



STATE OF TENNESSEE
DEPARTMENT OF GENERAL SERVICES

BILL HASLAM
GOVERNOR

ROBERT E. OGLESBY, AIA
COMMISSIONER

AGENDA

ADVISORY COUNCIL ON STATE PROCUREMENT MEETING #016
WEDNESDAY, APRIL 30, 2014 – 9:30 A.M.
TN TOWER – 3rd FLOOR, NASHVILLE ROOM

AGENDA ITEM	PAGE #
I. Call to Order	--
II. Approve Minutes from April 2, 2014 Meeting (see attached documentation)	1
III. New Business Proposed revisions to the following Central Procurement Office documents (see attached redline and clean versions):	
(1) HIPAA Compliance Term	6
(2) HIPAA Business Associate Agreement (BAA) Model	10
(3) Section 5.11.2 of the <i>Procurement Procedures Manual of the Central Procurement Office</i>	35
(4) Debarment and Suspension changes to:.....	39
<ul style="list-style-type: none"> • <i>Sections 4, 8, and 8.4 of the Procurement Procedures Manual of the Central Procurement Office</i> • Request for Proposals (RFP) and Request for Qualifications (RFQ) templates, and Edison Document Configurator • All applicable contracts and grants models and templates 	
IV. Other Business	--
V. Adjournment	--

CENTRAL PROCUREMENT OFFICE

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(615) 741-1035 • FAX: (615) 741-0684 • WWW.TN.GOV/GENERALSERV/

**MINUTES OF APRIL 2, 2014
MEETING**



STATE OF TENNESSEE
DEPARTMENT OF GENERAL SERVICES

BILL HASLAM
GOVERNOR

ROBERT E. OGLESBY, AIA
COMMISSIONER

MINUTES
ADVISORY COUNCIL ON STATE PROCUREMENT MEETING #015
WEDNESDAY, APRIL 2, 2014 – 1:00 P.M.
TN TOWER – 3RD FLOOR – NASHVILLE ROOM

Members in Attendance:

Mike Perry, Sondra Howe, Buddy Lea, Kelly Smith, Melissa Kmiecik, Tommy Wheeler, Rick Peppers, Scottie Domenico, Terry Anderson

Members Joining by Phone:

Hugh Holt

Others in Attendance:

Paul Krivacka, Jenny Young, Hannah Terry, Melinda Parton, Bryan Chriske, Chuck Lawrence, Charlotte McKinney

- I. **Call to Order:** Mike Perry, Chief Procurement Officer and Advisory Council on State Procurement Chairman, officially called the meeting to order. He recognized that a quorum of members was present even though one voting member, Jason Mumpower, Chief of Staff, Comptroller's Office, was not present.
- II. **Minutes from the March 5, 2014 Meeting:** Chief Procurement Officer Perry asked if there were any corrections or additions to the minutes from the March 5, 2014 meeting. Seeing none, a motion was made by Buddy Lea, Assistant Commissioner, Department of Finance and Administration, to accept the minutes as presented. The motion was seconded by Kelly Smith, Assistant Commissioner, Department of General Services. All members voted in favor – none opposed.
- III. **Welcome to new Advisory Council Member:** Chief Procurement Officer Perry introduced Scottie Domenico as a new member to the Advisory Council ("Council"). Ms. Domenico is a long-time vendor with the State of Tennessee and brings a wealth of knowledge and experience to the Council. She currently works for AED Brands and was previously with Pitney Bowes for many years. Chief Procurement Officer Perry stated that he was pleased to have Ms. Domenico as a new member on the Council and extended a welcome to all members present.

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IV. New Business: Chief Procurement Officer Perry turned the floor over to Paul Krivacka, Lead Attorney/Director of Category Management, Central Procurement Office, to discuss the following New Business agenda items:

Proposed revisions to:

- (1) Request for Proposals (RFP) Standard Template and Request for Qualifications (RFQ) Template, Section B.15

Mr. Krivacka stated that Section B.15 of the RFP and RFQ templates relates to a Respondent's diversity information. The current Section B.15.b requests a list of the Respondent's current contracts with business enterprises owned by minorities, women, Tennessee service-disabled veterans, and small businesses. The proposed edit would remove the requirement that these businesses be certified by the Governor's Office of Diversity Business Enterprise ("GoDBE"). Chief Procurement Officer Perry explained that GoDBE is a unit within the Central Procurement Office that assists business enterprises owned by minorities, women, Tennessee service-disabled veterans, and small businesses with contract and procurement opportunities with the State.

Chief Procurement Officer Perry asked if there were any additional comments or questions regarding Section B.15 of the RFP and RFQ templates. Seeing none, a motion was made by Ms. Smith to recommend the proposed changes to the Request for Proposals (RFP) Standard Template and Request for Qualifications (RFQ) Template, Section B.15, as presented, to the Procurement Commission for approval. Mr. Lea seconded the motion. All members voted in favor – none opposed.

- (2) Request for Proposals (RFP) Amendment Template

Mr. Krivacka stated that after the Procurement Commission approved the RFP Standard Template, the RFP Amendment form was reviewed and it was determined by the Advisory Council Subcommittee that changes were needed and that the form should become a template. The changes would require RFP Coordinators to insert the RFP Schedule of Events from the last release of the RFP, as amended and add, delete, or modify the Schedule of Events as appropriate. Also, a new section titled "RFP Amendment Effective Date" was added to require that each amendment include an RFP Amendment Effective Date as the last section.

Chief Procurement Officer Perry asked if there were any additional comments or questions regarding the proposed Request for Proposals (RFP) Amendment Template. Seeing none, a motion was made by Ms. Smith to recommend the proposed Request for Proposals (RFP) Amendment Template, as presented, to the Procurement Commission for approval. Mr. Lea seconded the motion. All members voted in favor – none opposed.

At this point in the meeting Chief Procurement Officer Perry paused and stated that he had failed to acknowledge that one member of the Advisory Council, Hugh Holt, was joining the meeting by phone. He then asked Mr. Krivacka to continue with the New Business agenda items.

(3) Interagency Agreement (IA) Model

Mr. Krivacka stated that the proposed change to the IA Model would clarify whether the model can be used if units of State government exempt from the Central Procurement Office's rules, policies, and procedures were parties, e.g., the University of Tennessee ("UT") or the Tennessee Board of Regents ("TBR"). The intent of the Interagency Agreement was to allow for the optional use of this model when exempt units of State government, e.g., UT or the TBR, were entering into an interagency agreement with a non-exempt State agency.

Chief Procurement Officer Perry asked if there were any additional comments or questions regarding the IA Model.

Mr. Lea stated that he believed the proposed clarifications were useful and helpful to all parties involved. Mr. Lea then made a motion to recommend the changes to the Interagency Agreement (IA) Model, as presented, to the Procurement Commission for approval. Ms. Smith seconded the motion. All members voted in favor – none opposed.

(4) Grant Management and Subrecipient Monitoring Policy and Procedures

Mr. Krivacka presented proposed edits to the Grant Management and Subrecipient Monitoring Policy and Procedures. For clarification, a definition was added for "Direct Appropriation Grants" that ties back to the annual direct appropriation list compiled by the Department of Finance and Administration, Division of Budget. Also, Section 5, Advance Payments, was revised to include additional explanatory language. These changes would help to clarify the types of grants that are subject to the Grant Management and Subrecipient Monitoring Policy and Procedures. Chief Procurement Officer Perry added that this policy was brought before the Advisory Council previously but was not presented to the Procurement Commission due to some questions and ambiguity that have now been addressed. Chief Procurement Officer Perry stated that after recommendation by the Advisory Council, the Grant Management and Subrecipient Monitoring Policy and Procedures would be presented to the Procurement Commission at its next meeting.

Chief Procurement Officer Perry asked if there were any additional comments or questions regarding the Grant Management and Subrecipient Monitoring Policy and Procedures. Seeing none, a motion was made by Mr. Lea to recommend the Grant Management and Subrecipient Monitoring Policy and Procedures, as presented, to the

Procurement Commission for approval. Ms. Smith seconded the motion. All members voted in favor – none opposed.

- V. **Other Business:** Chief Procurement Officer Perry asked for any other business that the Council needed to discuss. Mr. Perry encouraged all members of the Advisory Council, both voting and non-voting, to participate during meetings and to feel free to ask questions and provide comments at any time. Mr. Perry also stated that it was unlikely that the Procurement Commission would meet in April so any items that received Advisory Council approval for recommendation at this meeting were expected to be presented to the Procurement Commission at its May meeting.
- VI. **Adjournment:** Seeing no other business, a motion for adjournment was made by Ms. Smith and seconded by Mr. Lea. All members voted in favor – none opposed.

HIPAA COMPLIANCE TERM

REDLINE COMPARISON TO 4/17/14 VERSION

REQUEST: Replace the "HIPAA Compliance" term currently included as an optional special term and condition with the following as a standard term and condition in all applicable contract templates. Add the "HIPAA Compliance" term to the document configurator in Edison.

TRACK CHANGES:

HIPAA Compliance

Add the following section if it is applicable to or warranted by the contract.

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

HIPAA COMPLIANCE TERM

CLEAN VERSION

CLEAN:

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

**HIPAA BUSINESS ASSOCIATE
AGREEMENT (BAA) MODEL**

**REDLINE COMPARISON TO 4/17/14
VERSION**

HIPAA BUSINESS ASSOCIATE AGREEMENT (BAA) MODEL

A Business Associate Agreement should be completed when required by the Health Insurance Portability and Accountability Act of 1996 (HIPAA) and related regulations. The use of this model is optional and serves as a guide. Add, delete, or revise information in the model as needed.

**HIPAA BUSINESS ASSOCIATE AGREEMENT
COMPLIANCE WITH PRIVACY AND SECURITY RULES**

THIS BUSINESS ASSOCIATE AGREEMENT (hereinafter "Agreement") is between **The State of Tennessee, STATE AGENCY NAME** (hereinafter "Covered Entity") and **BUSINESS ASSOCIATE NAME** (hereinafter "Business Associate"). Covered Entity and Business Associate may be referred to herein individually as "Party" or collectively as "Parties."

BACKGROUND

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

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

LIST OF AGREEMENTS AFFECTED BY THIS BUSINESS ASSOCIATE AGREEMENT:

LIST OF CONTRACTS AFFECTED BY HIPAA REQUIREMENTS OR NOT APPLICABLE

Contract Name:

Execution Date:

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

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

DEFINITIONS

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

- 1.1 "Breach of the Security of the [Business Associate's Information] System" shall have the meaning set out in its definition at T.C.A. § 47-18-2107
- 1.2 "Business Associate" shall have the meaning set out in its definition at 45 C.F.R. § 160.103.
- 1.3 "Covered Entity" shall have the meaning set out in its definition at 45 C.F.R. § 160.103.
- 1.4 "Designated Record Set" shall have the meaning set out in its definition at 45 C.F.R. § 164.501.
- 1.5 "Electronic Protected Health Care Information" shall have the meaning set out in its definition at 45 C.F.R. § 160.103.

- 1.6 "Genetic Information" shall have the meaning set out in its definition at 45 C.F.R. § 160.103.
- 1.7 "Health Care Operations" shall have the meaning set out in its definition at 45 C.F.R. § 164.501.
- 1.8 "Individual" shall have the same meaning as the term "individual" in 45 CFR § 160.103 and shall include a person who qualifies as a personal representative in accordance with 45 CFR § 164.502(g).
- 1.9 "Information Holder" shall have the meaning set out in its definition at T.C.A. § 47-18-2107
- 1.10 "Marketing" shall have the meaning set out in its definition at 45 C.F.R. § 164.501.
- 1.11 "Personal information" shall have the meaning set out in its definition at T.C.A. § 47-18-2107
- 1.12 "Privacy Official" shall have the meaning as set out in its definition at 45 C.F.R. § 164.530(a)(1).
- 1.13 "Privacy Rule" shall mean the Standards for Privacy of Individually Identifiable Health Information at 45 CFR Part 160 and Part 164, subparts A, and E.
- 1.14 "Protected Health Information" shall have the same meaning as the term "protected health information" in 45 CFR § 160.103, limited to the information created or received by Business Associate from or on behalf of Covered Entity.
- 1.15 "Required by Law" shall have the meaning set forth in 45 CFR § 164.512.
- 1.16 "Security Incident" shall have the meaning set out in its definition at 45 C.F.R. § 160.304.
- 1.17 "Security Rule" shall mean the Security Standards for the Protection of Electronic Protected Health Information at 45 CFR Parts 160 and 164, Subparts A and C.

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

- 2.1 Business Associate is authorized to use PHI for the purposes of carrying out its duties under the Services Contract. In the course of carrying out these duties, including but not limited to carrying out the Covered Entity's duties under HIPAA, Business Associate shall fully comply with the requirements under the Privacy Rule applicable to "business associates," as that term is defined in the Privacy Rule and not use or further disclose PHI other than as permitted or required by this Agreement, the Service Contracts, or as Required By Law. Business Associate is subject to requirements of the Privacy Rule as required by Public Law 111-5, Section 13404 [designated as 42 U.S.C. 17934] In case of any conflict between this Agreement and the Service Contracts, this Agreement shall govern.
- 2.2 The Health Information Technology for Economic and Clinical Health Act (HITECH) was adopted as part of the American Recovery and Reinvestment Act of 2009. HITECH and its implementing regulations impose new requirements on Business Associates with respect to privacy, security, and breach notification. Business Associate hereby acknowledges and agrees that to the extent it is functioning as a Business Associate of Covered Entity, Business Associate shall comply with HITECH. Business Associate and the Covered Entity further agree that the provisions of HIPAA and HITECH that apply to business associates and that are required to be incorporated by reference in a business associate agreement have been incorporated into this Agreement

between Business Associate and Covered Entity. Should any provision not be set forth specifically, it is as if set forth in this Agreement in its entirety and is effective as of the Applicable Effective Date, and as amended.

- 2.3 Business Associate shall use appropriate administrative, physical, and technical safeguards to prevent use or disclosure of PHI other than as provided for by this Agreement, Services Contract(s), or as Required By Law. This includes the implementation of Administrative, Physical, and Technical Safeguards to reasonably and appropriately protect the Covered Entity's PHI against any reasonably anticipated threats or hazards, utilizing the technology commercially available to the Business Associate. The Business Associate shall maintain appropriate documentation of its compliance with the Privacy Rule, including, but not limited to, its policies, procedures, records of training and sanctions of members of its Workforce.
- 2.4 Business Associate shall require any agent, including a subcontractor, to whom it provides PHI received from, maintained, created or received by Business Associate on behalf of Covered Entity or that carries out any duties for the Business Associate involving the use, custody, disclosure, creation of, or access to PHI or other confidential information, to agree, by written contract with Business Associate, to the same restrictions and conditions that apply through this Agreement to Business Associate with respect to such information.
- 2.5 Business Associate shall mitigate, to the extent practicable, any harmful effect that is known to Business Associate of a use or disclosure of PHI by Business Associate in violation of the requirements of this Agreement.
- 2.6 Business Associate shall require its employees, agents, and subcontractors to promptly report, to Business Associate, immediately upon becoming aware of any use or disclosure of PHI in violation of this Agreement. Business Associate shall report to Covered Entity any use or disclosure of the PHI not provided for by this Agreement. Business Associate will also provide additional information reasonably requested by the Covered Entity related to the breach.
- 2.7 As required by the Breach Notification Rule, Business Associate shall, and shall require its subcontractor(s) to, maintain systems to monitor and detect a Breach of Unsecured PHI, whether in paper or electronic form.
 - 2.7.1 Business Associate shall provide to Covered Entity notice of a Provisional or Actual Breach of Unsecured PHI immediately upon becoming aware of the Breach.
 - 2.7.2 Business Associate shall cooperate with Covered Entity in timely providing the appropriate and necessary information to Covered Entity.
 - 2.7.3 Covered Entity shall make the final determination whether the Breach requires notification and whether the notification shall be made by Covered Entity or Business Associate.
- 2.8 If Business Associate receives PHI from Covered Entity in a Designated Record Set, Business Associate shall provide access, at the request of Covered Entity, to PHI in a Designated Record Set to Covered Entity, in order to meet the requirements under 45 CFR § 164.524, provided that Business Associate shall have at least 30 business days from Covered Entity notice to provide access to, or deliver such information.

- 2.9 If Business Associate receives PHI from Covered Entity in a Designated Record Set, then Business Associate shall make any amendments to PHI in a Designated Record Set that the Covered Entity directs or agrees to pursuant to the 45 CFR § 164.526 at the request of Covered Entity or an Individual, and in the time and manner designated by Covered Entity, provided that Business Associate shall have at least 30 business days from Covered Entity notice to make an amendment.
- 2.10 Business Associate shall make its internal practices, books, and records including policies and procedures and PHI, relating to the use and disclosure of PHI received from, created by or received by Business Associate on behalf of, Covered Entity available to the Secretary of the United States Department of Health in Human Services or the Secretary's designee, in a time and manner designated by the Secretary, for purposes of determining Covered Entity's or Business Associate's compliance with the Privacy Rule.
- 2.11 Business Associate shall document disclosures of PHI and information related to such disclosures as would be required for Covered Entity to respond to a request by an Individual for an accounting of disclosure of PHI in accordance with 45 CFR § 164.528.
- 2.12 Business Associate shall provide Covered Entity or an Individual, in time and manner designated by Covered Entity, information collected in accordance with this Agreement, to permit Covered Entity to respond to a request by an Individual for and accounting of disclosures of PHI in accordance with 45 CFR § 164.528, provided that Business Associate shall have at least 30 business days from Covered Entity notice to provide access to, or deliver such information which shall include, at minimum, (a) date of the disclosure; (b) name of the third party to whom the PHI was disclosed and, if known, the address of the third party; (c) brief description of the disclosed information; and (d) brief explanation of the purpose and basis for such disclosure. Business Associate shall provide an accounting of disclosures directly to an individual when required by section 13405(c) of Public Law 111-5 [designated as 42 U.S.C. 17935(c)].
- 2.13 Business Associate agrees it must limit any use, disclosure, or request for use or disclosure of PHI to the minimum amount necessary to accomplish the intended purpose of the use, disclosure, or request in accordance with the requirements of the Privacy Rule.
- 2.13.1 Business Associate represents to Covered Entity that all its uses and disclosures of, or requests for, PHI shall be the minimum necessary in accordance with the Privacy Rule requirements.
- 2.13.2 Covered Entity may, pursuant to the Privacy Rule, reasonably rely on any requested disclosure as the minimum necessary for the stated purpose when the information is requested by Business Associate.
- 2.13.3 Business Associate acknowledges that if Business Associate is also a covered entity, as defined by the Privacy Rule, Business Associate is required, independent of Business Associate's obligations under this Memorandum, to comply with the Privacy Rule's minimum necessary requirements when making any request for PHI from Covered Entity.
- 2.14 Business Associate shall adequately and properly maintain all PHI received from, or created or received on behalf of, Covered Entity

- 2.15 If Business Associate receives a request from an Individual for a copy of the individual's PHI, and the PHI is in the sole possession of the Business Associate, Business Associate will provide the requested copies to the individual and notify the Covered Entity of such action. If Business Associate receives a request for PHI in the possession of the Covered Entity, or receives a request to exercise other individual rights as set forth in the Privacy Rule, Business Associate shall notify Covered Entity of such request and forward the request to Covered Entity. Business Associate shall then assist Covered Entity in responding to the request.
- 2.16 Business Associate shall fully cooperate in good faith with and to assist Covered Entity in complying with the requirements of the Privacy Rule.

3 OBLIGATIONS AND ACTIVITIES OF BUSINESS ASSOCIATE (Security Rule)

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

- 3.6 Business Associate shall fully cooperate in good faith with and to assist Covered Entity in complying with the requirements of the Security Rule.
- 3.7 Notification for the purposes of Sections 2.8 and 3.4 shall be in writing made by email/fax, certified mail or overnight parcel immediately upon becoming aware of the event, with supplemental notification by facsimile and/or telephone as soon as practicable, to:

COVERED ENTITY NAME
NAME AND TITLE
ADDRESS
 Telephone: **NUMBER**
 Fax: **NUMBER**

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

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

4. PERMITTED USES AND DISCLOSURES BY BUSINESS ASSOCIATE

- 4.1 Except as otherwise limited in this Agreement, Business Associate may use or disclose PHI to perform functions, activities, or services for, or on behalf of, Covered Entity as specified in Service Contract(s), provided that such use or disclosure would not violate the Privacy and Security Rule, if done by Covered Entity. Business Associate's disclosure of PHI shall be subject to the limited data set and minimum necessary requirements of Section 13405(b) of Public Law 111-5, [designated as 42 U.S.C. 13735(b)]
- 4.2 Except as otherwise limited in this Agreement, Business Associate may use PHI as required for Business Associate's proper management and administration or to carry out the legal responsibilities of the Business Associate.
- 4.3 Except as otherwise limited in this Agreement, Business Associate may disclose PHI for the proper management and administration of the Business Associate, provided that disclosures are Required By Law, or provided that, if Business Associate discloses any PHI to a third party for such a purpose, Business Associate shall enter into a written agreement with such third party requiring the third party to: (a) maintain the confidentiality, integrity, and availability of PHI and not to use or further disclose such information except as Required By Law or for the purpose for which it was disclosed, and (b) notify Business Associate of any instances in which it becomes

aware in which the confidentiality, integrity, and/or availability of the PHI is breached immediately upon becoming aware.

- 4.4 Except as otherwise limited in this Agreement, Business Associate may use PHI to provide data aggregation services to Covered Entity as permitted by 42 CFR § 164.504(e)(2)(i)(B).
- 4.5 Business Associate may use PHI to report violations of law to appropriate Federal and State Authorities consistent with 45 CFR 164.502(j)(1).
- 4.6 Business Associate shall not use or disclose PHI that is Genetic Information for underwriting purposes. Moreover, the sale, marketing or the sharing for commercial use or any purpose construed by Covered Entity as the sale, marketing or commercial use of member's personal or financial information with affiliates, even if such sharing would be permitted by federal or state laws, is prohibited.
- 4.7 Business Associate shall enter into written agreements that are substantially similar to this Business Associate Agreements with any Subcontractor or agent which Business Associate provides access to Protected Health Information.
- 4.8 Business Associates shall implement and maintain information security policies that comply with the HIPAA Security Rule.

5. OBLIGATIONS OF COVERED ENTITY

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

6. PERMISSIBLE REQUESTS BY COVERED ENTITY

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

7. TERM AND TERMINATION

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

- 7.2.1 This Agreement authorizes and Business Associate acknowledges and agrees Covered Entity shall have the right to immediately terminate this Agreement and Service Contracts in the event Business Associate fails to comply with, or violates a material provision of, requirements of the Privacy and/or Security Rule or this Memorandum.
- 7.2.2 Upon Covered Entity's knowledge of a material breach by Business Associate, Covered Entity shall either:
- 7.2.2.1 Provide a reasonable opportunity for Business Associate to cure the breach or end the violation, or
 - 7.2.2.2 If Business Associate has breached a material term of this Agreement and cure is not possible or if Business Associate does not cure a curable breach or end the violation within a reasonable time as specified by, and at the sole discretion of, Covered Entity, Covered Entity may immediately terminate this Agreement and the Service Agreement.
 - 7.2.2.3 If neither cure nor termination is feasible, Covered Entity shall report the violation to the Secretary of the United States Department of Health in Human Services or the Secretary's designee.

7.3 Effect of Termination.

- 7.3.1 Except as provided in Section 7.3.2. below, upon termination of this Agreement, for any reason, Business Associate shall return or destroy all PHI received from Covered Entity, or created or received by Business Associate on behalf of, Covered Entity. This provision shall apply to PHI that is in the possession of subcontractors or agents of Business Associate. Business Associate shall retain no copies of the PHI.
- 7.3.2 In the event that Business Associate determines that returning or destroying the PHI is not feasible, Business Associate shall provide to Covered Entity notification of the conditions that make return or destruction unfeasible. Upon mutual agreement of the Parties that return or destruction of PHI is unfeasible; Business Associate shall extend the protections of this Memorandum to such PHI and limit further uses and disclosures of such PHI to those purposes that make the return or destruction unfeasible, for so long as Business Associate maintains such PHI.

8. MISCELLANEOUS

- 8.1 Regulatory Reference. A reference in this Agreement to a section in the Privacy and or Security Rule means the section as in effect or as amended.
- 8.2 Indemnity. The Business Associate shall indemnify the Covered Entity and hold it harmless for any claims, losses or other damages arising from or associated with any act or omission of Business Associate under this Agreement. This includes the costs of responding to a breach of the Agreement or the release of PHI contrary to the terms and conditions of this Agreement, the costs of responding to a government enforcement action related to the breach, and any resultant fines, penalties, or damages paid by the Covered Entity.
- 8.3 Amendment. The Parties agree to take such action as is necessary to amend this Agreement from time to time as is necessary for Covered Entity to comply with the requirements of the

Privacy and Security Rules and the Health Insurance Portability and Accountability Act, Public Law 104-191, including any amendments required by the United States Department of Health and Human Services to implement the Health Information Technology for Economic and Clinical Health and related regulations upon the effective date of such amendment, regardless of whether this Agreement has been formally amended, including, but not limited to changes required by the American Recovery and Reinvestment Act of 2009, Public Law 111-5.

- 8.4 Survival. The respective rights and obligations of Business Associate under Section 7.3. of this Memorandum shall survive the termination of this Agreement.
- 8.5 Interpretation. Any ambiguity in this Agreement shall be resolved in favor of a meaning that permits Covered Entity and the Business Associate to comply with the Privacy and Security Rules.
- 8.6 Notices and Communications. All instructions, notices, consents, demands, or other communications required or contemplated by this Agreement shall be in writing and shall be delivered by hand, by facsimile transmission, by overnight courier service, or by first class mail, postage prepaid, addressed to the respective party at the appropriate facsimile number or address as set forth below, or to such other party, facsimile number, or address as may be hereafter specified by written notice.

COVERED ENTITY:

**ENTITY NAME
NAME AND TITLE**

ADDRESS

Telephone: **NUMBER**

Fax: **NUMBER**

BUSINESS ASSOCIATE:

**ENTITY NAME
NAME AND TITLE**

ADDRESS

Telephone: **NUMBER**

Fax: **NUMBER**

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

- 8.7 Strict Compliance. No failure by any Party to insist upon strict compliance with any term or provision of this Agreement, to exercise any option, to enforce any right, or to seek any remedy upon any default of any other Party shall affect, or constitute a waiver of, any Party's right to insist upon such strict compliance, exercise that option, enforce that right, or seek that remedy with respect to that default or any prior, contemporaneous, or subsequent default. No custom or practice of the Parties at variance with any provision of this Agreement shall affect, or constitute a waiver of, any Party's right to demand strict compliance with all provisions of this Agreement

- 8.8 Severability. With respect to any provision of this Agreement finally determined by a court of competent jurisdiction to be unenforceable, such court shall have jurisdiction to reform such provision so that it is enforceable to the maximum extent permitted by applicable law, and the Parties shall abide by such court's determination. In the event that any provision of this Agreement cannot be reformed, such provision shall be deemed to be severed from this Agreement, but every other provision of this Agreement shall remain in full force and effect.
- 8.9 Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Tennessee except to the extent that Tennessee law has been pre-empted by HIPAA.
- 8.10 Compensation. There shall be **no** remuneration for performance under this Agreement except as specifically provided by, in, and through, existing administrative requirements of Tennessee State government and services contracts referenced herein.
- 8.11 Security Breach. A violation of HIPAA or the Privacy or Security Rules constitutes a breach of this Business Associate Agreement and a breach of the Service Contract(s) listed on page one of this agreement, and shall be subject to all available remedies for such breach.

IN WITNESS WHEREOF,

COVERED ENTITY LEGAL ENTITY NAME:

NAME AND TITLE

Date:

BUSINESS ASSOCIATE LEGAL ENTITY NAME:

NAME AND TITLE

Date:

Document comparison by Workshare Compare on Thursday, April 24, 2014
9:47:08 AM

Input:	
Document 1 ID	file://C:\Users\ba01350\Desktop\Docs for Policy Subcmte\April 30 Advisory Council Documents\BAA 4-17-14.doc
Description	BAA 4-17-14
Document 2 ID	file://C:\Users\ba01350\Desktop\Docs for Policy Subcmte\April 30 Advisory Council Documents\Business Associate Agreement.doc
Description	Business Associate Agreement
Rendering set	Standard

Legend:	
<u>Insertion</u>	
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Style change	
Format change	
Moved-deletion	
Inserted cell	
Deleted cell	
Moved cell	
Split/Merged cell	
Padding cell	

Statistics:	
	Count
Insertions	1
Deletions	0
Moved from	0
Moved to	0
Style change	0
Format changed	0
Total changes	1

**HIPAA BUSINESS ASSOCIATE
AGREEMENT (BAA) MODEL**

CLEAN VERSION

HIPAA BUSINESS ASSOCIATE AGREEMENT (BAA) MODEL

A Business Associate Agreement should be completed when required by the Health Insurance Portability and Accountability Act of 1996 (HIPAA) and related regulations. The use of this model is optional and serves as a guide. Add, delete, or revise information in the model as needed.

**HIPAA BUSINESS ASSOCIATE AGREEMENT
COMPLIANCE WITH PRIVACY AND SECURITY RULES**

THIS BUSINESS ASSOCIATE AGREEMENT (hereinafter "Agreement") is between **The State of Tennessee, STATE AGENCY NAME** (hereinafter "Covered Entity") and **BUSINESS ASSOCIATE NAME** (hereinafter "Business Associate"). Covered Entity and Business Associate may be referred to herein individually as "Party" or collectively as "Parties."

BACKGROUND

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

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

LIST OF AGREEMENTS AFFECTED BY THIS BUSINESS ASSOCIATE AGREEMENT:

LIST OF CONTRACTS AFFECTED BY HIPAA REQUIREMENTS OR NOT APPLICABLE

Contract Name:

Execution Date:

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

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

DEFINITIONS

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

- 1.1 "Breach of the Security of the [Business Associate's Information] System" shall have the meaning set out in its definition at T.C.A. § 47-18-2107
- 1.2 "Business Associate" shall have the meaning set out in its definition at 45 C.F.R. § 160.103.
- 1.3 "Covered Entity" shall have the meaning set out in its definition at 45 C.F.R. § 160.103.
- 1.4 "Designated Record Set" shall have the meaning set out in its definition at 45 C.F.R. § 164.501.
- 1.5 "Electronic Protected Health Care Information" shall have the meaning set out in its definition at 45 C.F.R. § 160.103.

- 1.6 "Genetic Information" shall have the meaning set out in its definition at 45 C.F.R. § 160.103.
- 1.7 "Health Care Operations" shall have the meaning set out in its definition at 45 C.F.R. § 164.501.
- 1.8 "Individual" shall have the same meaning as the term "individual" in 45 CFR § 160.103 and shall include a person who qualifies as a personal representative in accordance with 45 CFR § 164.502(g).
- 1.9 "Information Holder" shall have the meaning set out in its definition at T.C.A. § 47-18-2107
- 1.10 "Marketing" shall have the meaning set out in its definition at 45 C.F.R. § 164.501.
- 1.11 "Personal information" shall have the meaning set out in its definition at T.C.A. § 47-18-2107
- 1.12 "Privacy Official" shall have the meaning as set out in its definition at 45 C.F.R. § 164.530(a)(1).
- 1.13 "Privacy Rule" shall mean the Standards for Privacy of Individually Identifiable Health Information at 45 CFR Part 160 and Part 164, subparts A, and E.
- 1.14 "Protected Health Information" shall have the same meaning as the term "protected health information" in 45 CFR § 160.103, limited to the information created or received by Business Associate from or on behalf of Covered Entity.
- 1.15 "Required by Law" shall have the meaning set forth in 45 CFR § 164.512.
- 1.16 "Security Incident" shall have the meaning set out in its definition at 45 C.F.R. § 160.304.
- 1.17 "Security Rule" shall mean the Security Standards for the Protection of Electronic Protected Health Information at 45 CFR Parts 160 and 164, Subparts A and C.

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

- 2.1 Business Associate is authorized to use PHI for the purposes of carrying out its duties under the Services Contract. In the course of carrying out these duties, including but not limited to carrying out the Covered Entity's duties under HIPAA, Business Associate shall fully comply with the requirements under the Privacy Rule applicable to "business associates," as that term is defined in the Privacy Rule and not use or further disclose PHI other than as permitted or required by this Agreement, the Service Contracts, or as Required By Law. Business Associate is subject to requirements of the Privacy Rule as required by Public Law 111-5, Section 13404 [designated as 42 U.S.C. 17934] In case of any conflict between this Agreement and the Service Contracts, this Agreement shall govern.
- 2.2 The Health Information Technology for Economic and Clinical Health Act (HITECH) was adopted as part of the American Recovery and Reinvestment Act of 2009. HITECH and its implementing regulations impose new requirements on Business Associates with respect to privacy, security, and breach notification. Business Associate hereby acknowledges and agrees that to the extent it is functioning as a Business Associate of Covered Entity, Business Associate shall comply with HITECH. Business Associate and the Covered Entity further agree that the provisions of HIPAA and HITECH that apply to business associates and that are required to be incorporated by reference in a business associate agreement have been incorporated into this Agreement

between Business Associate and Covered Entity. Should any provision not be set forth specifically, it is as if set forth in this Agreement in its entirety and is effective as of the Applicable Effective Date, and as amended.

- 2.3 Business Associate shall use appropriate administrative, physical, and technical safeguards to prevent use or disclosure of PHI other than as provided for by this Agreement, Services Contract(s), or as Required By Law. This includes the implementation of Administrative, Physical, and Technical Safeguards to reasonably and appropriately protect the Covered Entity's PHI against any reasonably anticipated threats or hazards, utilizing the technology commercially available to the Business Associate. The Business Associate shall maintain appropriate documentation of its compliance with the Privacy Rule, including, but not limited to, its policies, procedures, records of training and sanctions of members of its Workforce.
- 2.4 Business Associate shall require any agent, including a subcontractor, to whom it provides PHI received from, maintained, created or received by Business Associate on behalf of Covered Entity or that carries out any duties for the Business Associate involving the use, custody, disclosure, creation of, or access to PHI or other confidential information, to agree, by written contract with Business Associate, to the same restrictions and conditions that apply through this Agreement to Business Associate with respect to such information.
- 2.5 Business Associate shall mitigate, to the extent practicable, any harmful effect that is known to Business Associate of a use or disclosure of PHI by Business Associate in violation of the requirements of this Agreement.
- 2.6 Business Associate shall require its employees, agents, and subcontractors to promptly report, to Business Associate, immediately upon becoming aware of any use or disclosure of PHI in violation of this Agreement. Business Associate shall report to Covered Entity any use or disclosure of the PHI not provided for by this Agreement. Business Associate will also provide additional information reasonably requested by the Covered Entity related to the breach.
- 2.7 As required by the Breach Notification Rule, Business Associate shall, and shall require its subcontractor(s) to, maintain systems to monitor and detect a Breach of Unsecured PHI, whether in paper or electronic form.
 - 2.7.1 Business Associate shall provide to Covered Entity notice of a Provisional or Actual Breach of Unsecured PHI immediately upon becoming aware of the Breach.
 - 2.7.2 Business Associate shall cooperate with Covered Entity in timely providing the appropriate and necessary information to Covered Entity.
 - 2.7.3 Covered Entity shall make the final determination whether the Breach requires notification and whether the notification shall be made by Covered Entity or Business Associate.
- 2.8 If Business Associate receives PHI from Covered Entity in a Designated Record Set, Business Associate shall provide access, at the request of Covered Entity, to PHI in a Designated Record Set to Covered Entity, in order to meet the requirements under 45 CFR § 164.524, provided that Business Associate shall have at least 30 business days from Covered Entity notice to provide access to, or deliver such information.

- 2.9 If Business Associate receives PHI from Covered Entity in a Designated Record Set, then Business Associate shall make any amendments to PHI in a Designated Record Set that the Covered Entity directs or agrees to pursuant to the 45 CFR § 164.526 at the request of Covered Entity or an Individual, and in the time and manner designated by Covered Entity, provided that Business Associate shall have at least 30 business days from Covered Entity notice to make an amendment.
- 2.10 Business Associate shall make its internal practices, books, and records including policies and procedures and PHI, relating to the use and disclosure of PHI received from, created by or received by Business Associate on behalf of, Covered Entity available to the Secretary of the United States Department of Health in Human Services or the Secretary's designee, in a time and manner designated by the Secretary, for purposes of determining Covered Entity's or Business Associate's compliance with the Privacy Rule.
- 2.11 Business Associate shall document disclosures of PHI and information related to such disclosures as would be required for Covered Entity to respond to a request by an Individual for an accounting of disclosure of PHI in accordance with 45 CFR § 164.528.
- 2.12 Business Associate shall provide Covered Entity or an Individual, in time and manner designated by Covered Entity, information collected in accordance with this Agreement, to permit Covered Entity to respond to a request by an Individual for and accounting of disclosures of PHI in accordance with 45 CFR § 164.528, provided that Business Associate shall have at least 30 business days from Covered Entity notice to provide access to, or deliver such information which shall include, at minimum, (a) date of the disclosure; (b) name of the third party to whom the PHI was disclosed and, if known, the address of the third party; (c) brief description of the disclosed information; and (d) brief explanation of the purpose and basis for such disclosure. Business Associate shall provide an accounting of disclosures directly to an individual when required by section 13405(c) of Public Law 111-5 [designated as 42 U.S.C. 17935(c)].
- 2.13 Business Associate agrees it must limit any use, disclosure, or request for use or disclosure of PHI to the minimum amount necessary to accomplish the intended purpose of the use, disclosure, or request in accordance with the requirements of the Privacy Rule.
- 2.13.1 Business Associate represents to Covered Entity that all its uses and disclosures of, or requests for, PHI shall be the minimum necessary in accordance with the Privacy Rule requirements.
- 2.13.2 Covered Entity may, pursuant to the Privacy Rule, reasonably rely on any requested disclosure as the minimum necessary for the stated purpose when the information is requested by Business Associate.
- 2.13.3 Business Associate acknowledges that if Business Associate is also a covered entity, as defined by the Privacy Rule, Business Associate is required, independent of Business Associate's obligations under this Memorandum, to comply with the Privacy Rule's minimum necessary requirements when making any request for PHI from Covered Entity.
- 2.14 Business Associate shall adequately and properly maintain all PHI received from, or created or received on behalf of, Covered Entity

- 2.15 If Business Associate receives a request from an Individual for a copy of the individual's PHI, and the PHI is in the sole possession of the Business Associate, Business Associate will provide the requested copies to the individual and notify the Covered Entity of such action. If Business Associate receives a request for PHI in the possession of the Covered Entity, or receives a request to exercise other individual rights as set forth in the Privacy Rule, Business Associate shall notify Covered Entity of such request and forward the request to Covered Entity. Business Associate shall then assist Covered Entity in responding to the request.
- 2.16 Business Associate shall fully cooperate in good faith with and to assist Covered Entity in complying with the requirements of the Privacy Rule.

3 OBLIGATIONS AND ACTIVITIES OF BUSINESS ASSOCIATE (Security Rule)

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

- 3.6 Business Associate shall fully cooperate in good faith with and to assist Covered Entity in complying with the requirements of the Security Rule.
- 3.7 Notification for the purposes of Sections 2.8 and 3.4 shall be in writing made by email/fax, certified mail or overnight parcel immediately upon becoming aware of the event, with supplemental notification by facsimile and/or telephone as soon as practicable, to:

COVERED ENTITY NAME
NAME AND TITLE
ADDRESS
 Telephone: **NUMBER**
 Fax: **NUMBER**

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

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

4. PERMITTED USES AND DISCLOSURES BY BUSINESS ASSOCIATE

- 4.1 Except as otherwise limited in this Agreement, Business Associate may use or disclose PHI to perform functions, activities, or services for, or on behalf of, Covered Entity as specified in Service Contract(s), provided that such use or disclosure would not violate the Privacy and Security Rule, if done by Covered Entity. Business Associate's disclosure of PHI shall be subject to the limited data set and minimum necessary requirements of Section 13405(b) of Public Law 111-5, [designated as 42 U.S.C. 13735(b)]
- 4.2 Except as otherwise limited in this Agreement, Business Associate may use PHI as required for Business Associate's proper management and administration or to carry out the legal responsibilities of the Business Associate.
- 4.3 Except as otherwise limited in this Agreement, Business Associate may disclose PHI for the proper management and administration of the Business Associate, provided that disclosures are Required By Law, or provided that, if Business Associate discloses any PHI to a third party for such a purpose, Business Associate shall enter into a written agreement with such third party requiring the third party to: (a) maintain the confidentiality, integrity, and availability of PHI and not to use or further disclose such information except as Required By Law or for the purpose for which it was disclosed, and (b) notify Business Associate of any instances in which it becomes

aware in which the confidentiality, integrity, and/or availability of the PHI is breached immediately upon becoming aware.

- 4.4 Except as otherwise limited in this Agreement, Business Associate may use PHI to provide data aggregation services to Covered Entity as permitted by 42 CFR § 164.504(e)(2)(i)(B).
- 4.5 Business Associate may use PHI to report violations of law to appropriate Federal and State Authorities consistent with 45 CFR 164.502(j)(1).
- 4.6 Business Associate shall not use or disclose PHI that is Genetic Information for underwriting purposes. Moreover, the sale, marketing or the sharing for commercial use or any purpose construed by Covered Entity as the sale, marketing or commercial use of member's personal or financial information with affiliates, even if such sharing would be permitted by federal or state laws, is prohibited.
- 4.7 Business Associate shall enter into written agreements that are substantially similar to this Business Associate Agreements with any Subcontractor or agent which Business Associate provides access to Protected Health Information.
- 4.8 Business Associates shall implement and maintain information security policies that comply with the HIPAA Security Rule.

5. OBLIGATIONS OF COVERED ENTITY

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

6. PERMISSIBLE REQUESTS BY COVERED ENTITY

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

7. TERM AND TERMINATION

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

- 7.2.1 This Agreement authorizes and Business Associate acknowledges and agrees Covered Entity shall have the right to immediately terminate this Agreement and Service Contracts in the event Business Associate fails to comply with, or violates a material provision of, requirements of the Privacy and/or Security Rule or this Memorandum.
- 7.2.2 Upon Covered Entity's knowledge of a material breach by Business Associate, Covered Entity shall either:
- 7.2.2.1 Provide a reasonable opportunity for Business Associate to cure the breach or end the violation, or
- 7.2.2.2 If Business Associate has breached a material term of this Agreement and cure is not possible or if Business Associate does not cure a curable breach or end the violation within a reasonable time as specified by, and at the sole discretion of, Covered Entity, Covered Entity may immediately terminate this Agreement and the Service Agreement.
- 7.2.2.3 If neither cure nor termination is feasible, Covered Entity shall report the violation to the Secretary of the United States Department of Health in Human Services or the Secretary's designee.

7.3 Effect of Termination.

- 7.3.1 Except as provided in Section 7.3.2. below, upon termination of this Agreement, for any reason, Business Associate shall return or destroy all PHI received from Covered Entity, or created or received by Business Associate on behalf of, Covered Entity. This provision shall apply to PHI that is in the possession of subcontractors or agents of Business Associate. Business Associate shall retain no copies of the PHI.
- 7.3.2 In the event that Business Associate determines that returning or destroying the PHI is not feasible, Business Associate shall provide to Covered Entity notification of the conditions that make return or destruction unfeasible. Upon mutual agreement of the Parties that return or destruction of PHI is unfeasible; Business Associate shall extend the protections of this Memorandum to such PHI and limit further uses and disclosures of such PHI to those purposes that make the return or destruction unfeasible, for so long as Business Associate maintains such PHI.

8. MISCELLANEOUS

- 8.1 Regulatory Reference. A reference in this Agreement to a section in the Privacy and or Security Rule means the section as in effect or as amended.
- 8.2 Indemnity. The Business Associate shall indemnify the Covered Entity and hold it harmless for any claims, losses or other damages arising from or associated with any act or omission of Business Associate under this Agreement. This includes the costs of responding to a breach of the Agreement or the release of PHI contrary to the terms and conditions of this Agreement, the costs of responding to a government enforcement action related to the breach, and any resultant fines, penalties, or damages paid by the Covered Entity.
- 8.3 Amendment. The Parties agree to take such action as is necessary to amend this Agreement from time to time as is necessary for Covered Entity to comply with the requirements of the

Privacy and Security Rules and the Health Insurance Portability and Accountability Act, Public Law 104-191, including any amendments required by the United States Department of Health and Human Services to implement the Health Information Technology for Economic and Clinical Health and related regulations upon the effective date of such amendment, regardless of whether this Agreement has been formally amended, including, but not limited to changes required by the American Recovery and Reinvestment Act of 2009, Public Law 111-5.

- 8.4 Survival. The respective rights and obligations of Business Associate under Section 7.3. of this Memorandum shall survive the termination of this Agreement.
- 8.5 Interpretation. Any ambiguity in this Agreement shall be resolved in favor of a meaning that permits Covered Entity and the Business Associate to comply with the Privacy and Security Rules.
- 8.6 Notices and Communications. All instructions, notices, consents, demands, or other communications required or contemplated by this Agreement shall be in writing and shall be delivered by hand, by facsimile transmission, by overnight courier service, or by first class mail, postage prepaid, addressed to the respective party at the appropriate facsimile number or address as set forth below, or to such other party, facsimile number, or address as may be hereafter specified by written notice.

COVERED ENTITY:

ENTITY NAME
NAME AND TITLE
ADDRESS
 Telephone: **NUMBER**
 Fax: **NUMBER**

BUSINESS ASSOCIATE:

ENTITY NAME
NAME AND TITLE
ADDRESS
 Telephone: **NUMBER**
 Fax: **NUMBER**

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

- 8.7 Strict Compliance. No failure by any Party to insist upon strict compliance with any term or provision of this Agreement, to exercise any option, to enforce any right, or to seek any remedy upon any default of any other Party shall affect, or constitute a waiver of, any Party's right to insist upon such strict compliance, exercise that option, enforce that right, or seek that remedy with respect to that default or any prior, contemporaneous, or subsequent default. No custom or practice of the Parties at variance with any provision of this Agreement shall affect, or constitute a waiver of, any Party's right to demand strict compliance with all provisions of this Agreement
- 8.8 Severability. With respect to any provision of this Agreement finally determined by a court of competent jurisdiction to be unenforceable, such court shall have jurisdiction to reform such

provision so that it is enforceable to the maximum extent permitted by applicable law, and the Parties shall abide by such court's determination. In the event that any provision of this Agreement cannot be reformed, such provision shall be deemed to be severed from this Agreement, but every other provision of this Agreement shall remain in full force and effect.

8.9 Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Tennessee except to the extent that Tennessee law has been pre-empted by HIPAA.

8.10 Compensation. There shall be **no** remuneration for performance under this Agreement except as specifically provided by, in, and through, existing administrative requirements of Tennessee State government and services contracts referenced herein.

8.11 Security Breach. A violation of HIPAA or the Privacy or Security Rules constitutes a breach of this Business Associate Agreement and a breach of the Service Contract(s) listed on page one of this agreement, and shall be subject to all available remedies for such breach.

IN WITNESS WHEREOF,

COVERED ENTITY LEGAL ENTITY NAME:

NAME AND TITLE **Date:**

BUSINESS ASSOCIATE LEGAL ENTITY NAME:

NAME AND TITLE **Date:**

**SECTION 5.11.2 OF THE *PROCUREMENT
PROCEDURES MANUAL OF THE
CENTRAL PROCUREMENT OFFICE***

REDLINE VERSION

REQUEST: Revise section 5.11.2 of the *Procurement Procedures Manual of the Central Procurement Office* to more accurately reflect the intent of Department of General Services Central Procurement Office rule 0690-03-01.12 to remove written notice requirement to “non-responsive” respondents prior to the Open File Period.

TRACK CHANGES:

5.11.2. *Determine status – Responsiveness and Responsibility.*

The solicitation coordinator, in consult with the evaluation committee if applicable, should determine whether each response is “responsive” or “non-responsive.” A response that is “responsive” is one that conforms in all material respects to the solicitation and meets all mandatory requirements. A response may be deemed “non-responsive” if any of the required information is not provided, the submitted price is found to be excessive or inadequate as measured by criteria stated in the solicitation, or the response is clearly not within the scope of work or specifications described and required in the solicitation. The solicitation coordinator should exercise extreme care when making this determination because of the time and cost that a potential respondent has put into submitting a response and the fact that competition strengthens the results of a given procurement.

Responses capable of being ~~determined technically~~ responsive through clarification should not be deemed non-responsive. If a response is determined to be “non-responsive,” the solicitation coordinator ~~should~~ will document the justification for this determination. If a response fails to address one or more solicitation mandatory requirements or respond to them incompletely, the response should not be evaluated unless these areas can be clarified by the respondent. Documentation of any decision to bypass or determine a response “non-responsive” should be included in the procurement file. All respondents are deemed to know all facts documented in the State’s procurement files on the first day of the open file period. A respondent should be informed no later than the beginning of the open file period that the response was deemed non-responsive. The reasons for the rejection of a response should be communicated in writing to the respondent, e.g., so that the respondent’s right to protest is not abridged, the respondent can be debriefed as to the reasons the respondent’s response was deemed non-responsive, etc.

**SECTION 5.11.2 OF THE *PROCUREMENT
PROCEDURES MANUAL OF THE
CENTRAL PROCUREMENT OFFICE***

CLEAN VERSION

CLEAN:

5.11.2. *Determine status – Responsiveness and Responsibility.*

The solicitation coordinator, in consult with the evaluation committee if applicable, should determine whether each response is “responsive” or “non-responsive.” A response that is “responsive” is one that conforms in all material respects to the solicitation and meets all mandatory requirements. A response may be deemed “non-responsive” if any of the required information is not provided, the submitted price is found to be excessive or inadequate as measured by criteria stated in the solicitation, or the response is clearly not within the scope of work or specifications described and required in the solicitation. The solicitation coordinator should exercise extreme care when making this determination because of the time and cost that a potential respondent has put into submitting a response and the fact that competition strengthens the results of a given procurement.

Responses capable of being determined responsive through clarification should not be deemed non-responsive. If a response is determined to be “non-responsive,” the solicitation coordinator will document the justification for this determination. If a response fails to address one or more solicitation mandatory requirements or respond to them incompletely, the response should not be evaluated unless these areas can be clarified by the respondent. Documentation of any decision to bypass or determine a response “non-responsive” should be included in the procurement file. All respondents are deemed to know all facts documented in the State’s procurement files on the first day of the open file period.

**DEBARMENT AND SUSPENSION PROPOSED
CHANGES TO:**

- **SECTIONS 4, 8, AND 8.4 OF THE *PROCUREMENT PROCEDURES MANUAL OF THE CENTRAL PROCUREMENT OFFICE***
- **REQUEST FOR PROPOSALS (RFP) AND REQUEST FOR QUALIFICATIONS (RFQ) TEMPLATES AND EDISON DOCUMENT CONFIGURATOR**
- **ALL APPLICABLE CONTRACTS AND GRANTS MODELS AND TEMPLATES**

REDLINE COMPARISON TO 4/17/14 VERSION

Policy Change:

REQUEST: Revise the *Procurement Procedures Manual of the Central Procurement Office* by adding new definitions to section 4., “Definitions, Abbreviations and Codes” and section 8.4. related to Debarments and Suspensions. Rere-title Chapter 8 to “Protest, Stay of Award and Debarment and Suspension.” Add a new section 8.4. related to Debarments and Suspensions and re-number subsequent sections accordingly.

4. Definitions, Abbreviations and Codes.

“Debarment” means excluding a Respondent or ~~vendor~~Vendor from participation in ~~any~~ State procurements or contracts as a Respondent, contractor or subcontractor, as specified by the Chief Procurement Officer.

“Suspension” means a temporary or limited exclusion of a Respondent or ~~vendor~~Vendor from participation in ~~any~~ State procurements or contracts as a Respondent, contractor or subcontractor, pending completion of a State investigation or administrative or judicial proceedings, as specified by the Chief Procurement Officer.

8.4 *Debarment and Suspension.*

8.4.1. *Statement of Policy and Purpose.*

It is the policy of the Central Procurement Office to solicit responses from Respondents who are responsive and responsible and contract with vendors who conduct their business with high ethical standards. Debarments or ~~suspensions~~Suspensions may be imposed at the discretion of the Chief Procurement Officer in order to maintain the integrity of the procurement and contract management processes and to ensure public trust and confidence in the operations of the State. If a Respondent or a ~~vendor~~Vendor is debarred or suspended, the Respondent or ~~vendor~~Vendor is debarred or suspended from ~~all~~ procurements with the State or its Agencies under the Central Procurement Office’s authority, as specified by the Chief Procurement Officer. Notwithstanding the foregoing, the existence of a cause for debarment does not necessarily require that the Respondent or ~~vendor~~Vendor should be debarred or suspended. The seriousness of the Respondent’s or ~~vendor~~Vendor’s acts or omissions and any remedial measures or mitigating factors should be considered by the Chief Procurement Officer in making any debarment or suspension decision.

8.4.2. *Grounds for Debarment or Suspension.*

A Respondent ~~to a solicitation~~ or a ~~vendor to contract~~Vendor may be debarred or suspended if the Respondent or ~~vendor~~Vendor:

- Is presently debarred, suspended, proposed for debarment, ~~declared ineligible,~~ or voluntarily excluded from participation in solicitations conducted by the State, local governments within the State, states other than Tennessee, local governments in a state other than Tennessee, or the federal government;

- Within a three (3) year period preceding the contract, has been convicted of, or had a civil judgment rendered against the Respondent or ~~vendor~~Vendor, from commission of fraud, or a criminal offense in connection with obtaining, attempting to obtain, or performing a public 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;
- Is presently indicted or otherwise criminally or civilly charged by a government entity with commission of any of the offenses detailed above; and has within a three (3) year period preceding the contract had one or more public transactions terminated for cause or default;
- Has been awarded a contract pursuant to a public procurement, but has repudiated the award made by the State, local governments within the State, states other than Tennessee, local governments in a state other than Tennessee, or the federal government;
- ~~Has been awarded a contract pursuant to a public procurement, but has repudiated the award made by the State, local governments within the State, states other than Tennessee, local governments in a state other than Tennessee, or the federal government;~~ Has willfully breached any contract with the State, local governments within the State, states other than Tennessee, local governments in a state other than Tennessee, or the federal government; or
- ~~Has willfully breached any contract with the State, local governments within the State, states other than Tennessee, local governments in a state other than Tennessee, or the federal government;~~ or
- Has exhibited a history or pattern of failure to perform, or of unsatisfactory performance of, one or more contracts with the State, local governments within the State, states other than Tennessee, local governments in a state other than Tennessee, or the federal government.

8.4.3. *Debarment or Suspension Considerations.*

Before arriving at any debarment or suspension decision, the Chief Procurement Officer should consider factors such as the following:

- Whether the Respondent or ~~vendor~~Vendor had effective standards of conduct and internal control systems in place at the time of the activity which gave rise to debarment or suspension or had adopted such procedures prior to any investigation of the activity cited as a cause for debarment or suspension.
- Whether the Respondent or ~~vendor~~Vendor brought the activity cited as a cause for debarment or suspension to the attention of the appropriate government official in a timely manner.
- Whether the Respondent or ~~vendor~~Vendor has fully investigated the circumstances surrounding the cause for debarment or suspension and, if so, made the results of the investigation available to the Chief Procurement Officer.

- Whether the Respondent or ~~vendor~~Vendor cooperated fully with the Central Procurement Office or State Agencies during any investigation or any court or administrative action.
- Whether the Respondent or ~~vendor~~Vendor has paid or has agreed to pay all criminal, civil, or administrative liability or damages for the activity, including any investigative or administrative costs incurred by the State, and has made or agreed to make full restitution.
- Whether the Respondent or ~~vendor~~Vendor has taken appropriate disciplinary action against the individuals responsible for the activity which constitutes cause for debarment or suspension.
- Whether the Respondent or ~~vendor~~Vendor has implemented or agreed to implement remedial measures, including any identified by the State.
- Whether the Respondent or ~~vendor~~Vendor has instituted or agreed to institute new or revised review and control procedures and ethics training programs.
- Whether the Respondent or ~~vendor~~Vendor has had adequate time to eliminate the circumstances within the Respondent's or ~~vendor~~Vendor's organization that led to the cause for debarment or suspension.
- Whether the Respondent's or ~~vendor~~Vendor's management recognizes and understands the seriousness of the misconduct giving rise to the cause for debarment or suspension and has implemented programs to prevent recurrence.

The existence or nonexistence of any mitigating factors or remedial measures such as set forth in this Section 8.4.3 is not determinative of a Respondent's or ~~vendor~~Vendor's present responsibility. Accordingly, if a cause for debarment or suspension exists, the Respondent or ~~vendor~~Vendor has the burden of demonstrating, to the satisfaction of the Chief Procurement Officer, its ability to fulfill its present responsibilityresponsibilities and that debarment or suspension is unnecessary.

8.4.4. *Continuing Duty to Disclose.*

Respondents, or ~~vendors~~Vendors to whom a contract has been awarded, must provide immediate written notice to the State if at any time the Respondent or ~~vendor~~Vendor learns that it has failed to disclose information that its principals, affiliates or subcontractors are excluded or disqualified from contracting with the State, local governments within the State, states other than Tennessee, local governments in a state other than Tennessee, or the federal government.

8.4.5. *Written Notice.*

If the Chief Procurement Officer determines that a Respondent or a ~~vendor~~Vendor should be suspended or debarred from contracting with the State, the Chief Procurement Officer shall provide the Respondent or ~~vendor~~Vendor with written notice of the grounds for which the

Respondent or ~~vendor~~Vendor is debarred or suspended from participating in State solicitations. The notice shall also specify the period of time in which the Respondent or ~~vendor~~Vendor is debarred or suspended. The Respondent or ~~vendor~~Vendor may, within seven (7) calendar days from when the notice of debarment or suspension was sent, request an informal hearing and provide a response to the CPO why the ~~vendor~~Vendor should not be debarred or suspended. The decision of the Chief Procurement Officer will be final and shall not be subject to further administrative review.

8.4.5.8.4.6. *Reinstatement or Reduction.*

Respondents or ~~vendors~~Vendors who seek to be reinstated after being debarred or suspended may submit a letter to the Chief Procurement Officer stating why the Respondent or ~~vendor~~Vendor should be reinstated. The Respondent's or ~~vendor~~Vendor's request for reinstatement should include the steps the Respondent or ~~vendor~~Vendor has taken to avoid the circumstances that gave rise to debarment or suspension and what action Respondent or ~~vendor~~Vendor has been taken to mitigate any harm caused by the Respondent's or the ~~vendor~~Vendor's actions. For good cause shown, the Chief Procurement Officer, at his or her sole discretion, may reduce the period of debarment or suspension or rescind the debarment or suspension, thus reinstating the Respondent or the ~~vendor~~Vendor in good standing. The Chief Procurement Officer may rescind or reduce the period or extent of debarment or suspension, upon the Respondent's or ~~vendor~~Vendor's request, supported by documentation, for the following reasons:

- ~~●~~—Newly discovered material evidence;
 - ~~●~~—Reversal of the conviction, administrative findings or civil judgment upon which the debarment was based;
 - ~~●~~—Bona fide change in ownership or management;
 - ~~●~~—Elimination of other causes for which the debarment or suspension was imposed;
- or
- Other reasons the Chief Procurement Officer deems appropriate.

Solicitation Change:

REQUEST: Add a question regarding “Debarmentdebarments and Suspension”~~suspensions~~ to the RequestRequests for Proposals (RFP) Template and Requestthe Requests for Qualifications (RFQ) Templates. This would be added to Section in section B., General Qualifications & Experience Items. Add or change the question regarding debarments and suspensions in Edison to be utilized for Invitations to Bid (“ITB”), as appropriate.

RFP and RFQ #:

	<p>B.#. Provide a statement and any relevant details addressing whether the Respondent is any of the following:</p> <ul style="list-style-type: none">(a) is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any federal or state department or agency;(b) has within the past three (3) years, been convicted of, or had a civil judgment rendered against the contracting party from commission of fraud, or a criminal offence 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) is presently indicted or otherwise criminally or civilly charged by a government entity (federal, state, or local) with commission of any of the offenses detailed above; and(d) has within a three (3) year period preceding the contract had one or more public transactions (federal, state, or local) terminated for cause or default.
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Contract Change:

Edison #:

Please answer yes or no to the following. If "yes", describe using additional pages and attach to the Response including any relevant details:

- (a) is the Respondent presently debarred, suspended, proposed for debarment, or voluntarily excluded from covered transactions by any federal or state department or agency;
- (b) has the Respondent within the past three (3) years, been convicted of, or had a civil judgment rendered against the contracting party from commission of fraud, or a criminal offence 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) is the Respondent presently indicted or otherwise criminally or civilly charged by a government entity (federal, state, or local) with commission of any of the offenses detailed above; and
- (d) has the Respondent within a three (3) year period preceding the contract had one or more public transactions (federal, state, or local) terminated for cause or default.

REQUEST: Make "Debarment and Suspension" a mandatory term and condition in all applicable contracts and grants models and templates. The two (2) variations of the clause, depending on whether the contract is with a grantee or contractor, are copied below and currently included as optional terms and conditions.

With a Grantee:

E.#. Debarment and Suspension. The Grantee 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 Grant Contract been convicted of, or had a civil judgment rendered against them from commission of fraud, or a criminal offence 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 Grant Contract had one or more public transactions (federal, state, or local) terminated for cause or default.~~

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

~~With a Contractor:~~

~~E.#. 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 Grant Contract been convicted of, or had a civil judgment rendered against them from commission of fraud, or a criminal offence 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 Grant Contract had one or more public transactions (federal, state, or local) terminated for cause or default.~~

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

With a Contractor:

Added to *pro forma* contract section E.#. or as an Edison Standard Term and Condition, as appropriate:

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 offence in connection with obtaining, attempting to obtain, or performing a public (federal, state, or local) transaction or grant under a public transaction; violation of federal or state antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification, or destruction of records, making false statements, or receiving stolen property;
- c. are not presently indicted or otherwise criminally or civilly charged by a government entity (federal, state, or local) with commission of any of the offenses detailed in section b. of this certification; and
- d. have not within a three (3) year period preceding this Contract had one or more public transactions (federal, state, or local) terminated for cause or default.

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

Document comparison by Workshare Compare on Thursday, April 24, 2014
9:49:11 AM

Input:	
Document 1 ID	file://C:\Users\ba01350\Desktop\Docs for Policy Subcmte\April 30 Advisory Council Documents\Debarment 4-17-14.docx
Description	Debarment 4-17-14
Document 2 ID	file://C:\Users\ba01350\Desktop\Docs for Policy Subcmte\April 30 Advisory Council Documents\Debarment and Suspension Manual, Solicitation, and Contract Term CLEAN (revised 4.21.14).doc
Description	Debarment and Suspension Manual, Solicitation, and Contract Term CLEAN (revised 4.21.14)
Rendering set	Standard

Legend:	
<u>Insertion</u>	
Deletion	
Moved from	
<u>Moved to</u>	
Style change	
Format change	
Moved-deletion	
Inserted cell	
Deleted cell	
Moved cell	
Split/Merged cell	
Padding cell	

Statistics:	
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Insertions	77
Deletions	74
Moved from	14
Moved to	14
Style change	0
Format changed	0
Total changes	179

**DEBARMENT AND SUSPENSION PROPOSED
CHANGES TO:**

- **SECTIONS 4, 8, AND 8.4 OF THE *PROCUREMENT PROCEDURES MANUAL OF THE CENTRAL PROCUREMENT OFFICE***
- **REQUEST FOR PROPOSALS (RFP) AND REQUEST FOR QUALIFICATIONS (RFQ) TEMPLATES AND EDISON DOCUMENT CONFIGURATOR**
- **ALL APPLICABLE CONTRACTS AND GRANTS MODELS AND TEMPLATES**

CLEAN VERSION

REQUEST: Revise the *Procurement Procedures Manual of the Central Procurement Office* by adding new definitions to section 4., "Definitions, Abbreviations and Codes" and re-title Chapter 8 to "Protest, Stay of Award and Debarment and Suspension." Add a new section 8.4. related to Debarments and Suspensions and re-number subsequent sections accordingly.

4. Definitions, Abbreviations and Codes.

"Debarment" means excluding a Respondent or Vendor from participation in State procurements or contracts as a Respondent, contractor or subcontractor, as specified by the Chief Procurement Officer.

"Suspension" means a temporary or limited exclusion of a Respondent or Vendor from participation in State procurements or contracts as a Respondent, contractor or subcontractor, pending completion of a State investigation or administrative or judicial proceedings, as specified by the Chief Procurement Officer.

8.4 Debarment and Suspension.

8.4.1. Statement of Policy and Purpose.

It is the policy of the Central Procurement Office to solicit responses from Respondents who are responsive and responsible and contract with vendors who conduct their business with high ethical standards. Debarments or Suspensions may be imposed at the discretion of the Chief Procurement Officer in order to maintain the integrity of the procurement and contract management processes and to ensure public trust and confidence in the operations of the State. If a Respondent or a Vendor is debarred or suspended, the Respondent or Vendor is debarred or suspended from procurements with the State or its Agencies under the Central Procurement Office's authority, as specified by the Chief Procurement Officer. Notwithstanding the foregoing, the existence of a cause for debarment does not necessarily require that the Respondent or Vendor should be debarred or suspended. The seriousness of the Respondent's or Vendor's acts or omissions and any remedial measures or mitigating factors should be considered by the Chief Procurement Officer in making any debarment or suspension decision.

8.4.2. Grounds for Debarment or Suspension.

A Respondent or a Vendor may be debarred or suspended if the Respondent or Vendor:

- Is presently debarred, suspended, proposed for debarment, or voluntarily excluded from participation in solicitations conducted by the State, local governments within the State, states other than Tennessee, local governments in a state other than Tennessee, or the federal government;
- Within a three (3) year period preceding the contract, has been convicted of, or had a civil judgment rendered against the Respondent or Vendor, from commission of fraud, or a criminal offense in connection with obtaining, attempting to obtain, or performing a public 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;

- Is presently indicted or otherwise criminally or civilly charged by a government entity with commission of any of the offenses detailed above; and has within a three (3) year period preceding the contract had one or more public transactions terminated for cause or default;
- Has been awarded a contract pursuant to a public procurement, but has repudiated the award made by the State, local governments within the State, states other than Tennessee, local governments in a state other than Tennessee, or the federal government;
- Has willfully breached any contract with the State, local governments within the State, states other than Tennessee, local governments in a state other than Tennessee, or the federal government; or
- Has exhibited a history or pattern of failure to perform, or of unsatisfactory performance of, one or more contracts with the State, local governments within the State, states other than Tennessee, local governments in a state other than Tennessee, or the federal government.

8.4.3. *Debarment or Suspension Considerations.*

Before arriving at any debarment or suspension decision, the Chief Procurement Officer should consider factors such as the following:

- Whether the Respondent or Vendor had effective standards of conduct and internal control systems in place at the time of the activity which gave rise to debarment or suspension or had adopted such procedures prior to any investigation of the activity cited as a cause for debarment or suspension.
- Whether the Respondent or Vendor brought the activity cited as a cause for debarment or suspension to the attention of the appropriate government official in a timely manner.
- Whether the Respondent or Vendor has fully investigated the circumstances surrounding the cause for debarment or suspension and, if so, made the results of the investigation available to the Chief Procurement Officer.
- Whether the Respondent or Vendor cooperated fully with the Central Procurement Office or State Agencies during any investigation or any court or administrative action.
- Whether the Respondent or Vendor has paid or has agreed to pay all criminal, civil, or administrative liability or damages for the activity, including any investigative or administrative costs incurred by the State, and has made or agreed to make full restitution.

- Whether the Respondent or Vendor has taken appropriate disciplinary action against the individuals responsible for the activity which constitutes cause for debarment or suspension.
- Whether the Respondent or Vendor has implemented or agreed to implement remedial measures, including any identified by the State.
- Whether the Respondent or Vendor has instituted or agreed to institute new or revised review and control procedures and ethics training programs.
- Whether the Respondent or Vendor has had adequate time to eliminate the circumstances within the Respondent's or Vendor's organization that led to the cause for debarment or suspension.
- Whether the Respondent's or Vendor's management recognizes and understands the seriousness of the misconduct giving rise to the cause for debarment or suspension and has implemented programs to prevent recurrence.

The existence or nonexistence of any mitigating factors or remedial measures such as set forth in this Section 8.4.3 is not determinative of a Respondent's or Vendor's present responsibility. Accordingly, if a cause for debarment or suspension exists, the Respondent or Vendor has the burden of demonstrating, to the satisfaction of the Chief Procurement Officer, its ability to fulfill its present responsibilities and that debarment or suspension is unnecessary.

8.4.4. *Continuing Duty to Disclose.*

Respondents, or Vendors to whom a contract has been awarded, must provide immediate written notice to the State if at any time the Respondent or Vendor learns that it has failed to disclose information that its principals, affiliates or subcontractors are excluded or disqualified from contracting with the State, local governments within the State, states other than Tennessee, local governments in a state other than Tennessee, or the federal government.

8.4.5. *Written Notice.*

If the Chief Procurement Officer determines that a Respondent or a Vendor should be suspended or debarred from contracting with the State, the Chief Procurement Officer shall provide the Respondent or Vendor with written notice of the grounds for which the Respondent or Vendor is debarred or suspended from participating in State solicitations. The notice shall also specify the period of time in which the Respondent or Vendor is debarred or suspended. The Respondent or Vendor may, within seven (7) calendar days from when the notice of debarment or suspension was sent, request an informal hearing and provide a response to the CPO why the Vendor should not be debarred or suspended. The decision of the Chief Procurement Officer will be final and shall not be subject to further administrative review.

8.4.6. *Reinstatement or Reduction.*

Respondents or Vendors who seek to be reinstated after being debarred or suspended may submit a letter to the Chief Procurement Officer stating why the Respondent or Vendor should be reinstated. The Respondent's or Vendor's request for reinstatement should include the steps the Respondent or Vendor has taken to avoid the circumstances that gave rise to debarment or suspension and what action Respondent or Vendor has been taken to mitigate any harm caused by the Respondent's or the Vendor's actions. For good cause shown, the Chief Procurement Officer, at his or her sole discretion, may reduce the period of debarment or suspension or rescind the debarment or suspension, thus reinstating the Respondent or the Vendor in good standing. The Chief Procurement Officer may rescind or reduce the period or extent of debarment or suspension, upon the Respondent's or Vendor's request, supported by documentation, for the following reasons:

- Newly discovered material evidence;
- Reversal of the conviction, administrative findings or civil judgment upon which the debarment was based;
- Bona fide change in ownership or management;
- Elimination of other causes for which the debarment or suspension was imposed; or
- Other reasons the Chief Procurement Officer deems appropriate.

REQUEST: Add a question regarding debarments and suspensions to the Requests for Proposals (RFP) Template and the Requests for Qualifications (RFQ) Templates in section B., General Qualifications & Experience Items. Add or change the question regarding debarments and suspensions in Edison to be utilized for Invitations to Bid ("ITB"), as appropriate.

RFP and RFQ #:

Provide a statement and any relevant details addressing whether the Respondent is any of the following:

- (a) is presently debarred, suspended, proposed for debarment, or voluntarily excluded from covered transactions by any federal or state department or agency;
- (b) has within the past three (3) years, been convicted of, or had a civil judgment rendered against the contracting party from commission of fraud, or a criminal offence 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) is presently indicted or otherwise criminally or civilly charged by a government entity (federal, state, or local) with commission of any of the offenses detailed above; and

(d) has within a three (3) year period preceding the contract had one or more public transactions (federal, state, or local) terminated for cause or default.

Edison #:

Please answer yes or no to the following. If "yes", describe using additional pages and attach to the Response including any relevant details:

- (a) is the Respondent presently debarred, suspended, proposed for debarment, or voluntarily excluded from covered transactions by any federal or state department or agency;
- (b) has the Respondent within the past three (3) years, been convicted of, or had a civil judgment rendered against the contracting party from commission of fraud, or a criminal offence 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) is the Respondent presently indicted or otherwise criminally or civilly charged by a government entity (federal, state, or local) with commission of any of the offenses detailed above; and
- (d) has the Respondent within a three (3) year period preceding the contract had one or more public transactions (federal, state, or local) terminated for cause or default.

REQUEST: Make "Debarment and Suspension" a mandatory term and condition in all applicable contracts and grants models and templates. The two (2) variations of the clause, depending on whether the contract is with a grantee or contractor, are copied below and currently included as optional terms and conditions.

With a Grantee:

E.#. Debarment and Suspension. The Grantee 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 Grant Contract been convicted of, or had a civil judgment rendered against them from commission of fraud, or a criminal offence 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 Grant Contract had one or more public transactions (federal, state, or local) terminated for cause or default.

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

With a Contractor:

Added to *pro forma* contract section E.#. or as an Edison Standard Term and Condition, as appropriate:

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 offence in connection with obtaining, attempting to obtain, or performing a public (federal, state, or local) transaction or grant under a public transaction; violation of federal or state antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification, or destruction of records, making false statements, or receiving stolen property;
- c. are not presently indicted or otherwise criminally or civilly charged by a government entity (federal, state, or local) with commission of any of the offenses detailed in section b. of this certification; and
- d. have not within a three (3) year period preceding this Contract had one or more public transactions (federal, state, or local) terminated for cause or default.

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