Special Contract Request

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

Speed Chart (optional)	Account Code (optional)
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CONTRACT #
BETWEEN THE
GREATER NASHVILLE REGIONAL COUNCIL
AND
CONTRACTOR NAME

This Contract, by and between the Greater Nashville Regional Council (GNRC, Agency) and **Contractor Legal Entity Name** (Contractor), is for the provision of **Scope of Goods or Services Caption**, as further defined in the "SCOPE." GNRC and Contractor may be referred to individually as a "Party" or collectively as the "Parties" to this Contract.

The Contractor is **a/an Individual, For-Profit Corporation, Non-Profit Corporation, Special Purpose Corporation Or Association, Partnership, Joint Venture, Or Limited Liability Company.**

Contractor Place of Incorporation or Organization: **Location**

Contractor Edison Registration ID # **Number**

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.]

A.3. Scope to be provided under this Contract is included in Attachment 1, which is attached and made a part of this Contract.

A.4. Warranty. Contractor represents and warrants that the term of the warranty ("Warranty Period") shall be the greater of the Term of this Contract or any other warranty generally offered by Contractor, its suppliers, or manufacturers to customers of its goods or services. The goods or services provided under this Contract shall conform to the terms and conditions of this Contract throughout the Warranty Period. Any nonconformance of the goods or services to the terms and conditions of this Contract shall constitute a "Defect" and shall be considered "Defective." If Contractor receives notice of a Defect during the Warranty Period, then Contractor shall correct the Defect, at no additional charge.

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

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

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

A.5. Inspection and Acceptance. The Agency shall have the right to inspect all goods or services provided by Contractor under this Contract. If, upon inspection, the Agency determines that the goods or services are Defective, the Agency shall notify Contractor, and Contractor shall re-deliver the goods or provide the services at no additional cost to the Agency. If after a period of thirty (30) days following delivery of goods or performance of services the Agency does not provide a notice of any Defects, the goods or services shall be deemed to have been accepted by the Agency.

B. TERM OF CONTRACT:

This Contract shall be effective for the period beginning on **Date** (“Effective Date”) and ending on **Date**, (“Term”). The Agency shall have no obligation for goods or services provided by the Contractor prior to the Effective Date.

C. PAYMENT TERMS AND CONDITIONS:

C.1. Estimated Liability. The total purchases of any goods or services under the Contract are not known. The GNRC estimates the purchases during the Term shall be **DOLLAR AMOUNT (\$NUMBER)** (“Estimated Liability”). This Contract does not grant the Contractor any exclusive rights. The GNRC 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 GNRC 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 Agency 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:

Goods or Services Description	Amount (per compensable increment)
Milestone	\$ Number
Unit	\$ Number each
Job Title /Activity	\$ Number per Hour /Day /etc.
Use & Repeat Rows Above as Necessary	

Add Contingently Required Subsections as Appropriate (refer to instructions for details)

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 Agency only for goods delivered and accepted by the Agency 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:

Agency Billing Address

- 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 Agency);
- (4) Customer account name: **Agency & Division Name**;
- (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 Agency 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 Agency shall not prejudice the Agency's right to object to or question any payment, invoice, or other matter. A payment by the Agency 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 Agency, 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 Agency 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 Agency of Tennessee, any amounts that are or shall become due and payable to the Agency of Tennessee by the Contractor.

C.9. Prerequisite Documentation. The Contractor shall not invoice the Agency under this Contract until the Agency has received the following, properly completed documentation.

- a. The Contractor shall complete, sign, and present to the Agency the "Authorization Agreement for Automatic Deposit Form" provided by the Agency. By doing so, the Contractor acknowledges and agrees that, once this form is received by the Agency, payments to the Contractor, under this or any other contract the Contractor has with the Agency, may be made by ACH; and

- b. The Contractor shall complete, sign, and return to the Agency the Agency-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 Agency is not bound by this Contract until it is duly approved by the Parties and all appropriate Agency 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 Agency:

Agency Contact Name & Title
Agency Name
Address
Email Address
Telephone # Number
FAX # Number

The Contractor:

Contractor Contact Name & Title
Contractor Name
Address
Email Address
Telephone # Number
FAX # Number

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 Agency 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 Agency reserves the right to terminate this Contract upon written notice to the Contractor. The Agency's exercise of its right to terminate this Contract shall not constitute a breach of Contract by the Agency. Upon receipt of the written notice, the Contractor shall cease all work associated with the Contract. If the Agency 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 Agency and for all satisfactory and authorized services completed as of the termination date. Should the Agency exercise its right to terminate this Contract due to unavailability of funds, the Contractor shall have no right to recover from the Agency any actual, general, special, incidental, consequential, or any other damages of any description or amount.

- D.5. Termination for Convenience. The Agency may terminate this Contract for convenience without cause and for any reason. The Agency 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 Agency or for satisfactory, authorized services completed as of the termination date. In no event shall the Agency be liable to the Contractor for compensation for any goods neither requested nor accepted by the Agency or for any services neither requested by the Agency nor satisfactorily performed by the Contractor. In no event shall the Agency's exercise of its right to terminate this Contract for convenience relieve the Contractor of any liability to the Agency 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 Agency 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 Agency for damages sustained by virtue of any Breach Condition and the Agency 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 Agency. 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 Agency 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 or Agency 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 Agency 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 or Agency.

- 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 Agency, 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 Agency a completed and signed copy of the document at Attachment 3, semi-annually during the Term. If the Contractor is a party to more than one contract with the Agency, the Contractor may submit one attestation that applies to all contracts with

the Agency. All Contractor attestations shall be maintained by the Contractor and made available to Agency 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 Agency 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 Agency.
 - 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 GNRC, 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 Agency, State of Tennessee, the Comptroller of the Treasury, or their duly appointed representatives.
- D.13. Progress Reports. The Contractor shall submit brief, periodic, progress reports to the Agency 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 Agency and hold it harmless from any costs to the

Agency arising from Contractor's failure to fulfill its PPACA responsibilities for itself or its employees.

- D.17. Limitation of Agency's Liability. The Agency shall have no liability except as specifically provided in this Contract. In no event will the Agency 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 Agency'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. For clarity, except as otherwise expressly set forth in this Section, Contractor's indemnification obligations and other remedies available under this Contract are subject to the limitations on liability set forth in this Section.
- D.19. Hold Harmless. The Contractor agrees to indemnify and hold harmless GNRC and 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 GNRC or 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 GNRC 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 of Tennessee in any legal matter, as the right to represent the State of Tennessee is governed by Tenn. Code Ann. § 8-6-106.
- D.20. HIPAA Compliance. The Agency 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 Agency 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 Agency, including cooperation and coordination with Agency 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 Agency 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 Agency 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. The Business Associate Agreement between the parties to this Contract attached to this Contract as Attachment 2, is deemed a part of this Contract and is incorporated therein, and upon the parties signing this Contract, the parties shall also be bound by the attached Business Associate Agreement as fully as if signed as a separate document.

- d. The Contractor will indemnify the Agency 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 Agency 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 Agency 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 Agency 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 Agency of any delay caused by a Force Majeure Event (to be confirmed in a written notice to the Agency 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 Agency 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 Agency 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 **[identify attachments and exhibits]**;
 - c. any clarifications of or addenda to the Contractor's proposal seeking this Contract;
 - d. the Agency 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 Agency 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 Agency. All insurance companies providing coverage must be: (a) acceptable to the Agency; (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 Agency. Contractor agrees to name the Agency 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 Agency. Any deductible or self insured retention ("SIR") over fifty thousand dollars (\$50,000) must be approved by the Agency. 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 Agency is otherwise named as an additional insured.

Contractor shall provide the Agency 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., 3rd floor Central Procurement Office, Nashville, TN 37243 as the certificate holder. Contractor shall provide the COI ten (10) business days prior to the Effective Date and again thirty (30) calendar days before renewal or replacement of coverage. Contractor shall provide the Agency evidence that all subcontractors maintain the required insurance or that subcontractors are included under the Contractor's policy. At any time, the Agency 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 Agency reserves the right to require complete copies of all required insurance policies, including endorsements required by these specifications, at any time.

The Agency agrees that it shall give written notice to the Contractor as soon as practicable after the Agency becomes aware of any claim asserted or made against the Agency, but in no event later than thirty (30) calendar days after the Agency becomes aware of such claim. The failure of the Agency 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 Agency 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 Agency. 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. Sexual Abuse and Molestation Insurance

- i. The Contractor shall maintain sexual abuse and molestation insurance written on either an occurrence or a claims-made basis. This insurance may be written on a claims-made basis, but in the event that coverage is cancelled or non-renewed, the Contractor shall purchase an extended reporting or "tail coverage" of at least two (2) years after the Term.
- ii. Any sexual abuse and molestation insurance policy shall have a limit not less than one million dollars (\$1,000,000) per occurrence and two million dollars (\$2,000,000) in the aggregate.
- iii. In lieu of this coverage requirement, the Contractor may provide an Educator's Legal Liability (ELL) insurance policy endorsed to provide equivalent coverages as indicated in this provision.

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

- 2) The Contractor shall maintain technology professional liability (errors & omissions)/cyber liability insurance appropriate to the Contractor's profession in an amount not less than **ten million dollars (\$10,000,000)** per occurrence or claim and **ten million dollars (\$10,000,000)** annual aggregate, covering all acts, claims, errors, omissions, negligence, infringement of intellectual property (including copyright, patent and trade secret); 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.
- 3) Such coverage shall include data breach response expenses, in an amount not less than **ten million dollars (\$10,000,000)** and payable whether incurred by the GNRC 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 GNRC or on behalf of the GNRC hereunder.]

f. [Crime Insurance

- 1) The Contractor shall maintain crime insurance, which shall be written on a "loss sustained form" or "loss discovered form" providing coverage for third party fidelity, including cyber theft and extortion. The policy must allow for reporting of

circumstances or incidents that may give rise to future claims, include an extended reporting period of no less than two (2) years with respect to events which occurred but were not reported during the term of the policy, and not contain a condition requiring an arrest or conviction.

Any crime insurance policy shall have a limit not less than **one million dollars (\$1,000,000)** per claim and **one million dollars (\$1,000,000)** in the aggregate. Any crime insurance policy shall contain a Social Engineering Fraud Endorsement with a limit of not less than **two hundred and fifty thousand dollars (\$250,000)**. This insurance may be written on a claims-made basis, but in the event that coverage is cancelled or non-renewed, the Contractor shall purchase an extended reporting or "tail coverage" of at least two (2) years after the Term.]

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 Agency or acquired by the Contractor on behalf of the Agency 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 Agency 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.

[D.35. Equal Opportunity. The Contractor agrees as follows:

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

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

- b. The Contractor will, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive considerations for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.
- c. If the GNRC approves any subcontract, the subcontract shall include paragraphs (a) and (b) above.

- d. In addition, to the extent applicable the Contractor agrees to comply with 41 C.F. R. § 60-1.4, as that section is amended from time to time during the term.

E. SPECIAL TERMS AND CONDITIONS:

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

The Contractor shall assist the Agency in monitoring the Contractor's performance of this commitment by providing, as requested, a monthly report of participation in the performance of this Contract by small business enterprises and businesses owned by minorities, women, service-disabled veterans, and persons with disabilities. Such reports shall be provided to the State of Tennessee Governor's Office of Diversity Business Enterprise in the TN Diversity Software available online at:

<https://tn.diversitysoftware.com/FrontEnd/StartCertification.asp?TN=tn&XID=9810>.

- E.3. Prohibited Advertising or Marketing. The Contractor shall not suggest or imply in advertising or marketing materials that Contractor's goods or services are endorsed by the Agency. The restrictions on Contractor advertising or marketing materials under this Section shall survive the termination of this Contract.
- E.4. Public Accountability. If the Contractor is subject to Tenn. Code Ann. §§ 8-4-401, *et seq.*, or if this Contract involves the provision of services to citizens by the Contractor on behalf of the GNRC, the Contractor agrees to establish a system through which recipients of services may present grievances about Contractor's operation of the service program. The Contractor shall also display in a prominent place, located near the passageway through which the public enters in order to receive contract-supported services, a sign at least eleven inches (11") in height and seventeen inches (17") in width stating the following:

NOTICE: THIS AGENCY IS A RECIPIENT OF TAXPAYER FUNDING. IF YOU OBSERVE AN AGENCY DIRECTOR OR EMPLOYEE ENGAGING IN ANY ACTIVITY THAT YOU CONSIDER TO BE ILLEGAL, IMPROPER, OR WASTEFUL, PLEASE CALL THE STATE COMPTROLLER'S TOLL-FREE HOTLINE: 1-800-232-5454

The sign shall be of the form prescribed by the Comptroller of the Treasury. The contracting state agency shall request copies of the sign from the Comptroller of the Treasury and provide signs to contractors.

- E.5. Personally Identifiable Information. While performing its obligations under this Contract, Contractor may have access to Personally Identifiable Information held by the GNRC ("PII"). For the purposes of this Contract, "PII" includes "Nonpublic Personal Information" as that term is defined in Title V of the Gramm-Leach-Bliley Act of 1999 or any successor federal statute, and the rules and regulations thereunder, all as may be amended or supplemented from time to time ("GLBA") and personally identifiable information and other data protected under any other applicable laws, rule or regulation of any jurisdiction relating to disclosure or use of personal information ("Privacy Laws"). Contractor agrees it shall not do or omit to do anything which would cause the GNRC to be in breach of any Privacy Laws. Contractor shall, and shall cause its employees, agents and representatives to: (i) keep PII confidential and may use and disclose PII only as necessary to carry out those specific aspects of the purpose for which the PII was disclosed to Contractor and in accordance with this Contract, GLBA and Privacy Laws; and (ii) implement and maintain appropriate technical and organizational measures regarding information security to: (A) ensure the security and confidentiality of PII; (B) protect against any threats or hazards to the security or integrity of PII; and (C) prevent unauthorized access to or use of PII. Contractor shall immediately notify GNRC: (1) of any disclosure or use of any PII by Contractor or

any of its employees, agents and representatives in breach of this Contract; and (2) of any disclosure of any PII to Contractor or its employees, agents and representatives where the purpose of such disclosure is not known to Contractor or its employees, agents and representatives. The GNRC reserves the right to review Contractor's policies and procedures used to maintain the security and confidentiality of PII and Contractor shall, and cause its employees, agents and representatives to, comply with all reasonable requests or directions from the GNRC to enable the GNRC to verify or ensure that Contractor is in full compliance with its obligations under this Contract in relation to PII. Upon termination or expiration of the Contract or at the GNRC's direction at any time in its sole discretion, whichever is earlier, Contractor shall immediately return to the GNRC any and all PII which it has received under this Contract and shall destroy all records of such PII.

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

- E.6. Drug-Free Workplace. The Contractor shall provide a drug-free workplace pursuant to the Drug-Free Workplace Act of 1988, Title 41 U.S.C. §§ 701, *et seq.*, and the regulations in Title 41 U.S.C.A. §§ 8101 through 8106.
- E.7. Equal Employment Opportunity. During the performance of this Contract, the Contractor agrees as follows:
- a. The Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. The Contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to the following: Employment, upgrading, demotion, or transfer, recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting officer setting forth the provisions of this nondiscrimination clause.
 - b. The Contractor will, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.
 - c. The Contractor will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with the contractor's legal duty to furnish information.
 - d. The Contractor will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, a notice to be provided by the agency contracting officer, advising the labor union or workers' representative of the contractor's commitments under section 202 of Executive Order 11246 of September 24, 1965, and shall post

copies of the notice in conspicuous places available to employees and applicants for employment.

- e. The Contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.
- f. The Contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the contracting agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.
- g. In the event of the Contractor's non-compliance with the nondiscrimination clauses of this contract or with any of such rules, regulations, or orders, this contract may be canceled, terminated or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.
- h. The Contractor will include the portion of the sentence immediately preceding paragraph (1) and the provisions of paragraphs (1) through (8) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The Contractor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance:

Provided, however, that in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency, the contractor may request the United States to enter into such litigation to protect the interests of the United States.

The applicant further agrees that it will be bound by the above equal opportunity clause with respect to its own employment practices when it participates in federally assisted construction work: Provided, That if the applicant so participating is a State or local government, the above equal opportunity clause is not applicable to any agency, instrumentality or subdivision of such government which does not participate in work on or under the contract.

The applicant agrees that it will assist and cooperate actively with the administering agency and the Secretary of Labor in obtaining the compliance of contractors and subcontractors with the equal opportunity clause and the rules, regulations, and relevant orders of the Secretary of Labor, that it will furnish the administering agency and the Secretary of Labor such information as they may require for the supervision of such compliance, and that it will otherwise assist the administering agency in the discharge of the agency's primary responsibility for securing compliance.

The applicant further agrees that it will refrain from entering into any contract or contract modification subject to Executive Order 11246 of September 24, 1965, with a contractor debarred from, or who has not demonstrated eligibility for, Government contracts and federally assisted construction contracts pursuant to the Executive Order and will carry out such sanctions and penalties for violation of the equal opportunity clause as may be imposed upon contractors and subcontractors by the administering agency or the Secretary of Labor pursuant to Part II, Subpart D of the Executive Order. In addition, the applicant agrees that if it fails or refuses to comply with these undertakings, the administering agency may take any or all of the following actions: Cancel, terminate, or suspend in whole or in part this grant (contract, loan, insurance, guarantee); refrain from extending any further assistance to the applicant under the program with respect to which the failure or refund occurred until satisfactory assurance of future compliance has been received from such applicant; and refer the case to the Department of Justice for appropriate legal proceedings.

- E.8. Prohibited Advertising or Marketing. The Contractor shall not suggest or imply in advertising or marketing materials that Contractor's goods or services are endorsed by the GNRC. The

restrictions on Contractor advertising or marketing materials under this Section shall survive the termination of this Contract.

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

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

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

[E. 10. Clean Air Act and Federal Water Pollution Control Act. As a condition for receipt of federal awards, the Contractor agrees to comply with the Clean Air Act, 42 U.S.C. § 7401 et seq. and the Federal Water Pollution Control Act, 33 U.S.C § 1251 et seq., as those sections are amended from time to time during the term. Violations must be reported to the Administration on Community Living and the Region 4 Office of the Environmental Protection Agency.]

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

The Contractor shall comply with the following:

- a. Reporting of Total Compensation of the Contractor's Executives.
 - (1) The Contractor shall report the names and total compensation of each of its five most highly compensated executives for the Contractor's preceding completed fiscal year, if in the Contractor's preceding fiscal year it received:
 - i. 80 percent or more of the Contractor's annual gross revenues from federal procurement contracts and federal financial assistance subject to the Transparency Act, as defined at 2 CFR 170.320 (and subawards); and
 - ii. \$25,000,000 or more in annual gross revenues from federal procurement contracts (and subcontracts), and federal financial assistance subject to the Transparency Act (and subawards); and
 - iii. The public does not have access to information about the compensation of the executives through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(a), 78o(d))

or section 6104 of the Internal Revenue Code of 1986. (To determine if the public has access to the compensation information, see the U.S. Securities and Exchange Commission total compensation filings at <http://www.sec.gov/answers/execomp.htm>.)

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

(2) Total compensation means the cash and noncash dollar value earned by the executive during the Contractor's preceding fiscal year and includes the following (for more information see 17 C.F.R. § 229.402(c)(2)):

- i. Salary and bonus.
- ii. Awards of stock, stock options, and stock appreciation rights. Use the dollar amount recognized for financial statement reporting purposes with respect to the fiscal year in accordance with the Statement of Financial Accounting Standards No. 123 (Revised 2004) (FAS 123R), Shared Based Payments.
- iii. Earnings for services under non-equity incentive plans. This does not include group life, health, hospitalization or medical reimbursement plans that do not discriminate in favor of executives, and are available generally to all salaried employees.
- iv. Change in pension value. This is the change in present value of defined benefit and actuarial pension plans.
- v. Above-market earnings on deferred compensation which is not tax qualified.
- vi. Other compensation, if the aggregate value of all such other compensation (e.g. severance, termination payments, value of life insurance paid on behalf of the employee, perquisites or property) for the executive exceeds \$10,000.

- b. The Contractor must report executive total compensation described above to the GNRC by the end of the month during which this Contract is awarded.
- c. If this Contract is amended to extend the Term, the Contractor must submit an executive total compensation report to the GNRC by the end of the month in which the term extension becomes effective.
- d. The Contractor will obtain a Data Universal Numbering System (DUNS) number and maintain its DUNS number for the term of this Contract. More information about obtaining a DUNS Number can be found at: <http://fedgov.dnb.com/webform/>

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

IN WITNESS WHEREOF,

CONTRACTOR LEGAL ENTITY NAME:

CONTRACTOR SIGNATURE

DATE

PRINTED NAME AND TITLE OF CONTRACTOR SIGNATORY (above)

AGENCY NAME:

NAME & TITLE

DATE

DRAFT

SCOPE OF SERVICES

[INSERT SCOPE PAGES]

DRAFT

**HEALTH INSURANCE PORTABILITY AND ACCOUNTABILITY ACT OF 1996 (HIPAA)
BUSINESS ASSOCIATE AGREEMENT**

This Business Associate Agreement (Agreement) is a part of and is incorporated into the Contract (as that term is defined below) between the Greater Nashville Regional Council (GNRC) and Mid-Cumberland Human Resource Agency (Grantee) in accordance with Section D.11 of the Contract. This Agreement shall have the same effective date as the date of the Contract. This Business Associate Agreement is entered into by and between the **Greater Nashville Regional Council** (hereinafter referred to as “GNRC”) and **Grantee Name** (hereinafter referred to as “Business Associate”).

In the course of executing the Contract, Business Associate may come into contact with, use, or disclose “protected health information” as that term is used in the Federal Health Insurance Portability and Accountability Act of 1996, as amended, hereinafter referred to as “HIPAA”. In accordance with the federal privacy regulations set forth at 45 C.F.R. Part 160, Part 162 and Part 164, which require GNRC to have a written contract known as a Business Associate Agreement with persons or entities that help GNRC (as a covered entity under HIPAA) carry out its health care activities and functions, the Parties to the Contract wish to establish satisfactory assurances that will appropriately safeguard “protected health information” and comply with all relevant HIPAA rules and regulations. Therefore the Parties to the Contract and this Agreement, GNRC and Business Associate, agree as follows:

1. Definitions:

Terms used, but not otherwise defined, in this Business Associate Agreement shall have the same meaning as those terms in 45 CFR §§ 160.103 and 164.501. Specially defined terms in this Agreement are as follows:

- (a) Agreement. “Agreement” shall mean the Business Associate Agreement between GNRC and the Business Associate contained in this Agreement between GNRC and the Business Associate.
- (b) Business Associate. “Business Associate” shall generally have the same meaning as the term “business associate” at 45 CFR 160.103, and in reference to the party to the Agreement, shall mean **Grantee Name**, whose principal address is **Grantee Address**.
- (c) Contract. “Contract” shall mean the Contract between GNRC and the Business Associate of which this Agreement is made a part.
- (d) Covered Entity. “Covered Entity” shall generally have the same meaning as the term “covered entity” at 45 CFR 160.13, and in reference to the party to this Agreement, shall mean GNRC, whose principal address is 220 Athens Way, Ste 200, Nashville, TN 37228.
- (e) HIPAA Rules. “HIPAA Rules” shall mean the Privacy, Security, Breach Notification, and Enforcement Rules at 45 CFR Part 160 and Part 164 in effect and as amended. The “HIPAA Privacy Rule” is at 45 CFR, part 160 and part 164, subparts A and E. The “HIPAA Security Rule” is at 45 CFR Parts 160 and 164. The “HIPAA Breach Notification Rule” is at 45 CFR Part 164, Subpart D.
- (f) Parties. “Parties” shall mean the parties to the Contract and Agreement, both Business Associate and Covered Entity. “Party” shall mean one of the two Parties.

2. Obligations of Business Associate

Business Associate Agrees to:

- (a) Not use or disclose protected health information other than as permitted or required by this Agreement or as required by law, and to fully comply with all the applicable provisions of the Health Insurance Portability and Accountability Act of 1996 (HIPAA) and the HIPAA Rules

- (b) Use appropriate safeguards, and comply with Subpart C of 45 CFR Part 164 with respect to electronic protected health information, to prevent use or disclosure of protected health information other than as provided for by this Agreement, and to use appropriate procedural, physical, and electronic safeguards to prevent use or disclosure of protected health information other than as provided for by this Agreement. Said safeguards shall include, but are not limited to, requiring employees to agree to use or disclose protected health information only as permitted or required by this Agreement and taking related disciplinary actions for inappropriate use or disclosure as necessary.
- (c) Notify GNRC of any use or disclosure of protected health information not provided for by this Agreement of which it becomes aware, including breaches of unsecured protected health information as required at 45 CFR 164.410,24 and any security incident of which it becomes aware as soon as practicable, but not exceeding five (5) business days. Additionally, business associate shall notify GNRC in the same manner of any suspected or potential breach of its obligation to not disclose protected health information in violation of this Agreement and the HIPAA Rules. Any notification under this subsection shall include, to the extent possible, the identification of each individual whose protected health information has been or is reasonably believed by the business associate to have been accessed, acquired, used, or disclosed during the breach and shall include all available information that is required to be in the notification to the individual under 45 CFR 164.404(c).
- (d) In accordance with 45 CFR 164.502(e)(1)(ii) and 164.308(b)(2), if applicable, ensure that any subcontractors that create, receive, maintain, or transmit protected health information on behalf of the business associate agree by written contract to the same restrictions, conditions, and requirements that apply to the business associate with respect to such information;
- (e) Require its employees, agents, and sub-contractors to immediately report, to the business associate, any use or disclosure of protected health information in violation of this Agreement and to report to GNRC any use or disclosure of the protected health information not provided for by this Agreement.
- (f) If business associate receives protected health information from GNRC in a designated record set, then business associate agrees to provide access, at the request of GNRC, to protected health information in a designated record set, to GNRC or, as directed by GNRC, to an individual in order to meet the requirements under 45 CFR 164.524, provided that business associate shall have at least thirty (30) days from GNRC's notice to provide access to or deliver such information.
- (g) If business associate receives a request from an individual for a copy of the individual's protected health information, and the protected health information is in the sole possession of the business associate, business associate will provide the requested copies to the individual and notify GNRC of such action. If business associate receives a request for protected health information in the possession of GNRC, or receives a request to exercise other individual rights as set forth in the privacy rule, business associate shall notify GNRC of such request and forward the request to GNRC. Business associate shall then assist GNRC in responding to the request.
- (h) Make any amendment(s) to protected health information in a designated record set as directed or agreed to by GNRC pursuant to 45 CFR 164.526 or take other measures as necessary to satisfy covered entity's obligations under 45 CFR 164.526;
- (i) Provide to GNRC or an individual, in time and manner designated by GNRC, information collected and maintained in accordance with this Contract, to permit GNRC to respond to a request by an individual for an accounting of disclosures of protected health information in accordance with 45 CFR 164.528, provided that business associate shall have at least thirty (30) days from GNRC's notice to provide access to or deliver such information which shall include, at minimum, (a) date of the disclosure; (b) name of the third party to whom the

- protected health information was disclosed and, if known, the address of the third party; (c) brief description of the disclosed information; and (d) brief explanation of the purpose and basis for such disclosure.
- (j) To the extent the business associate is to carry out one or more of covered entity's obligation(s) under Subpart E of 45 CFR Part 164, comply with the requirements of Subpart E that apply to the covered entity in the performance of such obligation(s); and
 - (k) Make its internal practices, books, and records available to GNRC and the Secretary of the U.S. Department of Health and Human Services, or the Secretary's designee, for purposes of determining compliance with the HIPAA Rules.
 - (l) Mitigate, to the extent practicable, any harmful effect that is known to the business associate of a use or disclosure of protected health information by the business associate in violation of the requirements of this Agreement.
 - (m) Document disclosures of protected health information and information related to such disclosures as would be required for GNRC to respond to a request by an individual for an accounting of disclosure of protected health information in accordance with 45 CFR 164.528.
 - (n) Limit any use, disclosure, or request for use or disclosure of protected health information to the minimum amount necessary to accomplish the intended purpose of the use, disclosure, or request in accordance with the requirements of the privacy rule and other HIPAA Rules.

3. Permitted Uses and Disclosures by Business Associate

- (a) Business associate may only use or disclose protected health information as necessary to perform the services set forth in the Contract.
- (b) Business associate may use or disclose protected health information as required by law.
- (c) Except as otherwise limited herein, business associate may use or disclose protected health information to perform functions, activities, or services for or on behalf of GNRC as specified in the Contract, provided that such use or disclosure would not violate the privacy rule or other HIPAA Rules if done by GNRC.
- (d) Business associate agrees to make uses and disclosures and requests for protected health information consistent with covered entity's minimum necessary policies and procedures.
- (e) Except for the specific uses and disclosures set forth herein, business associate may not use or disclose protected health information in a manner that would violate Subpart E of 45 CFR Part 164 if done by covered entity.
- (f) Business associate may disclose protected health information for the proper management and administration of business associate or to carry out the legal responsibilities of the business associate, provided the disclosures are required by law, or business associate obtains reasonable assurances from the person to whom the information is disclosed that the information will remain confidential and used or further disclosed only as required by law or for the purposes for which it was disclosed to the person, and the person notifies business associate of any instances of which it is aware in which the confidentiality of the information has been breached.
- (g) Except as otherwise limited herein, business associate may use protected health information to provide Data Aggregation services to GNRC as permitted by 42 CFR 164.504(e)(2)(i)(B).
- (h) Limit any use, disclosure, or request for use or disclosure of protected health information to the minimum amount necessary to accomplish the intended purpose of the use, disclosure, or request in accordance with the requirements of the privacy rule.

4. Term and Termination

- (a) Term. This Agreement shall be effective as of the date described above and shall terminate when all of the protected health information provided by GNRC to business associate or created or received by business associate on behalf of GNRC, is destroyed or returned to GNRC, or, if it is infeasible to return or destroy protected health information, Section 6 herein shall apply.
- (b) Termination for Cause. The Contract authorizes and business associate acknowledges and agrees GNRC shall have the right to immediately terminate the Contract in the event business associate fails to comply with, or violates a material provision of, requirements of the HIPAA Rules or this Agreement. Upon GNRC's knowledge of a material breach by business associate, GNRC shall, whenever practicable, provide a reasonable opportunity for business associate to cure the breach or end the violation. If business associate has breached a material term of this Agreement and cure is not possible or if business associate does not cure a curable breach or end the violation within a reasonable time as specified by, and at the sole discretion of, GNRC, GNRC may immediately terminate the Contract.
- (c) Reporting. If neither cure nor termination is feasible, GNRC shall report the violation to the Secretary of the United States Department of Health and Human Services or the Secretary's designee.

5. Obligations of GNRC.

GNRC Agrees to:

- (a) Provide business associate with the notice of privacy practices that GNRC produces in accordance with 45 CFR 164.520, as well as any changes to such notice.
- (b) Provide business associate with any changes in, or revocation of, permission by an Individual to use or disclose protected health information, if such changes affect business associate's permitted or required uses.
- (c) Notify business associate of any restriction to the use or disclosure of protected health information that GNRC has agreed to in accordance with 45 CFR 164.522, to the extent that such restriction may affect business associate's use of protected health information.
- (d) Not request business associate to use or disclose protected health information in any manner that would not be permissible under the privacy rule if done by GNRC.

6. Obligations of Business Associate Upon Termination.

- (a) Except as provided in subsection (b) below, upon termination of the Contract, for any reason, business associate shall, at direction of the GNRC, return or destroy all protected health information received from GNRC, or created or received by business associate on behalf of GNRC. This provision shall apply to protected health information that is in the possession of sub-contractors or agents of business associate. Business associate shall retain no copies of the protected health information.
- (b) In the event that business associate determines that returning or destroying the protected health information is not feasible, business associate shall provide to GNRC notification of the conditions that make return or destruction infeasible. Upon mutual agreement of the Parties that return or destruction of protected health information is infeasible, business associate shall extend the protections of this Agreement to such protected health information and limit further uses and disclosures of such protected health information to those purposes that make the return or destruction infeasible, for so long as business associate maintains such protected health information.

- (c) In the event that business associate continues to maintain protected health information after termination of this Contract, business associate shall continue to use appropriate safeguards and comply with Subpart C of 45 CFR Part 164 with respect to electronic protected health information to prevent use or disclosure of the protected health information, other than as provided for in this Agreement, for as long as business associate retains the protected health information;
- (d) The obligations of business associate under this Section shall survive the termination of this Agreement.

7. Miscellaneous

- (a) Regulatory References. A reference in this Agreement to a section in the HIPAA Rules means the section as in effect or as amended.
- (b) Amendment. The Parties agree to take such action as is necessary to amend this Agreement from time to time as is necessary for compliance with the requirements of the HIPAA Rules and any other applicable law. Nevertheless, business associate and GNRC shall comply with any amendment to the Health Insurance Portability and Accountability Act, Public Law 104-191, and amendment to the HIPAA Rules upon the effective date of such amendment, regardless of whether this Agreement has been formally amended.
- (c) Interpretation. Any ambiguity in this Agreement shall be interpreted to permit compliance with the HIPAA Rules.
- (d) Notices and Communications. All instructions, notices, consents, demands, or other communications required or contemplated by this Agreement shall be in writing and shall be delivered by hand, by facsimile transmission, by overnight courier service, or by first class mail, postage prepaid, addressed to the respective party at the appropriate facsimile number or address as set forth in Section E.2. (Communications and Contacts) of the Contract, or to such other party, facsimile number, or address as may be hereafter specified by written notice.
- (e) Effective Date of Notices. All instructions, notices, consents, demands, or other communications shall be considered effectively given as of the date of hand delivery; as of the date specified for overnight courier service delivery; as of three (3) business days after the date of mailing; or on the day the facsimile transmission is received mechanically by the facsimile machine at the receiving location and receipt is verbally confirmed by the sender.
- (f) Strict Compliance. No failure by any Party to insist upon strict compliance with any term or provision of this Agreement, to exercise any option, to enforce any right, or to seek any remedy upon any default of any other Party shall affect, or constitute a waiver of, any Party's right to insist upon such strict compliance, exercise that option, enforce that right, or seek that remedy with respect to that default or any prior, contemporaneous, or subsequent default. No custom or practice of the Parties at variance with any provision of this Agreement shall affect, or constitute a waiver of, any Party's right to demand strict compliance with all provisions of this Agreement.
- (g) Severability. With respect to any provision of this Agreement finally determined by a court of competent jurisdiction to be unenforceable, such court shall have jurisdiction to reform such provision so that it is enforceable to the maximum extent permitted by applicable law, and the Parties shall abide by such court's determination. In the event that any provision of this Agreement cannot be reformed, such provision shall be deemed to be severed from this Agreement, but every other provision of this Agreement shall remain in full force and effect.
- (h) Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Tennessee and of the United States of America.

ATTESTATION RE PERSONNEL USED IN CONTRACT PERFORMANCE

<p>If the attestation applies to more than one contract, modify this row accordingly.</p> <p>SUBJECT CONTRACT NUMBER:</p>	
<p>CONTRACTOR LEGAL ENTITY NAME:</p>	
<p>EDISON VENDOR IDENTIFICATION NUMBER:</p>	

If the attestation applies to more than one contract, modify the following paragraph accordingly.

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

CONTRACTOR SIGNATURE

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

PRINTED NAME AND TITLE OF SIGNATORY

DATE OF ATTESTATION

