Note: Agenda Revisions as distributed by email on 6/24/15 and hard copies provided to Advisory Council members at the meeting on 6/24/15

REVISED

PREREQUISITE DOCUMENTATION PROVISION FOR THE FA TEMPLATE AND GU MODEL

REQUEST: Make the two changes described below to the FA Template and GU Model.

(1) Replace the mandatory Prerequisite Documentation provision with the following:

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

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

b. The Contractor shall complete, sign, and return to the State the State-provided W-9 form. The taxpayer identification number on the W-9 form must be the same as the Contractor's Federal Employer Identification Number or Social Security Number referenced in the Contractor's Edison registration information.

(2) Add the following as an optional provision:

Option: Contractor will accept the State's Purchasing Card ("P-Card") as a form of payment
Replace the mandatory Prerequisite Documentation provision with the following if the RFP or RFQ required the awarded Respondent to accept the P-Card as a form of payment or as necessary.

C.9. Prerequisite Documentation. The Contractor shall not invoice the State under this Contract until the State has received the following, properly completed documentation. At the State's option, it may make payments to Contractor by automated clearing house ("ACH") or the State Purchasing Card ("P-Card").

a. The Contractor shall complete, sign, and present to the State:

(1) An "Authorization Agreement for Automatic Deposit Form" provided by the State. By doing so, the Contractor acknowledges and agrees that, once this form is received by the State, payments to the Contractor, under this or any other contract the Contractor has with the State of Tennessee, may be made by ACH; and

(2) An "Authorization to Receive Payments by Purchasing Card Form" provided by the State. By doing so, the Contractor agrees that payments to the Contractor under this Contract may be made using the State P-Card and Contractor will provide level III data reporting information.

b. The Contractor shall complete, sign, and return to the State the State-provided W-9 form. The taxpayer identification number on the W-9 form must be the same as the Contractor's Federal Employer Identification Number or Social Security Number referenced in the Contractor's Edison registration information.

REVISED

AUTHORIZATION TO RECEIVE PAYMENTS BY PURCHASING CARD

Authorization to Receive Payments by Purchasing Card

Name

Edison Vendor ID number

By my signature below, I agree to receive any payments due under a contract or grant contract with the State of Tennessee ("State") from the State's Purchasing Card ("P-Card"). In the event the State makes payments using the P-Card, I agree to accept these payments ~~as a level 3 merchant~~ at no cost to the State and to provide level III data reporting information.

Signed:

Contractor or Grantee's authorized signatory, date

Printed name and title of authorized signatory

REVISED

REQUEST FOR PROPOSALS (RFP) TEMPLATE

FOR PURCHASING CARD

4.9.3. No payment will be obligated or made until the relevant Contract is approved as required by applicable statutes and rules of the State of Tennessee.

4.9.3.1. The State shall not be liable for payment of any type associated with the Contract resulting from this RFP (or any amendment thereof) or responsible for any goods delivered or services rendered by the Contractor, even goods delivered or services rendered in good faith and even if the Contractor is orally directed to proceed with the delivery of goods or the rendering of services, if it occurs before the Contract start date or after the Contract end date.

4.9.3.2. All payments relating to this procurement will be made in accordance with the Payment Terms and Conditions of the Contract resulting from this RFP (refer to RFP Attachment 6.6., *Pro Forma* Contract, Section C).

~~4.9.3.3. The Respondent awarded the Contract resulting from this RFP shall accept the State's Purchasing Card ("P-Card") as a form of payment at no cost to the State.~~

4.9.3.34. If any provision of the Contract provides direct funding or reimbursement for the competitive purchase of goods or services as a component of contract performance or otherwise provides for the reimbursement of specified, actual costs, the State will employ all reasonable means and will require all such documentation that it deems necessary to ensure that such purchases were competitive and costs were reasonable, necessary, and actual. The Contractor shall provide reasonable assistance and access related to such review. Further, the State shall not remit, as funding or reimbursement pursuant to such provisions, any amounts that it determines do not represent reasonable, necessary, and actual costs.

4.10. Contractor Performance

The Contractor who is awarded a contract will be responsible for the delivery of all acceptable goods or the satisfactory completion of all services set out in this RFP (including attachments) as may be amended. All goods or services are subject to inspection and evaluation by the State. The State will employ all reasonable means to ensure that goods delivered or services rendered are in compliance with the Contract, and the Contractor must cooperate with such efforts.

4.11. Contract Amendment

After contract award, the State may request the Contractor to deliver additional goods or perform additional services within the general scope of the contract and this RFP, but beyond the specified scope of service, and for which the Contractor may be compensated. In such instances, the State will provide the Contractor a written description of the additional goods or services. The Contractor must respond to the State with a time schedule for delivering the additional goods or accomplishing the additional services based on the compensable units included in the Contractor's response to this RFP. If the State and the Contractor reach an agreement regarding the goods or services and associated compensation, such agreement must be effected by means of a contract amendment. Further, any such amendment requiring additional goods or services must be signed by both the State agency head and the Contractor and must be approved by other state officials as required by applicable statutes, rules, policies and procedures of the State of Tennessee. The Contractor must not provide additional goods or render additional services until the State has issued a written contract amendment with all required approvals.

4.12. Severability

If any provision of this RFP is declared by a court to be illegal or in conflict with any law, said decision will not affect the validity of the remaining RFP terms and provisions, and the rights and obligations of the State and Respondents will be construed and enforced as if the RFP did not contain the particular provision held to be invalid.

Option: Additional Delivery Instructions.

Revise subsections, if necessary, to provide for additional instructions for labeling and submitting the Technical Response and Cost Proposal.

3.3. **Response and Respondent Prohibitions**

Option: No Extraneous Terms and Conditions in Response

If the RFP involves information technology goods or services, insert the following as 3.3.2. and renumber the subsequent subsections **only after** consulting with the Central Procurement Office's Legal Team and obtaining the Central Procurement Office's approval.

A Respondent shall not include in its response, or after contract award, any end-user license agreement, manufacturer's terms and conditions, service guide, clickwrap agreement, shrinkwrap agreement, online terms and conditions, or other terms and conditions that supplement, modify, or contradict the terms set forth in the *pro forma* contract.

4. GENERAL CONTRACTING INFORMATION & REQUIREMENTS

4.8. **Disclosure of Response Contents**

Option: Additional Disclosure Information.

Add the following to the end of sub-section 4.8.3., if it is requested by the procuring agency and approved by the Attorney General's Office. The Attorney General's Office's approval shall be submitted with the RFP review request.

The State agrees to protect, to the fullest extent permitted by state law, the confidentiality of information expressly identified by the Respondent as confidential and proprietary, including information that would allow a person to obtain unauthorized access to confidential information or to electronic information processing systems owned by or licensed to the State.

4.9. **Contract Approval and Contract Payments**

Option: Awarded Respondent shall accept the State's Purchasing Card as a form of payment

Add the following to the end of subsection 4.9.3. only after performing market research and determining that: (a) requiring vendors to accept payments via purchasing card is generally accepted in the marketplace; and (b) requiring prospective Respondents to accept the State's Purchasing Card at no cost to the State will not materially affect competition.

The Respondent awarded the Contract resulting from this RFP shall accept the State's Purchasing Card ("P-Card") as a form of payment at no cost to the State and provide level III data reporting information.

5. EVALUATION & CONTRACT AWARD

5.1. **Evaluation Categories & Maximum Points**

The total, maximum possible points should be expressed as a numerical score, e.g., "100" (or "1,000"), so that the relative percentage of importance or emphasis of each category is readily apparent. The weight of each category should correspond to the importance to the State of each criterion. The evaluation points assigned to the Cost Proposal may NOT be less than 30% of the total points.

Option: Oral Presentation Points – Example 1.

Replace the RFP Section 5.1. table with the following if an Oral Presentation requirement is proposed. Only include this section if the Oral Presentation will be evaluated as a separate evaluation category.

REVISED

REQUEST FOR QUALIFICATIONS (RFQ) TEMPLATE

FOR PURCHASING CARD

ATTACHMENT E

STATEMENT OF CERTIFICATIONS AND ASSURANCES

An individual responding in his or her individual capacity or legally empowered to contractually bind the Respondent must complete and sign the Statement of Certifications and Assurances below as required, and this signed statement must be included with the response as required by the Request for Qualifications.

The Respondent does, hereby, expressly affirm, declare, confirm, certify, and assure ALL of the following:

1. The Respondent will comply with all of the provisions and requirements of the RFQ.
2. The Respondent will provide all specified goods or services as required by the contract awarded pursuant to this RFQ.
3. The Respondent accepts and agrees to all terms and conditions set out in the contract awarded pursuant to this RFQ.
~~4. The Respondent awarded the Contract resulting from this RFQ shall accept the State Purchasing Card ("P-Card") as a form of payment at no cost to the State.~~ Formatted: Indent: Left: 0.5", No bullet numbering, Tab stops: Not at 0.5"
~~5.~~4. The Respondent acknowledges and agrees that a contract resulting from the RFQ shall incorporate, by reference, all Response responses as a part of the contract.
~~6.~~5. The Respondent will comply, as applicable, with:
   (a) the laws of the State of Tennessee;
   (b) Title VI of the federal Civil Rights Act of 1964;
   (c) Title IX of the federal Education Amendments Act of 1972;
   (d) the Equal Employment Opportunity Act and the regulations issued there under by the federal government; and,
   (e) the Americans with Disabilities Act of 1990 and the regulations issued there under by the federal government.
~~7.~~6. To the best of the undersigned's knowledge, information or belief, the information detailed within the Response to the RFQ is accurate.
~~8.~~7. The Response submitted to the RFQ was independently prepared, without collusion, and under penalty of perjury.
~~9.~~8. No amount shall be paid directly or indirectly to an employee or official of the State of Tennessee as wages, compensation, or gifts in exchange for acting as an officer, agent, employee, subcontractor, or consultant to the Respondent in connection with the request or any potential resulting contract.
~~10.~~9. The Response submitted in response to the RFQ shall remain valid for at least 120 days subsequent to the date of the Response opening and thereafter in accordance with any contract pursuant to the RFQ.

By signature below, the signatory certifies legal authority to bind the responding entity to the provisions of this request and any contract awarded pursuant to it. The State may, at its sole discretion and at any time, require evidence documenting the signatory's authority to be personally bound or to legally bind the responding entity.

DO NOT SIGN THIS DOCUMENT IF YOU ARE NOT LEGALLY AUTHORIZED TO DO SO BY THE ENTITY RESPONDING TO THIS RFQ.

SIGNATURE & DATE: _____

PRINTED NAME & TITLE: _____

LEGAL ENTITY NAME: _____

FEIN or SSN: _____

RESPONDENT LEGAL ENTITY NAME:								
Cost Item Description	Proposed Cost					State Use ONLY		
	DATE—DATE	DATE—DATE	DATE—DATE	DATE—DATE	DATE—DATE	Sum	Evaluation Factor	Evaluation Cost (sum x factor)
REPEAT AS NECESSARY	$ / UNIT	$ / UNIT	$ / UNIT	$ / UNIT	$ / UNIT		NUMBER	
REPEAT AS NECESSARY	$ / UNIT	$ / UNIT	$ / UNIT	$ / UNIT	$ / UNIT		NUMBER	
TOTAL EVALUATION COST AMOUNT (sum of evaluation costs above): The RFP Coordinator will use this sum and the formula below to calculate the Cost Proposal Score. Numbers rounded to two (2) places to the right of the decimal point will be standard for calculations.								
lowest evaluation cost amount from all proposals / evaluation cost amount being evaluated x RFP § 5.5. NUMBER (maximum possible score) = SCORE:								
State Use – RFQ Coordinator Signature, Printed Name & Date:								

Option: Cost Proposal Format – NO Evaluation Factors Column contract

In those instances where the relative importance of ALL line item of costs is equal (for example, if payments will be only based on milestone/lump sum type payments in which the sum of all of the line item of costs would equal the anticipated cost of the contract), all Evaluation Factors would equal "1." Inasmuch, it would be acceptable to draft the Cost Proposal format without the preamble notice relating to Evaluation Factors as well as without the Evaluation Factor column or the Sum and Evaluation Factor columns.

Option: Cost Proposal & Evaluation Guide.

Revise the Cost Proposal & Evaluation Guide detailed in the model, as appropriate, to direct respondents to complete a protected spreadsheet ("protected" so that respondents may only insert proposed cost as required) provided by the state along with the RFQ in lieu of completing the Cost Proposal table illustrated in the guide.

ATTACHMENTE: STATEMENT OF CERTIFICATIONS & ASSURANCES

Option: Alternate Language if Red-Line Allowed

Modify Item 3 as follows if Red-Line *pro forma* contract submittal was permitted in RFQ Attachment B.

The Respondent accepts and agrees to all terms and conditions, except changes as set forth in the response (refer to RFQ Attachment B, Item B#NUMBER), set out in the RFQ Attachment G, *pro forma* Contract.

Option: Awarded Respondent shall accept payment via the State's Purchasing Card

Add the following as Item 4 only after performing market research and determining that: (a) requiring vendors to accept payments via purchasing card is generally accepted in the marketplace; and (b) requiring prospective Respondents to accept the State's Purchasing Card at no cost to the State will not materially affect competition.

The Respondent awarded the Contract resulting from this RFQ shall accept the State Purchasing Card ("P-Card") as a form of payment at no cost to the State and provide level III data reporting information.

Option: Alternate Language if Red-Line Allowed

Modify Item 9 as follows if the State will solicit Cost Proposals from Qualified Respondents.

Both the Technical Response and the Cost Proposal submitted in response to the RFQ shall remain valid for at least 120 days subsequent to the date of the Cost Proposal opening and thereafter in accordance with any contract pursuant to the RFQ.

ATTACHMENT F: REFERENCE QUESTIONNAIRE

Option: Questionnaire Revision.

Select one of the two different Reference Questionnaire options available below, depending on your procurement needs.

Add, delete, or revise questionnaire items as appropriate to the subject procurement so that the state has the best possible information upon which to select a Respondent for contract award.

RFQ # NUMBER REFERENCE QUESTIONNAIRE

RESPONDENT NAME: RESPONDENT NAME (completed by respondent before reference is requested)

The "respondent name" specified above, intends to submit a response to the State of Tennessee in response to the Request for Qualifications (RFQ) indicated. As a part of such response, the respondent must include a number of completed and sealed reference questionnaires (using this form).

Each individual responding to this reference questionnaire is asked to follow these instructions:

- complete this questionnaire (either using the form provided or an exact duplicate of this document);
- sign and date the completed questionnaire;
- seal the completed, signed, and dated questionnaire in a new standard #10 envelope;
- sign in ink across the sealed portion of the envelope; and
- return the sealed envelope containing the completed questionnaire directly to the respondent.

(1) What is the name of the individual, company, organization, or entity responding to this reference questionnaire?

(2) Please provide the following information about the individual completing this reference questionnaire on behalf of the above-named individual, company, organization, or entity.

STATE OF TENNESSEE
DEPARTMENT OF GENERAL SERVICES

BILL HASLAM
GOVERNOR

ROBERT E. OGLESBY, AIA
COMMISSIONER

AGENDA

ADVISORY COUNCIL ON STATE PROCUREMENT MEETING #023
WEDNESDAY, JUNE 24, 2015 – 3:00 P.M.
TN TOWER – 3rd FLOOR, NASHVILLE ROOM

	AGENDA ITEM	PAGE #
I.	Call to Order	--
II.	Approve Minutes from May 4, 2015 Meeting ..... (see attached documentation)	1
III.	New Business Proposed revisions to the following Central Procurement Office documents (see attached documentation): (1) Fee for Goods or Services Contract Template (FA) – new instructions and optional provisions ..... (2) Prerequisite Documentation Provision ..... (3) Authorization to receive payments by Purchasing Card (new document) ..... (4) Audit report provision for GR Template ..... (5) Audit report attachment for GR Template ..... (6) Audit report provisions for Governmental Grant (GG) Template ..... (7) Audit report attachment for GG Template ..... (8) Parent child attachment for GG and GR Templates ..... (9) Records provision in GG Template ..... (10) Revisions to Request for Proposals (RFP) and Request for Qualifications (RFQ) Templates for Purchasing Card ..... (11) Signature certification and authorization document ..... (12) Performance Bond Template (new document) ..... (13) Section 10.7 – Bonds, *Procurement Procedures Manual of the Central Procurement Office* ..... (14) Sections 4 and 10.8 – P-Card Purchases, *Procurement Procedures Manual of the Central Procurement Office*	 13 105 110 112 117 119 127 129 131 136 138 146 150 155
IV.	Other Business	--
V.	Adjournment	--

CENTRAL PROCUREMENT OFFICE

312 ROSA L. PARKS AVENUE, 3RD FLOOR • NASHVILLE, TENNESSEE 37243
(615) 741-1035 • FAX: (615) 741-0684 • WWW.TN.GOV/GENERALSERV/

MINUTES OF MAY 4, 2015 MEETING

MINUTES
ADVISORY COUNCIL ON STATE PROCUREMENT MEETING #022
MONDAY, MAY 4, 2015 – 3:00 P.M.
TN TOWER – 3rd FLOOR – NASHVILLE ROOM

Members in Attendance:

Melinda Parton (proxy for Jason Mumpower), Sondra Howe, Buddy Lea, Ted Hayden, Rick Peppers, Terry Anderson, Jane Greenlee

Others in Attendance:

Paul Krivacka, Don Ivancic, Bryan Chriske, Colleen Mallea, Kyle Hunter, Toni Stuart, Sandra Braber-Grove, Mark Naftel, Kaci Stewart, Charlotte McKinney.

I. **Call to Order:** Paul Krivacka, Lead Attorney/Director of Category Management, Central Procurement Office, announced that Mike Perry, Chief Procurement Officer, was unable to attend due to a death in the family and that he would chair the meeting in Mr. Perry's absence as a non-voting proxy. Mr. Krivacka called the meeting to order and recognized that four voting members were present, which constituted a quorum.

II. **Minutes from the March 31, 2015 Meeting:** Mr. Krivacka asked if there were any corrections or additions to the minutes from the March 31, 2015 meeting. Seeing none, a motion was made by Melinda Parton, Director of Management Services, Comptroller's Office, to accept the minutes as presented. The motion was seconded by Buddy Lea, Assistant Commissioner, Department of Finance and Administration. All members voted in favor – none opposed.

III. **New Business:** Mr. Krivacka then presented the following New Business agenda items.

(1) Contract Terms for the Edison Configurator

Mr. Krivacka summarized the following points with regard to the Contract Terms for the Edison Configurator:

- Mr. Krivacka explained that the Contract Terms for the Edison Configurator needed updating because so many things such as State officials, organization, terminology, and rules and procedures have changed since these terms and

conditions had been last updated.

- The Central Procurement Office ("CPO") Policy Review Subcommittee ("Subcommittee") has undertaken a sizable and much needed project—reviewing and revising all of the terms and conditions in the Edison configurator.
- As a first step, the Central Procurement Office's legal team sorted through all of the terms and conditions and identified them as contract terms or solicitation terms.
- This document contains the contract terms that will appear in contracts generated from an Invitation to Bid ("ITB").
- The goal is that at a future point the document will be organized to mirror the FA Template.
    - The mandatory section will appear first. These terms will appear in the contract unless a Rule Exception Request is obtained.
    - An optional section will follow. Procurement professionals will add any of the optional terms to the contract without obtaining a Rule Exception Request.

Mr. Krivacka asked if there were any comments or questions regarding the Contract Terms for the Edison Configurator. Seeing none, Mr. Krivacka asked for a motion to recommend the Contract Terms for the Edison Configurator as presented to the Procurement Commission for approval. Motion was made by Sondra Howe, Department of Military, and seconded by Ms. Parton. All members voted in favor – none opposed.

(2) Request for Proposal (RFP) Template

Mr. Krivacka summarized the following points with regard to the Request for Proposal (RFP) Template:

- This document contains several new sections, including:
    - A mandatory section that requires the respondent who is awarded a contract to accept the State's P-Card as a form of payment. This section also prohibits the awarded respondent from imposing any transaction costs as a condition for accepting P-Card payments.
    - An optional section for RFPs involving information technology goods or services. This section prohibits respondents from including an end-user license agreement, clickwrap agreement, online terms and conditions, or any other terms and conditions that supplement or modify the terms of the *pro forma* contract. The Subcommittee added this optional section in response to conduct by several IT contractors.
- The Subcommittee revised two parts of Attachment 6.2.
    - The first revision eliminates a reference to total value of any contracts with diversity business enterprises because Attachment 6.2 should not contain any pricing information.
    - The second revision clarifies the section on references, a section that prospective respondents consistently ask questions about.

Mr. Krivacka asked if there were any questions or comments regarding the Request for Proposal (RFP) Template.

Rick Peppers, NOI, asked if vendors should take into account the cost of credit card fees when submitting future bids for State contracts. Mr. Peppers stated that the profit margins can be quite low on some contracts and that it would be critical for vendors to build that cost into their bids. Mr. Krivacka responded that vendors would probably want to gross up their bids to cover the credit card fees and to allow for a proper profit margin. Mr. Peppers stated that the vendor may not know if the State would actually utilize the P-Card payment method in some cases and Mr. Krivacka indicated that the State was planning to significantly increase P-Card usage.

Mr. Lea added that there had been much debate in the Subcommittee on this issue and the conclusion was that most vendors would incorporate the credit card fees as a cost of doing business. Mr. Lea added that the overall benefit of increasing State P-Card usage outweighed the prospect that vendors would have to increase their proposed prices.

Mr. Peppers asked if the State had considered a dollar limit on P-Card transactions. Mr. Krivacka stated that the State had not discussed a dollar limit but would rather let the market dictate if one was needed. Mr. Krivacka continued that the State would not want P-Card usage to have a negative impact on competition or vendor profit margins. Mr. Krivacka indicated that the State wanted vendors to make money and be successful as that was good for all parties.

Mr. Lea stated that the hope was that the new policies and procedures would increase P-Card usage to the extent that a dollar limit might be needed, but at this point, P-Card usage was so low that would not be an issue.

Mr. Krivacka indicated that vendors have an opportunity at pre-solicitation conferences to raise the issue of the financial impact of accepting P-Cards, so that the State could take it into account when releasing the final solicitation.

Mr. Krivacka asked if there were any additional questions or comments regarding the Request for Proposal (RFP) Template. Seeing none, a motion was made by Mr. Lea to recommend the Request for Proposal (RFP) Template to the Procurement Commission for approval as presented. The motion was seconded by Ted Hayden, Executive Director of Compliance, State of Tennessee Real Estate Asset Management. All members voted in favor – none opposed.

(3) Request for Qualifications (RFQ) Template

Mr. Krivacka summarized the following points with regard to the Request for Qualifications (RFQ) Template:

- The Subcommittee implemented the same revisions to this document as it did to the RFP standard template.
- As a summary, these revisions include:
    - A mandatory section requiring awarded respondents to accept the P-Card as a form of payment;
    - An optional section for RFQs for information technology goods or services;
    - Deletion of a reference to contract value of any contracts with diversity business enterprises; and
    - Clarification of the section on references.

Mr. Krivacka asked if there were any questions or comments regarding the Request for Qualifications (RFQ) Template. Seeing none, Mr. Lea made a motion to recommend the Request for Qualifications (RFQ) Template as presented to the Procurement Commission for approval. The motion was seconded by Ms. Parton. All members voted in favor – none opposed.

(4) Revised Language for the Prerequisite Documentation Provision

Mr. Krivacka summarized the following points with regard to Revised Language for the Prerequisite Documentation Provision:

- Introduction of the State's new P-Card program required changes to this provision.
- The Subcommittee revised it to give the State the option to make payments to a contractor or grantee by Automated Clearing House or the State P-Card.

Mr. Krivacka asked if there were any questions or comments regarding the Revised Language for the Prerequisite Documentation Provision. Mr. Lea asked Mr. Krivacka if this language was revised by the Subcommittee to ensure that information such as the W-9 forms were included. Mr. Krivacka indicated that Mr. Lea was correct.

Seeing no other questions, a motion was made by Mr. Lea to recommend the Revised Language for the Prerequisite Documentation Provision as presented to the Procurement Commission for approval. The motion was seconded by Ms. Parton. All members voted in favor – none opposed.

(5) FA Template and Edison Configurator – Addition of lines, items, or options using Memorandum of Understanding ("MOU")

Mr. Krivacka summarized the following points with regard to the FA Template and Edison Configurator – Addition of lines, items, or options using MOU:

- This is a new provision that will be added as an option to the FA Template and Edison configurator.

- This provision allows the State to add needed goods or services that are within the Scope of the contract but that were not specifically included in the original contract.
- This provision enables the State to obtain needed goods or services without a formal amendment or an open procurement.
- Goods or services will not be added to a contract through a MOU without proper controls. The Subcommittee drafted a new section of the *Procurement Procedures Manual* that establishes a process for additions to a contract using a MOU.

Mr. Krivacka asked if there were any questions or comments regarding the FA Template and Edison Configurator – Addition of lines, items, or options using MOU.

Ms. Parton asked for clarification that this provision would only apply to adding items that fall within the scope of the contract. Mr. Krivacka indicated that was correct and addressed the following additional questions submitted by the Comptroller's Office:

1. In what contracts/contract types will this new MOU language be used?

   Mr. Krivacka indicated this language would be used primarily in statewide contracts where broad statewide needs were being met such as commodities with very short life cycles or frequent innovations. Mr. Krivacka added that agencies typically do a good job of forecasting demand for their agency term contracts and this MOU language would not be needed for most agency term contracts.

   Ms. Parton asked again for verification that any goods or services added to satisfy unanticipated agency needs would have to be within the scope of the original contract and Mr. Krivacka confirmed that she was correct.

   Terry Anderson, Department of Correction, stated that a good example would be the temporary services contract. Mr. Anderson added that an agency might have needs for a particular type of temporary services that were not specified in the original contract.

2. What are examples/situations of when adding this new MOU language would be in the State's best interest?

   Mr. Krivacka indicated that statewide contracts for commodities with very short life cycles and services with frequent changes in technology would be examples. The temporary services contract would also be a good example as well as a contract for security type services that involved frequent changes in technology.

3. Under existing procedures, line item additions that have been added via amendment and that have met certain thresholds have required Fiscal Review Committee approval. Will approval of this item change what is being submitted to the FRC for approval?

Mr. Krivacka indicated that amendments would still be sent to the Fiscal Review Committee ("FRC") for approval. Ms. Parton stated that in the past an amendment would have been needed to add additional line items to a contract and asked if this change had been discussed with FRC. Mr. Krivacka responded that he had not discussed with FRC but would be happy to do that. Mr. Lea added that when making this recommendation the Subcommittee had taken into account the valuable time of COT and the FRC and felt it would be more practical and better use of their time to review amendments to contracts with more substantive changes. Ms. Parton stated that she agreed but felt it would be a good idea to discuss the process change with FRC staff. Mr. Krivacka agreed to do that prior to the next Procurement Commission meeting.

4. Will line item additions correspond to an increase in the maximum liability for applicable contracts (e.g., Agency Term Contract)? How will increases in the maximum liability be addressed under this new MOU process?

   Mr. Krivacka indicated that if there was no increase in maximum liability, the proposed MOU process could be used. If there was an increase in maximum liability, the agency or CPO would submit an amendment to the contract.

Seeing no other questions or comments, Ms. Parton made a motion to recommend the FA Template and Edison Configurator – Addition of lines, items, or options using MOU as presented to the Procurement Commission for approval. Mr. Lea seconded the motion. All members voted in favor – none opposed.

(6) FA Template – Equal Opportunity Provision

Mr. Krivacka summarized the following points with regard to the FA Template – Equal Opportunity Provision:

- This is a new provision that will be added as an option to the FA Template and will expand protected classes in the State's non-discrimination contract provision.
- As required by a presidential executive order, this section will replace the standard non-discrimination provision in contracts that involve federal funding.

Mr. Krivacka asked if there were any questions or comments regarding the FA Template – Equal Opportunity Provision. Seeing none, Ms. Parton made a motion to recommend the FA Template – Equal Opportunity Provision as presented to the Procurement Commission for approval. Mr. Lea seconded the motion. All members voted in favor – none opposed.

(7) Contract Termination Request

Mr. Krivacka summarized the following points with regard to the Contract Termination Request:

- The Subcommittee revised this document to:
    - Clarify the justification section to allow the State to specify that it is terminating the contract either for cause or for convenience; and
    - Improving the instructional language to make the document more user friendly.

Mr. Krivacka asked if there were any questions or comments regarding the Contract Termination Request.

Mr. Lea commented that this change is a huge improvement and made a motion to recommend the Contract Termination Request as presented to the Procurement Commission for approval. Ms. Howe seconded the motion. All members voted in favor – none opposed.

(8) Signature block for formal request documents

Mr. Krivacka summarized the following points with regard to the Signature block for formal request documents:

- The CPO's templates and models page contains a section of formal request documents. Agencies use these documents to request permission to modify template language, amend a contract, or prematurely terminate a contract, among other things.
- Based on user questions and feedback, the Subcommittee revised the signature block on all formal request documents.
- The signature block now clearly indicates that an Agency Head's authorized designee may sign his or her own name.
- There will be a corresponding form to go with this whereby agencies designate who can sign for the Commissioner, who can sign in their own name on behalf of the Commissioner, and the types of CPO approval documents they can sign. The draft form was reviewed by the Subcommittee last week and there were some questions indicating that more work would be needed before the signature authorization form would be presented at the next Advisory Council meeting.

Ms. Parton asked about timing of getting the new signature authorization form tied into implementing the policy to designate. Mr. Krivacka indicated that the signature authorization form would be reviewed by the Subcommittee in May but not in time for the May 21 Procurement Commission meeting. Mr. Krivacka, however, indicated that it would be ready to present at the following Procurement Commission meeting. Ms. Parton asked if that meant there would be a month lag time between the policy to designate and the signature authorization form. Mr. Krivacka stated that Mr. Ivancic with the Comptroller's Office had mentioned that could be a problem for their office. Mr. Krivacka then stated that the CPO would ask the Procurement Commission to conditionally approve the policy to be effective upon adoption by the Procurement Commission of the signature authorization form.

Mr. Krivacka asked if there were any questions or comments regarding the Signature block for formal request documents. Seeing none, Ms. Parton made a motion to recommend the Signature block for formal request documents as presented to the Procurement Commission for approval. Mr. Lea seconded the motion. All members voted in favor – none opposed.

(9) Section 5.16 of the *Procurement Procedures Manual of the Central Procurement Office*

Mr. Krivacka summarized the following points with regard to Section 5.16 of the *Procurement Procedures Manual of the Central Procurement Office:*

- This is a new section of the *Procurement Procedures Manual* that establishes a process for additions to a contract using a MOU.
- This section is designed to ensure that the State obtains competitive pricing on any additions to a contract. The CPO must benchmark pricing for the proposed lines, items, or options.
- This section also provides for Comptroller oversight of the MOU process—the CPO must prepare a business case for additions to a contract using a MOU. The Comptroller will review the business case, and no new lines, items, or options are permitted without the Comptroller's approval.

Mr. Krivacka then read the following questions submitted by the COT:

1. Page 168 - The last bullet provides that a spreadsheet of approved MOUs will be provided to the Comptroller's Office each month. Will approved MOUs be reported to the Procurement Commission?

   Mr. Krivacka responded that the CPO would be happy to report approved MOUs to the Procurement Commission.

2. Page 168 –Signatory Authority Levels Table – There is an asterisk referencing an "individual delegated signatory authority worksheet" (See Category Specialist, Sourcing Analyst or Sourcing Account Specialist positions - up to $5 million*). What is the individual delegated signatory authority worksheet?

   Mr. Krivacka stated that the Individual Delegated Signatory Authority Worksheet was an internal CPO worksheet whereby various CPO personnel have authorized limits of authority. Sourcing Analysts, Sourcing Account Specialists, and Category Specialists can execute documents up to $5 million. Documents between $5 and $20 million must be executed at the Director or Deputy Director level, and documents over $20 million must be executed by the Chief Procurement Officer or the Deputy Chief Procurement Officer.

Mr. Krivacka asked if there were any questions or comments regarding the Section 5.16 of the *Procurement Procedures Manual of the Central Procurement Office*. Seeing none, Mr. Hayden made a motion to recommend Section 5.16 of the *Procurement Procedures Manual of the Central Procurement Office* as presented to the Procurement Commission for approval. Mr. Lea seconded the motion. All members voted in favor – none opposed.

(10) Section 6.7 of the *Procurement Procedures Manual of the Central Procurement Office*

Mr. Krivacka summarized the following points with regard to Section 6.7 of the *Procurement Procedures Manual of the Central Procurement Office:*

- Based on user feedback, the Subcommittee made two revisions to this section:
  - The first more clearly identifies the circumstances when a purchase order is unnecessary.
  - The second eliminates an outdated reference to DOHR approvals as it relates to training.

Mr. Krivacka asked if there were any questions or comments regarding Section 6.7 of the *Procurement Procedures Manual of the Central Procurement Office*. Seeing none, Ms. Howe made a motion to recommend Section 6.7 of the *Procurement Procedures Manual of the Central Procurement Office* as presented to the Procurement Commission for approval. Mr. Lea seconded the motion. All members voted in favor – none opposed.

(11) Section 10.6.13 of the *Procurement Procedures Manual of the Central Procurement Office*

Mr. Krivacka summarized the following points with regard to Section 10.6.13 of the *Procurement Procedures Manual of the Central Procurement Office:*

- The Subcommittee revised this section to permit substitutions without an amendment, provided the cost did not exceed ten percent (10%) more than the awarded item.
- Previously, the cost of a substitute could not exceed the cost of an awarded item.
- This revision reflects the reality that technology changes quickly and manufacturers may stop producing an awarded item during the contract's term. This revision allows the State to take advantage of technologically-superior substitutes that in some cases cost little more than the awarded items.

Mr. Krivacka then read the following questions submitted by COT:

1. Per the proposed substitution procedures, an amendment to the contract is not necessary to add a substituted line, provided that the substitute item's cost does

not exceed the cost of the item being substituted by more than 10%. Under existing procedures, substitutions must be equal to or less than the awarded price.

Why the change to allow for a 10% increase in cost of the substitute item?

Mr. Krivacka indicated that 10% was the amount arrived at by the Subcommittee. The Subcommittee felt that an over 10% increase would be an unreasonable substitution and the State would be better served to do an open market procurement. Mr. Krivacka explained that if the substitute item was priced at 10% more than the item on contract, but market research indicated that the item could be obtained for only 5% more, then there would be two options: go back to vendor to request a 5% concession or go to an open market procurement. Mr. Krivacka stated that market research would always be done in a substitution situation to determine the best business decision for the State.

Ms. Parton asked for confirmation that market research would be done before agreeing to any substitute items, and Mr. Krivacka indicated that she was correct. Mr. Krivacka added that the CPO would always verify that the quality or technology was the same or better than the item being substituted. Mr. Krivacka further indicated that the *Procurement Procedures Manual of the Central Procurement Office* outlined the criteria for accepting a substitution and that those guidelines would be followed.

Mr. Krivacka then read the second question submitted by COT:

2. How will the new rate(s) of the substitute item(s) be established? Will there be benchmarking of the rates similar to the MOU process?

   Mr. Krivacka stated that there would be benchmarking of the rates similar to the MOU process. Mr. Krivacka indicated that the baseline would always be the original cost of the item being substituted. As long as the cost was no more than 10% above the original cost and the quality, technology or functionality was equivalent or better, the item would be eligible as a substitute.

Mr. Krivacka asked if there were any additional questions or comments regarding Section 10.6.13 of the *Procurement Procedures Manual of the Central Procurement Office*.

Ms. Parton asked if there was a timing requirement after the solicitation was awarded. Mr. Krivacka responded that typically the State has one-year firm pricing and would normally not consider substitution until after the first year of the contract and then it would be on a case-by-case basis if it was in the best interest of the State.

Seeing no other questions or comments, Mr. Lea made a motion to recommend Section 10.6.13 of the *Procurement Procedures Manual of the Central Procurement*

Office as presented to the Procurement Commission for approval. Mr. Hayden seconded the motion. All members voted in favor – none opposed.

IV. Adjournment: Seeing no other business, a motion for adjournment was made by Mr. Hayden and seconded by Ms. Parton. All members voted in favor – none opposed.

FEE FOR GOODS OR SERVICES CONTRACT TEMPLATE (FA) – NEW INSTRUCTIONS AND OPTIONAL PROVISIONS

REDLINE VERSION

FEE FOR GOODS OR SERVICES CONTRACT TEMPLATE (FA)

This template prescribes the format and content for contracts involving the purchase of goods or services from an individual, business, or non-profit. This contract template requires the expenditure of State funds.

Procurement professionals shall adhere to this template with revisions only as instructions permit. Changes to this template require a Rule Exception as set forth in Tenn. Comp. R. & Regs. 0690-03-01-.17 and the *Procurement Procedures Manual of the Central Procurement Office*.

Procurement professionals shall complete text fields and follow, replace, or otherwise address red instructional text (*e.g.*, State Agency Name, amount, will/will not) as indicated with appropriate font and color. The standard FA Template begins on the following page. Additional instructions, considerations, and options follow the standard FA Template.

CONTRACT

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

Begin Date	End Date	Agency Tracking #	Edison Record ID

Contractor Legal Entity Name	Edison Vendor ID

Goods or Services Caption (one line only)

~~Subrecipient or~~ Contractor ☒ ~~Subrecipient~~ Contractor	CFDA #

Funding —

FY	State	Federal	Interdepartmental	Other	TOTAL Contract Amount
TOTAL:					

Contractor Ownership Characteristics:

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

☐ Woman Business Enterprise (WBE)

☐ Tennessee Service Disabled Veteran Enterprise (SDVBE)

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

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

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

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

Speed Chart (optional)	Account Code (optional)

CONTRACT
BETWEEN THE STATE OF TENNESSEE,
STATE AGENCY NAME
AND
CONTRACTOR NAME

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

The Contractor is a/an Individual, For-Profit Corporation, Non-Profit Corporation, Special Purpose Corporation Or Association, Partnership, Joint Venture, Or Limited Liability Company.
Contractor Place of Incorporation or Organization: Location
Contractor Edison Registration ID # Number

A. SCOPE:

A.1. The Contractor shall provide all goods or services and deliverables as required, described, and detailed below and shall meet all service and delivery timelines as specified by this Contract.

A.#. Specify the goods, services, deliverables, technical specifications, timelines, and delivery requirements that the Contractor must provide and meet (sufficient detail is required to ensure contractor accountability and definitive results).

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

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

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

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

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

B. TERM OF CONTRACT:

(5) Customer account number (assigned by the Contractor to the above-referenced Customer);
(6) Contractor name;
(7) Contractor Tennessee Edison registration ID number;
(8) Contractor contact for invoice questions (name, phone, or email);
(9) Contractor remittance address;
(10) Description of delivered goods or services provided and invoiced, including identifying information as applicable;
(11) Number of delivered or completed units, increments, hours, or days as applicable, of each good or service invoiced;
(12) Applicable payment methodology (as stipulated in Section C.3.) of each good or service invoiced;
(13) Amount due for each compensable unit of good or service; and
(14) Total amount due for the invoice period.

b. Contractor's invoices shall:

(1) Only include charges for goods delivered or services provided as described in Section A and in accordance with payment terms and conditions set forth in Section C;
(2) Only be submitted for goods delivered or services completed and shall not include any charge for future goods to be delivered or services to be performed;
(3) Not include Contractor's taxes, which includes without limitation Contractor's sales and use tax, excise taxes, franchise taxes, real or personal property taxes, or income taxes; and
(4) Include shipping or delivery charges only as authorized in this Contract.

c. The timeframe for payment (or any discounts) begins only when the State is in receipt of an invoice that meets the minimum requirements of this Section C.5.

C.6. Payment of Invoice. A payment by the State shall not prejudice the State's right to object to or question any payment, invoice, or other matter. A payment by the State shall not be construed as acceptance of goods delivered, any part of the services provided, or as approval of any amount invoiced.

C.7. Invoice Reductions. The Contractor's invoice shall be subject to reduction for amounts included in any invoice or payment that is determined by the State, on the basis of audits conducted in accordance with the terms of this Contract, to not constitute proper compensation for goods delivered or services provided.

C.8. Deductions. The State reserves the right to deduct from amounts, which are or shall become due and payable to the Contractor under this or any contract between the Contractor and the State of Tennessee, any amounts that are or shall become due and payable to the State of Tennessee by the Contractor.

C.9. Prerequisite Documentation. The Contractor shall not invoice the State under this Contract until the State has received the following, properly completed documentation. At the State's option, it may make payments to Contractor by automated clearing house ("ACH") or the State Purchasing Card ("P-Card").

a. The Contractor shall complete, sign, and present to the State:

(1) An "Authorization Agreement for Automatic Deposit Form" provided by the State. By doing so, the Contractor acknowledges and agrees that, once this form is received by the State, payments to the Contractor, under this or any other contract the Contractor has with the State of Tennessee, may be made by ACH; and

(2) An "Authorization to Receive Payments by Purchasing Card Form" provided by the State. By doing so, the Contractor agrees that payments to the Contractor under this Contract may be made using the State P-Card.

This Contract shall be effective on DATE ("Effective Date") and extend for a period of number (#) months after the Effective Date ("Term"). The State shall have no obligation for goods or services provided by the Contractor prior to the Effective Date.

C. PAYMENT TERMS AND CONDITIONS:

C.1. Maximum Liability. In no event shall the maximum liability of the State under this Contract exceed Written Dollar Amount ($Number) ("Maximum Liability"). This Contract does not grant the Contractor any exclusive rights. The State does not guarantee that it will buy any minimum quantity of goods or services under this Contract. Subject to the terms and conditions of this Contract, the Contractor will only be paid for goods or services provided under this Contract after a purchase order is issued to Contractor by the State or as otherwise specified by this Contract.

C.2. Compensation Firm. The payment methodology in Section C.3. of this Contract shall constitute the entire compensation due the Contractor for all goods or services provided under this Contract regardless of the difficulty, materials or equipment required. The payment methodology includes all applicable taxes, fees, overhead, and all other direct and indirect costs incurred or to be incurred by the Contractor.

C.3. Payment Methodology. The Contractor shall be compensated based on the payment methodology for goods or services authorized by the State in a total amount as set forth in Section C.1.

a. The Contractor's compensation shall be contingent upon the satisfactory provision of goods or services as set forth in Section A.

b. The Contractor shall be compensated based upon the following payment methodology:

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

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

C.4. Travel Compensation. The Contractor shall not be compensated or reimbursed for travel time, travel expenses, meals, or lodging.

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

State Agency Billing Address

a. Each invoice, on Contractor's letterhead, shall clearly and accurately detail all of the following information (calculations must be extended and totaled correctly):

(1) Invoice number (assigned by the Contractor);
(2) Invoice date;
(3) Contract number (assigned by the State);
(4) Customer account name: State Agency & Division Name;

b. The Contractor shall complete, sign, and return to the State the State-provided W-9 form. The taxpayer identification number on the W-9 form must be the same as the Contractor's Federal Employer Identification Number or Social Security Number referenced in the Contractor's Edison registration information.

D. MANDATORY TERMS AND CONDITIONS:

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

D.2. Communications and Contacts. All instructions, notices, consents, demands, or other communications required or contemplated by this Contract shall be in writing and shall be made by certified, first class mail, return receipt requested and postage prepaid, by overnight courier service with an asset tracking system, or by email or facsimile transmission with recipient confirmation. All communications, regardless of method of transmission, shall be addressed to the respective Party at the appropriate mailing address, facsimile number, or email address as stated below or any other address provided in writing by a Party.

The State:

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

The Contractor:

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

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

D.3. Modification and Amendment. This Contract may be modified only by a written amendment signed by all Parties and approved by all applicable State officials.

D.4. Subject to Funds Availability. The Contract is subject to the appropriation and availability of State or federal funds. In the event that the funds are not appropriated or are otherwise unavailable, the State reserves the right to terminate this Contract upon written notice to the Contractor. The State's exercise of its right to terminate this Contract shall not constitute a breach of Contract by the State. Upon receipt of the written notice, the Contractor shall cease all work associated with the Contract. If the State terminates this Contract due to lack of funds availability, the Contractor shall be entitled to compensation for all conforming goods requested and accepted by the State and for all satisfactory and authorized services completed as of the termination date. Should the State exercise its right to terminate this Contract due to unavailability of funds, the Contractor shall have no right to recover from the State any actual, general, special, incidental, consequential, or any other damages of any description or amount.

D.5. Termination for Convenience. The State may terminate this Contract for convenience without cause and for any reason. The State shall give the Contractor at least thirty (30) days written notice before the termination date. The Contractor shall be entitled to compensation for all conforming goods delivered and accepted by the State or for satisfactory, authorized services completed as of the termination date. In no event shall the State be liable to the Contractor for compensation for any goods neither requested nor accepted by the State or for any services neither requested by the State nor satisfactorily performed by the Contractor. In no event shall the State's exercise of its right to terminate this Contract for convenience relieve the Contractor of any liability to the State for any damages or claims arising under this Contract.

D.6. Termination for Cause. If the Contractor fails to properly perform its obligations under this Contract in a timely or proper manner, or if the Contractor materially violates any terms of this Contract ("Breach Condition"),the State shall have the right to immediately terminate the Contract and withhold payments in excess of compensation for completed services or provided goods. Notwithstanding the above, the Contractor shall not be relieved of liability to the State for damages sustained by virtue of any Breach Condition and the State may seek other remedies allowed at law or in equity for breach of this Contract.

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

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

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

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

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

a. The Contractor agrees that the Contractor shall not knowingly utilize the services of an illegal immigrant in the performance of this Contract and shall not knowingly utilize the services of any subcontractor who will utilize the services of an illegal immigrant in the performance of this Contract. The Contractor shall reaffirm this attestation, in writing, by submitting to the State a completed and signed copy of the document at Attachment Reference, semi-annually during the Term. If the Contractor is a party to more than one contract with the State, the Contractor may submit one attestation that applies to all contracts with the State. All Contractor attestations shall be maintained by the Contractor and made available to State officials upon request.

b. Prior to the use of any subcontractor in the performance of this Contract, and semi-annually thereafter, during the Term, the Contractor shall obtain and retain a current, written attestation that the subcontractor shall not knowingly utilize the services of an illegal immigrant to perform work under this Contract and shall not knowingly utilize the services of any subcontractor who will utilize the services of an illegal immigrant to perform work under this Contract. Attestations obtained from subcontractors shall be maintained by the Contractor and made available to State officials upon request.

c. The Contractor shall maintain records for all personnel used in the performance of this Contract. Contractor's records shall be subject to review and random inspection at any reasonable time upon reasonable notice by the State.

d. The Contractor understands and agrees that failure to comply with this section will be subject to the sanctions of Tenn. Code Ann. § 12-3-309 for acts or omissions occurring after its effective date.

e. For purposes of this Contract, "illegal immigrant" shall be defined as any person who is not: (i) a United States citizen; (ii) a Lawful Permanent Resident; (iii) a person whose physical presence in the United States is authorized; (iv) allowed by the federal Department of Homeland Security and who, under federal immigration laws or regulations, is authorized to be employed in the U.S.; or (v) is otherwise authorized to provide services under the Contract.

D.11. Records. The Contractor shall maintain documentation for all charges under this Contract. The books, records, and documents of the Contractor, for work performed or money received under this Contract, shall be maintained for a period of five (5) full years from the date of the final payment and shall be subject to audit at any reasonable time and upon reasonable notice by the State, the Comptroller of the Treasury, or their duly appointed representatives. The financial statements shall be prepared in accordance with generally accepted accounting principles.

D.12. Monitoring. The Contractor's activities conducted and records maintained pursuant to this Contract shall be subject to monitoring and evaluation by the State, the Comptroller of the Treasury, or their duly appointed representatives.

D.13. Progress Reports. The Contractor shall submit brief, periodic, progress reports to the State as requested.

D.14. Strict Performance. Failure by any Party to this Contract to require, in any one or more cases, the strict performance of any of the terms, covenants, conditions, or provisions of this Contract shall not be construed as a waiver or relinquishment of any term, covenant, condition, or provision. No term or condition of this Contract shall be held to be waived, modified, or deleted except by a written amendment signed by the Parties.

D.15. Independent Contractor. The Parties shall not act as employees, partners, joint venturers, or associates of one another. The Parties are independent contracting entities. Nothing in this Contract shall be construed to create an employer/employee relationship or to allow either Party to exercise control or direction over the manner or method by which the other transacts its business affairs or provides its usual services. The employees or agents of one Party are not employees or agents of the other Party.

D.16 Patient Protection and Affordable Care Act. The Contractor agrees that it will be responsible for compliance with the Patient Protection and Affordable Care Act ("PPACA") with respect to itself and its employees, including any obligation to report health insurance coverage, provide health insurance coverage, or pay any financial assessment, tax, or penalty for not providing health insurance. The Contractor shall indemnify the State and hold it harmless for any costs to the State arising from Contractor's failure to fulfill its PPACA responsibilities for itself or its employees.

D.17. Limitation of State's Liability. The State shall have no liability except as specifically provided in this Contract. In no event will the State be liable to the Contractor or any other party for any lost revenues, lost profits, loss of business, decrease in the value of any securities or cash position, time, money, goodwill, or any indirect, special, incidental, punitive, exemplary or consequential damages of any nature, whether based on warranty, contract, statute, regulation, tort (including but not limited to negligence), or any other legal theory that may arise under this Contract or otherwise. The State's total liability under this Contract (including any exhibits, schedules, amendments or other attachments to the Contract) or otherwise shall under no circumstances exceed the Maximum Liability. This limitation of liability is cumulative and not per incident.

D.18. Limitation of Contractor's Liability. In accordance with Tenn. Code Ann. § 12-3-701, the Contractor's liability for all claims arising under this Contract shall be limited to an amount equal to two (2) times the Maximum Liability amount detailed in Section C.1. and as may be amended, PROVIDED THAT in no event shall this Section limit the liability of the Contractor for: (i) intellectual property or any Contractor indemnity obligations for infringement for third-party intellectual property rights; (ii) any claims covered by any specific provision in the Contract providing for liquidated damages; or (iii) any claims for intentional torts, criminal acts, fraudulent conduct, or acts or omissions that result in personal injuries or death.

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

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

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

a. Contractor warrants to the State that it is familiar with the requirements of the Privacy Rules, and will comply with all applicable requirements in the course of this Contract.

b. Contractor warrants that it will cooperate with the State, including cooperation and coordination with State privacy officials and other compliance officers required by the Privacy Rules, in the course of performance of the Contract so that both parties will be in compliance with the Privacy Rules.

c. The State and the Contractor will sign documents, including but not limited to business associate agreements, as required by the Privacy Rules and that are reasonably necessary to keep the State and Contractor in compliance with the Privacy Rules. This provision shall not apply if information received or delivered by the parties under this Contract is NOT "protected health information" as defined by the Privacy Rules, or if the Privacy Rules permit the parties to receive or deliver the information without entering into a business associate agreement or signing another document.

d. The Contractor will indemnify the State and hold it harmless for any violation by the Contractor or its subcontractors of the Privacy Rules. This includes the costs of responding to a breach of protected health information, the costs of responding to a

government enforcement action related to the breach, and any fines, penalties, or damages paid by the State because of the violation.

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

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

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

a. are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any federal or state department or agency;

b. have not within a three (3) year period preceding this Contract been convicted of, or had a civil judgment rendered against them from commission of fraud, or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, state, or local) transaction or grant under a public transaction; violation of federal or state antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification, or destruction of records, making false statements, or receiving stolen property;

c. are not presently indicted or otherwise criminally or civilly charged by a government entity (federal, state, or local) with commission of any of the offenses detailed in section b. of this certification; and

d. have not within a three (3) year period preceding this Contract had one or more public transactions (federal, state, or local) terminated for cause or default.

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

D.24. Force Majeure. "Force Majeure Event" means fire, flood, earthquake, elements of nature or acts of God, wars, riots, civil disorders, rebellions or revolutions, acts of terrorism or any other similar cause beyond the reasonable control of the Party except to the extent that the non-performing Party is at fault in failing to prevent or causing the default or delay, and provided that the default or delay cannot reasonably be circumvented by the non-performing Party through the use of alternate sources, workaround plans or other means. A strike, lockout or labor dispute shall not excuse either Party from its obligations under this Contract. Except as set forth in this Section, any failure or delay by a Party in the performance of its obligations under this Contract arising from a Force Majeure Event is not a default under this Contract or grounds for termination. The non-performing Party will be excused from performing those obligations directly affected by the Force Majeure Event, and only for as long as the Force Majeure Event continues, provided that the Party continues to use diligent, good faith efforts to resume performance without delay. The occurrence of a Force Majeure Event affecting Contractor's representatives, suppliers, subcontractors, customers or business apart from this Contract is not a Force Majeure Event under this Contract. Contractor will promptly notify the State of any delay caused by a Force Majeure Event (to be

confirmed in a written notice to the State within one (1) day of the inception of the delay) that a Force Majeure Event has occurred, and will describe in reasonable detail the nature of the Force Majeure Event. If any Force Majeure Event results in a delay in Contractor's performance longer than forty-eight (48) hours, the State may, upon notice to Contractor: (a) cease payment of the fees until Contractor resumes performance of the affected obligations; or (b) immediately terminate this Contract or any purchase order, in whole or in part, without further payment except for fees then due and payable. Contractor will not increase its charges under this Contract or charge the State any fees other than those provided for in this Contract as the result of a Force Majeure Event.

D.25. State and Federal Compliance. The Contractor shall comply with all applicable state and federal laws and regulations in the performance of this Contract.

D.26. Governing Law. This Contract shall be governed by and construed in accordance with the laws of the State of Tennessee. The Tennessee Claims Commission or the state or federal courts in Tennessee shall be the venue for all claims, disputes, or disagreements arising under this Contract. The Contractor acknowledges and agrees that any rights, claims, or remedies against the State of Tennessee or its employees arising under this Contract shall be subject to and limited to those rights and remedies available under Tenn. Code Ann. §§ 9-8-101 - 407.

D.27. Entire Agreement. This Contract is complete and contains the entire understanding between the Parties relating to its subject matter, including all the terms and conditions of the Parties' agreement. This Contract supersedes any and all prior understandings, representations, negotiations, and agreements between the Parties, whether written or oral.

D.28. Severability. If any terms and conditions of this Contract are held to be invalid or unenforceable as a matter of law, the other terms and conditions of this Contract shall not be affected and shall remain in full force and effect. The terms and conditions of this Contract are severable.

D.29. Headings. Section headings of this Contract are for reference purposes only and shall not be construed as part of this Contract.

D.30. Incorporation of Additional Documents. Each of the following documents is included as a part of this Contract by reference. In the event of a discrepancy or ambiguity regarding the Contractor's duties, responsibilities, and performance under this Contract, these items shall govern in order of precedence below:

a. any amendment to this Contract, with the latter in time controlling over any earlier amendments;
b. this Contract with any attachments or exhibits (excluding the items listed at subsections c. through f., below), which includes [identify attachments and exhibits];
c. any clarifications of or addenda to the Contractor's proposal seeking this Contract;
d. the State solicitation, as may be amended, requesting responses in competition for this Contract;
e. any technical specifications provided to proposers during the procurement process to award this Contract; and,
f. the Contractor's response seeking this Contract.

E. SPECIAL TERMS AND CONDITIONS:

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

Add Appropriate and Contingently Required Special Terms & Conditions (refer to instructions for details)

IN WITNESS WHEREOF,

CONTRACTOR LEGAL ENTITY NAME:

CONTRACTOR SIGNATURE **DATE**

PRINTED NAME AND TITLE OF CONTRACTOR SIGNATORY (above)

STATE AGENCY NAME:

NAME & TITLE **DATE**

ATTACHMENT REFERENCE

ATTESTATION RE PERSONNEL USED IN CONTRACT PERFORMANCE

If the attestation applies to more than one contract, modify this row accordingly. **SUBJECT CONTRACT NUMBER:**	
CONTRACTOR LEGAL ENTITY NAME:	
FEDERAL EMPLOYER IDENTIFICATION NUMBER: (or Social Security Number)	

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

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

CONTRACTOR SIGNATURE

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

PRINTED NAME AND TITLE OF SIGNATORY

DATE OF ATTESTATION

FA TEMPLATE INSTRUCTIONS, CONSIDERATIONS, and OPTIONS

The following pages contain additional instructions, considerations, and options. Replace or modify the Standard FA Template by including the following content as appropriate. Content included with a box around it is intended to be inserted into the standard FA Template, as appropriate.

Procurement professionals should complete text fields and follow, replace, or otherwise address red instructional text (*e.g.*, State Agency Name, amount, will/will not) as indicated and with conforming font and color.

SUMMARY COVER SHEET

A summary cover sheet properly completed and in accordance with the Template is required for every copy of the contracting document. Complete summary cover sheet fields as indicated within the Template and the following field descriptions.

Agency Tracking # — a unique number comprised of: 5-digit business unit # + unique, 5-digit #
example: 31707-12345

Funding — amounts by fiscal year & funding source and with row & column totals;
the sum of the TOTAL Contract Amount column (the grand total amount for all fiscal years & all sources of funding) MUST equal the contract maximum liability

Contractor Ownership Characteristics

Minority Business Enterprise (MBE): select if a minority-owned business, which means a continuing, independent, for profit business that performs a commercially useful function, and is at least fifty-one percent (51%) owned and controlled by one (1) or more minority individuals who are impeded from normal entry into the economic mainstream because of past practices of discrimination based on race or ethnic background.

Identify the applicable Minority if known. Minority means a person who is a citizen or lawful permanent resident of the United States and who is:

(A) African American, a person having origins in any of the black racial groups of Africa;

(B) Asian American, a person having origins in any of the original peoples of the Far East, Southeast Asia, the Indian subcontinent, or the Pacific Islands;

(C) Hispanic American, a person of Mexican, Puerto Rican, Cuban, Central or South American, or other Spanish culture or origin, regardless of race;

(D) Native American, a person having origins in any of the original peoples of North America.

Woman Business Enterprise (WBE): select if a woman-owned business, which means a woman-owned business that is a continuing, independent, for profit business that performs a commercially useful function, and is at least fifty-one percent (51%) owned and controlled by one or more women; or, in the case of any publicly owned business, at least fifty-one-percent (51%) of the stock of which is owned and controlled by one (1) or more women and whose management and daily business operations are under the control of one (1) or more women.

Tennessee Service Disabled Veteran Enterprise (SDVBE): select if a Tennessee service-disabled veteran-owned business, which means a service-disabled veteran-owned business that is a continuing, independent, for profit business located in this state that performs a commercially useful function and:

(A) Is at least fifty-one percent (51%) owned and controlled by one (1) or more service-disabled veterans;

(B) In the case of a business solely owned by one (1) service-disabled veteran and such person's spouse, is at least fifty percent (50%) owned and controlled by the service-disabled veteran; or

(C) In the case of any publicly owned business, at least fifty-one percent (51%) of the stock of which is owned and controlled by one (1) or more service-disabled veterans and whose management and daily business operations are under the control of one (1) or more service-disabled veteran.

Tennessee Small Business Enterprise (SBE): select if a Tennessee small business, which means a business that is a continuing, independent, for profit business which performs a commercially useful function with residence in Tennessee and has gross receipts of no more than ten million dollars ($10,000,000) averaged over a three-year period or employs no more than ninety-nine (99) persons on a full-time basis.

Other: select if none of the above options. There is an option to provide additional details here, e.g., type governmental entity in the space provided if the Contractor is a governmental entity. For additional guidance, please visit: http://www.tn.gov/businessopp/program_elig.html.

PREAMBLE

Add additional information only if necessary.

In a contract with an individual, delete the Template preamble phrase, "Place of Incorporation or Organization: Location."

A. SCOPE OF SERVICES OR SPECIFICATIONS OF GOODS ("Scope")

Do NOT include payment terms in the Scope. Define any Contractor milestones without reference to payment. Section C should address payment at milestones.

Draft the Scope to clearly, specifically, and definitively detail contractor duties, responsibilities, and associated performance requirements and describe, in detail, the Scope and deliverable requirements and all related specifications. Include a definition section, key performance indicators, or any other specifications as needed.

It is the contracting state agency's responsibility to adequately draft a Scope, and oversight examiners will rely on the contracting state agency head's signature on the contract document as certification and assurance that the proposed Scope is clear and correct, adequate for all legal and enforcement purposes, and sufficiently detailed to ensure contractor accountability and results.

Option: Warranty when Contractor is reselling goods

Replace the standard warranty provision with the following to require Contractor to provide a warranty of the greater of one year or to pass through the original manufacturer's warranty.

A.#. Warranty for Resale of Goods. For all goods provided under this Contract, Contractor shall pass-through to the State any manufacturers' warranties. In addition, for a period of one (1) year after any receipt of any goods under this Contract, Contractor expressly warrants that all such goods are: (a) merchantable; (b) of good quality and workmanship; (c) free from defects; (d) in conformity with the intended purpose and for the particular purpose for which they were designed; and (e) in conformity with Contractor's samples, if any.

Option: Warranty period that is shorter than the Term

Replace the standard warranty provision with the following to obtain a warranty period that is shorter than the Term. The Contract shall not include a warranty period of less than one (1) year.

A.#. Warranty. Contractor represents and warrants that the term of the warranty ("Warranty Period") shall be the greater of: (a) number (#) months or years after the provision and acceptance by the State of goods or services provided by Contractor, or (b) any other warranty generally offered by Contractor, its suppliers, or manufacturers to customers of its goods or services. During the Warranty Period, any nonconformance of the goods or services to the terms and conditions of

this Contract shall constitute a "Defect" and shall be considered "Defective." If Contractor receives notice of a Defect during the Warranty Period, then Contractor shall correct the Defect at no additional charge.

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

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

Option: Acceptable Alternative to *Change Orders*.

The RFP Contract Amendment section does not preclude the State from "locking in" payment rates for any additional work per potential contract amendments. Therefore, if deemed appropriate, add the following sections to the *pro forma* contract Scope:

#. Correction of Deficiencies. Any corrections of deficiencies relating to the Contract Scope of Services requirements or deliverables and any investigation necessary to determine the source of such deficiencies shall be completed by the Contractor at no cost to the State.

AND...

#. Additional Work. The State may request, at its sole discretion, additional work involving the enhancement or modification of a deliverable under the Contract Scope, provided that this Contract is amended, pursuant to section #. Remuneration for any such additional work shall be based on the applicable "contingent," payment rate(s) detailed in Section C.3 of this Contract.

AND...

#. Contingent Rates— In accordance with section REFERENCE of this Contract, The State may request and the Contractor may agree to perform additional work involving the enhancement or modification of deliverables under the Contract Scope of Services, provided that this Contract is amended to require such work.

i. Remuneration for any such additional work shall be based on the applicable contingent, payment rate(s) detailed below and as approved by the State.

SERVICE	**AMOUNT PER HOUR**
SERVICE DESCRIPTION	$ AMOUNT

ii. The Contractor shall not be compensated for travel time to the primary location of service provision.

Option: *Change Orders*.

The incorporation of *pro forma* contract language permitting Change Orders will be stringently considered and may require oversight authority executive-level approval prior to a solicitation being approved for release.

Propose a Change Order process within a draft document only as appropriate, and provide clear justification as to why it is deemed necessary. **At minimum, draft the solicitation document to include: (1)** appropriate RFP text permitting Change Orders within specified parameters; **(2)** a clear,

comprehensive change order process in the *pro forma* contract's scope; and **(3)** clear, non-conflicting payment provisions in the *pro forma* contract's payment methodology section.

(1) Add the following to the solicitation document after RFP Section 4.11:

> Notwithstanding the above, *pro forma* Contract section REFERENCE provides for limited service "change orders" without a formal Contract Amendment upon the documented mutual agreement by the Parties.

(2) Add the following to the *pro forma* contract's scope:

> A.#. The State may, at its sole discretion and with written notice to the Contractor, request changes in the Scope that are necessary but were inadvertently unspecified in this Contract.
>
> a. Change Order Creation— After receipt of a written request for additional services from the State, the Contractor shall respond to the State, within a maximum of ten (10) business days, with a written proposal for completing the service. Contractor's proposal must specify:
>
> (1) the effect, if any, of implementing the requested change(s) on all other services required under this Contract;
>
> (2) the specific effort involved in completing the change(s);
>
> (3) the expected schedule for completing the change(s);
>
> (4) the maximum number of person hours required for the change(s); and
>
> (5) the maximum cost for the change(s)— this maximum cost shall in no instance exceed the product of the person hours required multiplied by the appropriate payment rate proposed for such work.
>
> The Contractor shall not perform any additional service until the State has approved the proposal. If approved, the State will sign the proposal, and it shall constitute a Change Order between the Contract Parties pertaining to the specified change(s) and shall be incorporated, hereby, as a part of this Contract.
>
> b. Change Order Performance— Subsequent to creation of a Change Order, the Contractor shall complete the required services. The State will be the sole judge of the acceptable completion of work and, upon such determination, shall provide the Contractor written approval.
>
> c. Change Order Remuneration— The State will remunerate the Contractor only for acceptable work. All acceptable work performed pursuant to an approved Change Order, without a formal amendment of this Contract, shall be remunerated in accordance with and further limited by Contract Section C.3.c., PROVIDED THAT, the State shall be liable to the Contractor only for the cost of the actual goods or services provided to complete the necessary work, not to exceed the maximum cost for the change detailed in the Change Order. In no instance shall the State be liable to the Contractor for any amount exceeding the maximum cost specified by the Change Order authorizing the goods or services. Upon State approval of the work, the Contractor shall invoice the State in accordance with the relevant provisions of this Contract.

(3) Add the following to the *pro forma* contract's payment methodology section:

[C.3.]x. The Contractor shall be compensated for changes requested and performed pursuant to Contract Section Reference, without a formal amendment of this Contract based upon the payment rates detailed in the schedule below and as agreed pursuant to Section Reference, PROVIDED THAT compensation to the Contractor for such "change order" work shall not exceed NUMBER NOT TO EXCEED SEVEN PERCENT (Number %) of the sum of milestone payment rates detailed in Section C.3.b., above (which is the total cost for the milestones and associated deliverables set forth in Contract Sections A.3., through A.7.). If, at any point during the Term, the State determines that the cost of necessary "change order" work would exceed the maximum amount, the State may amend this Contract to address the need.

Service Description	**Amount** (per compensable increment)
	$ Amount per hour
NOTE: The Contractor shall not be compensated for travel time to the primary location of service provision.	

B. TERM OF CONTRACT

Procurement professionals should obtain the Contractor's signature first before submitting the Contract for state signatures or approvals. Procurement professionals shall obtain all required approvals prior to the Effective Date written in the Contract and submit it for Central Procurement Office approval no less than thirty (30) days before the Effective Date.

If a signed contract is not submitted to the Central Procurement Office at least thirty (30) days prior to the Effective Date, then the CPO may request that the Contract be resubmitted with a new Effective Date or request that the procurement professional provide a written explanation as to why the Contract was submitted less than thirty (30) days before the Effective Date. In no event shall the Contractor deliver goods or perform services prior to the Effective Date.

Procurement professionals should plan procurements and draft contracts with a Term of no longer than sixty (60) months, including extensions or renewals. Contracts requiring a Term greater than sixty (60) months shall require an approved Rule Exception Request.

Option: Renewal or Extension Term

To reserve the right to renew or extend the Term, change the section designation under B. to B.1., and add either or both of the following sections.

B.#. Renewal Options. This Contract may be renewed upon satisfactory completion of the Term. The State reserves the right to execute up to number (#) renewal options under the same terms and conditions for a period not to exceed twelve (12) months each by the State, at the State's sole option. In no event, however, shall the maximum Term, including all renewals or extensions, exceed a total of sixty (60) months.

B.#. Term Extension. The State may extend the Term an additional period of time, not to exceed one hundred-eighty (180) days beyond the expiration date of this Contract, under the same terms and conditions, at the State's sole option. In no event, however, shall the maximum Term, including all renewals or extensions, exceed a total of sixty (60) months.

C. PAYMENT TERMS AND CONDITIONS

Revise Payment Terms and Conditions sections only as instructed.

Option: Statewide Contract Estimated Liability.

For statewide contracts with no Maximum Liability, replace C.1. with the following:

C.1. Estimated Liability. The total purchases of any goods or services under the Contract are not known. The State estimates the purchases during the Term shall be DOLLAR AMOUNT ($NUMBER) ("Estimated Liability"). This Contract does not grant the Contractor any exclusive rights. The State does not guarantee that it will buy any minimum quantity of goods or services under this Contract. Subject to the terms and conditions of this Contract, the Contractor will only be paid for goods or services provided under this Contract after a purchase order is issued to Contractor by the State or as otherwise specified by this Contract.

Option: Price Changes Authorized for Equitable Adjustment

C.2. Price Changes. Prices listed in awarded published catalog, price lists or price schedule shall remain firm for Number (#) days ("Firm Price Period").

a. Price Decreases. After the Firm Price Period, prices shall be equitably adjusted to reflect a decrease in Contractor's costs.

b. Price Increases. After the Firm Price Period, Contractor may request price increases. The request shall: include copies of the new price lists or catalog that reflect a change in the Contractor's cost; not constitute an increase in profit; and apply to all of the Contractor's customers.

c. Approval of Price Changes. The State may at its sole option: (1) grant the Contractor's request; (2) cancel the Contract and award it to the next apparent best evaluated Respondent; (3) cancel the Contract and reissue the solicitation; or (4) deny the Contractor's request. If approved, any price changes of less than seven percent (7%) will become effective upon the State's approval in writing. Price changes exceeding seven percent (7%) shall require a Contract amendment. The Contractor shall honor all purchase orders dated prior to the approved price change. Upon request from the State, the Contractor shall furnish the approved catalog, price schedule or price list as applicable to the State at no charge.

Option: Contracts That Detail Payment Methodology in an Appendix

Reference any appendix with line items as applicable.

C.3. Payment Methodology. The Contractor shall be compensated based on the payment rates for goods or services contained in Contract Appendix # and as authorized by the State in a total amount as set forth in Section C.1. The Contractor's compensation shall be contingent upon the satisfactory provision of goods or services as set forth in Section A.

The reimbursement of actual costs in a fee-for-service contract is NOT recommended. If the Contract includes payment terms providing for a reimbursement of actual costs (other than travel compensation in accordance with state rates), the payment terms MUST also include provisions that describe EXACTLY how the State will audit Contractor expenditures to ensure that the State pays for actual, reasonable, necessary and allowed costs only and that such costs resulted from competitive procurements.

Payment Methodology

The default payment methodology used in the Template provides for unit, milestone and temporal rate payments.

Requirement: *Pro Rata* Payments

If temporal payment rates effect payment for service periods greater than an hour (*e.g.*, daily payment rates), add a new subsection (similar to the following example) that defines the payment period and provides for *pro rata* payments for completed periods of service less than the payment rate period.

c. A "day" shall be defined as a minimum of eight (8) hours of service. If the Contractor provides fewer than eight hours of service in a standard twenty-four hour day, the Contractor shall bill *pro rata* for only those portions of the day in which service was actually delivered. The Contractor shall not bill more than the daily rate even if the Contractor works more than eight hours in a day.

Option: Rate Escalation

Replace paragraph C.3.b. with the following if specific rate escalation during the Term is appropriate.

b. The Contractor shall be compensated based upon the following payment rates:

(1) For service performed from Date, through Date, the following rates shall apply:

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

(2) For service performed from Date, through Date, the Contractor shall be compensated based upon the payment rates in Section Reference (*e.g.*, C.3.b.(1)) above but adjusted by the percentage increase, if any, between the Consumer Price Index for All Urban Consumers (CPI-U): U.S. city average, All Items /Medical Care expenditure category, not seasonally adjusted, index base period: 1982-84=100) published by the United States Department of Labor, Bureau of Labor Statistics in Month & Year (just before prior period end month) and that figure published in the same month, 12-months prior, up to a maximum of Written Number percent (Number%).

Repeat Previous Subsection for Each Subsequent Term

Option: Payment Upon Completion

Replace sections in the Template with the following sections if the Contract specifies one, lump sum payment after completion of all work.

C.3. Payment Methodology. Upon Contractor's satisfactory provision of goods or services set forth in Section A, the Contractor shall be compensated Written Dollar Amount ($Number).

C.4. Travel Compensation. The Contractor shall not be compensated or reimbursed for travel, meals, or lodging.

C.5. Invoice Requirements. The Contractor shall invoice the State only after completion of all work, described in Section A of this Contract, and present invoices no more often than monthly, with all necessary supporting documentation, to:

State Agency Billing Address

a. Each invoice, on Contractor's letterhead, shall clearly and accurately detail all of the following information (calculations must be extended and totaled correctly):

(1) Invoice number (assigned by the Contractor);
(2) Invoice date;
(3) Contract number (assigned by the State);
(4) Customer account name: State Agency & Division Name;
(5) Customer account number (assigned by the Contractor to the above-referenced Customer);
(6) Contractor name;
(7) Contractor Tennessee Edison registration ID number;
(8) Contractor contact for invoice questions (name, phone, or email);
(9) Contractor remittance address;
(10) Description of delivered goods or services provided and invoiced, including identifying information as applicable; and
(11) Total amount due for delivered goods or services provided (as stipulated in Section C.3. above).

b. The Contractor understands and agrees that an invoice under this Contract shall:

(1) only include charges for goods delivered or services provided as described in Section A and in accordance with payment terms and conditions set forth in Contract Section C;
(2) only be submitted for goods delivered or services completed and shall not include any charge for future goods to be delivered or services to be performed;
(3) not include Contractor's taxes which includes without limitation Contractor's sales and use tax, excise taxes, franchise taxes, real or personal property taxes, or income taxes; and
(4) begin the timeframe for payment (and any discounts) only when the State is in receipt of the invoice, and the invoice meets the minimum requirements of this Section C.5.

Travel Compensation

Replace the Section with the following as appropriate (and revise the Compensation Firm Section as indicated).

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

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

AND replace the second sentence of the Compensation Firm Section with the following:

The payment methodology in Section C.3 and the Travel Compensation provided in Section C.4.shall constitute the entire compensation due the Contractor for all goods or services provided under this Contract regardless of the difficulty, materials or equipment required. The payment methodology includes all applicable taxes, fees, overhead, and all other direct or indirect costs incurred or to be incurred by the Contractor.

Invoice Requirements

Add clear, non-conflicting, invoice requirements to this Section as appropriate.

Revise the Section to require or permit invoices more or less often than monthly.

Option: Retention of Final Payment

Add the following Section as appropriate. If unsure whether the Section is applicable, consult the CPO legal team.

C.#. Retention of Final Payment. The amount of Written Dollar Amount ($Number) shall be withheld by the State until Written Number (Number) days after final provision of goods or services under this Contract.

D. ~~STANDARD~~MANDATORY TERMS AND CONDITIONS

Modification and Amendment

Add the following section if the Contract includes a Renewal Option or Term Extension provision.

D.3. Modification and Amendment. This Contract may be modified only by a written amendment signed by all Parties and approved by all applicable State officials. The State's exercise of a valid Renewal Option or Term Extension does not constitute an amendment so long as there are no other changes to the Contract's terms and conditions.

Option: Revise Termination for Convenience Time Period

Specify whether the termination is immediate, increase or decrease notice requirement days as appropriate.

D.5. Termination for Convenience. The State may terminate this Contract for convenience without cause for any reason. The State's election to terminate this Contract for convenience shall be effective upon the date specified and shall not be deemed a breach of contract by the State. The Contractor shall be entitled to compensation for all conforming goods delivered and accepted by the State or for satisfactory, authorized services completed as of the termination date. In no event shall the State be liable to the Contractor for compensation for any good or service that has not been provided, nor shall the Contractor be relieved of any liability to the State for any damages or claims arising under this Contract.

Option: Bilateral Termination

Replace the standard Termination for Convenience Section with the following bilateral termination Section only if the contracting agency can justify that bilateral termination is in the best interest of the State.

D.5. Termination for Convenience. Either Party may terminate this Contract without cause for any reason. A party's exercise of its right to terminate this Contract for convenience shall not be deemed a breach of contract by either Party. The terminating Party shall give the other Party at least thirty (30) days written notice before the termination date. The Contractor shall be entitled to compensation for all conforming goods delivered and accepted by the State or for satisfactory, authorized services completed as of the termination date, but in no event shall the State be liable to the Contractor for compensation for any good or service that has not been provided, nor shall the Contractor be relieved of any liability to the State for any damages or claims arising under this Contract.

Termination for Cause

Option: Termination for Cause Providing for Notice of Breach and an Opportunity to Cure

Replace the Section with either of the following as appropriate. The first option requires the State to give notice of breach and provide Contractor an opportunity to cure the condition prior to termination. The second option allows the Contractor as well as the State to declare the other Party in breach while requiring a cure period prior to termination.

D.6. Termination for Cause. If the Contractor fails to properly perform its obligations under this Contract, or if the Contractor materially violates any terms of this Contract ("Breach Condition"), the State shall provide written notice to Contractor specifying the Breach Condition. If within thirty (30) days of notice, the Contractor has not cured the Breach Condition, the State may terminate the Contract and withhold payments in excess of compensation for completed services or provided goods. Notwithstanding the above, the Contractor shall not be relieved of liability to the State for damages sustained by virtue of any breach of this Contract by the Contractor and the State may seek other remedies allowed at law or in equity for breach of this Contract.

D.6. Termination for Cause. If a Party ("Breaching Party") fails to properly perform its obligations under this Contract, or if a Party materially violates any terms of this Contract ("Breach Condition"), the other Party ("Non-breaching Party") may provide written notice to the Breaching Party specifying the Breach Condition. If within thirty (30) days of notice, the Breaching Party has not cured the Breach Condition, the Non-breaching Party may terminate the Contract. In the event the Non-breaching Party is the State, the State may withhold payments in excess of compensation for completed services or provided goods. The Breaching Party shall not be relieved of liability to the Non-breaching Party for damages sustained by virtue of any breach of this Contract, and the Non-breaching Party may seek other remedies allowed at law or in equity for breach of this Contract.

Nondiscrimination

Replace the standard nondiscrimination provision with the following ONLY if contracting with a RELIGIOUS ORGANIZATION.

D.#. Nondiscrimination. The Contractor hereby agrees, warrants, and assures that no person shall be excluded from participation in, be denied benefits of, or be otherwise subjected to discrimination in the performance of this Contract or in the employment practices of the Contractor on the basis of any classification protected by federal, Tennessee State constitutional, or statutory law. The Contractor shall, upon request, show proof of such nondiscrimination and shall post in conspicuous places, available to all employees and applicants, notices of nondiscrimination.

Equal Opportunity

Replace the standard nondiscrimination provision with the following only if the goods or services under the Contract are paid for with federal funds. If the Contractor is a party to a federally funded contract and the Contractor enters into subcontracts, this Section must be included in the subcontracts.

D.#. Equal Opportunity. During the performance of this Contract, the Contractor agrees as follows:

a. The Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. The Contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to the following:

b.

(1) Employment, upgrading, demotion, or transfer, recruitment or recruitment advertising;
(2) Layoff or termination;
(3) Rates of pay or other forms of compensation; and
(4) Selection for training, including apprenticeship.
(5)

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

(7)

c. The Contractor will, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive considerations for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.

d.

e. If the State approves any subcontract, the subcontract shall include paragraphs (a) and (b) above.

f.

Prevailing Wage Rates

Add the following section if the Contractor will be performing work on a State highway construction project.

D.#. Prevailing Wage Rates. All State contracts for highway construction projects, which are for the purpose of building, rebuilding, locating, relocating or repairing any streets, highways or bridges, require compliance with the prevailing wage laws as provided in Tenn. Code Ann. §§ 12-4-401 – 12-4-415.

Limitation of Liability

If the Contractor's Limitation of Liability will vary from Tenn. Code Ann. § 12-3-701, an approved Limitation of Liability Request is required.

D.18. Limitation of Contractor's Liability. The Contractor's liability for all claims arising under this Contract shall be limited to an amount equal to NUMBER (#), PROVIDED THAT in no event shall this Section limit the liability of the Contractor for intentional torts, criminal acts, fraudulent conduct or acts or omissions that result in personal injuries or death.

Option: Statewide Contracts Estimated Liability

For statewide contracts with no Maximum Liability, replace D.17. and D.18. with the following:

D.17. Limitation of State's Liability. The State shall have no liability except as specifically provided in this Contract. In no event will the State be liable to the Contractor or any other party for any lost revenues, lost profits, loss of business, decrease in the value of any securities or cash position, time, money, goodwill, or any indirect, special, incidental, punitive, exemplary or consequential damages of any nature, whether based on warranty, contract, statute, regulation, tort (including but not limited to negligence), or any other legal theory that may arise under this Contract or otherwise. Notwithstanding anything else herein, the State's total liability under this Contract (including without limitation any exhibits, schedules, amendments or other attachments to the Contract) or otherwise shall under no circumstances exceed the Estimated Liability. This limitation of liability is cumulative and not per incident.

D.18. Limitation of Contractor's Liability. In accordance with Tenn. Code Ann. § 12-3-701, the Contractor's liability for all claims arising under this Contract shall be limited to an amount equal to two (2) times the Estimated Liability amount detailed in Section C.1. and as may be amended, PROVIDED THAT in no event shall this Section limit the liability of the Contractor for: (i) intellectual property or any Contractor indemnity obligations for infringement for third-party intellectual property rights; (ii) any claims covered by any specific provision in the Contract providing for liquidated damages; or (iii) any claims for intentional torts, criminal acts, fraudulent conduct, or acts or omissions that result in personal injuries or death.

Insurance Options

Select up to four (4) insurance options below. In the event that one of the insurance options is appropriate, insert the six (6) paragraphs immediately below before inserting the desired insurance option or options.

D.#. Insurance. Contractor shall provide the State a certificate of insurance ("COI") evidencing the coverages and amounts specified below. The COI shall be provided ten (10) business days prior to the Effective Date and again upon renewal or replacement of coverages required by this Contract. If insurance expires during the Term, the State must receive a new COI at least thirty (30) calendar days prior to the insurance's expiration date. If the Contractor loses insurance coverage, does not renew coverage, or for any reason becomes uninsured during the Term, the Contractor shall notify the State immediately.

The COI shall be on a form approved by the Tennessee Department of Commerce and Insurance ("TDCI") and signed by an authorized representative of the insurer. The COI shall list each insurer's national association of insurance commissioners (also known as NAIC) number or federal employer identification number and list the State of Tennessee, Risk Manager, 312 Rosa L. Parks Ave., 3rd floor Central Procurement Office, Nashville, TN 37243 in the certificate holder section. At

any time, the State may require the Contractor to provide a valid COI detailing coverage description; insurance company; policy number; exceptions; exclusions; policy effective date; policy expiration date; limits of liability; and the name and address of insured. The Contractor's failure to maintain or submit evidence of insurance coverage is considered a material breach of this Contract.

If the Contractor desires to self-insure, then a COI will not be required to prove coverage. In place of the COI, the Contractor must provide a certificate of self-insurance or a letter on the Contractor's letterhead detailing its coverage, liability policy amounts, and proof of funds to reasonably cover such expenses. Compliance with Tenn. Code Ann. § 50-6-405 and the rules of the TDCI is required for the Contractor to self-insure workers' compensation.
All insurance companies must be: (a) acceptable to the State; (b) authorized by the TDCI to transact business in the State of Tennessee; and (c) rated A- VII or better by A. M. Best. The Contractor shall provide the State evidence that all subcontractors maintain the required insurance or that the subcontractors are included under the Contractor's policy.

The Contractor agrees to name the State as an additional insured on any insurance policies with the exception of workers' compensation (employer liability) and professional liability (errors and omissions) ("Professional Liability") insurance. Also, all policies shall contain an endorsement for a waiver of subrogation in favor of the State.

The deductible and any premiums are the Contractor's sole responsibility. Any deductible over fifty thousand dollars ($50,000) must be approved by the State. The Contractor agrees that the insurance requirements specified in this Section do not reduce any liability the Contractor has assumed under this Contract including any indemnification or hold harmless requirements.
The State agrees that it shall give written notice to the Contractor as soon as practicable after the State becomes aware of any claim asserted or made against the State, but in no event later than thirty (30) calendar days after the State becomes aware of such claim. The failure of the State to give notice shall only relieve the Contractor of its obligations under this Section to the extent that the Contractor can demonstrate actual prejudice arising from the failure to give notice. This Section shall not grant the Contractor or its insurer, through its attorneys, the right to represent the State in any legal matter, as the right to represent the State is governed by Tenn. Code Ann. § 8-6-106.

All coverage required shall be on a primary basis and noncontributory with any other insurance coverage or self-insurance carried by the State. The State reserves the right to amend or require additional endorsements, types of coverage, and higher or lower limits of coverage depending on the nature of the work. Purchases or contracts involving any hazardous activity or equipment, tenant, concessionaire and lease agreements, alcohol sales, cyber-liability risks, environmental risks, special motorized equipment, or property may require customized insurance requirements (e.g. umbrella liability insurance) in addition to the general requirements listed below.

The Contractor shall obtain and maintain, at a minimum, the following insurance coverages and policy limits.

Option 1: Commercial General Liability Insurance
Add the following if the Contractor will: (1) provide services to the State; or (2) deliver goods on State property.

a Commercial General Liability Insurance

1) The Contractor shall maintain commercial general liability insurance, which shall be written on an Insurance Services Office, Inc. (also known as ISO) occurrence form (or a substitute form providing equivalent coverage) and shall cover liability arising from property damage, premises/operations, independent contractors, contractual liability, completed operations/products, personal and advertising

injury, and liability assumed under an insured contract (including the tort liability of another assumed in a business contract).

2) The Contractor shall maintain bodily injury/property damage with a combined single limit not less than one million dollars ($1,000,000) per occurrence and two million dollars ($2,000,000) aggregate for bodily injury and property damage, including products and completed operations coverage with an aggregate limit of at least two million dollars ($2,000,000).

Option 2: Workers' Compensation and Employer Liability Insurance

Add the following if the Contractor will provide services to the State. All contractors who provide services to the State must have a workers' compensation and employer liability insurance policy ***unless*** the contractor is statutorily exempt or self-insured.

a. Workers' Compensation and Employer Liability Insurance

1) For Contractors statutorily required to carry workers' compensation and employer liability insurance, the Contractor shall maintain:

i. Workers' compensation and employer liability insurance in the amounts required by appropriate state statutes; or

ii. In an amount not less than one million dollars ($1,000,000) including employer liability of one million dollars ($1,000,000) per accident for bodily injury by accident, one million dollars ($1,000,000) policy limit by disease, and one million dollars ($1,000,000) per employee for bodily injury by disease.

2) If the Contractor certifies that it is exempt from the requirements of Tenn. Code Ann. §§ 50-6-101 – 103, then the Contractor shall furnish written proof of such exemption for one or more of the following reasons:

i. The Contractor employees fewer than five (5) employees;

ii. The Contractor is a sole proprietor;

iii. The Contractor is in the construction business or trades with no employees;

iv. The Contractor is in the coal mining industry with no employees;

v. The Contractor is a state or local government; or

vi. The Contractor self-insures its workers' compensation and is in compliance with the TDCI rules and Tenn. Code Ann. § 50-6-405.

Option 3: Automobile Liability Insurance

Add the following if the Contractor will use a vehicle when providing goods or services under the Contract.

D.#.

c. Automobile Liability Insurance

i. The Contractor shall maintain automobile liability insurance which shall cover liability arising out of any automobile (including owned, leased, hired, and non-owned automobiles).

ii. The Contractor shall maintain bodily injury/property damage with a limit not less than one million dollars ($1,000,000) per occurrence or combined single limit.

Option 4: Professional Liability Insurance

Add the following if the Contract involves professional service providers, e.g., architects, engineers, consultants, counselors, medical professionals, attorneys, accountants.

D.#.

c. Professional Liability Insurance

i. Professional liability insurance shall be written on an occurrence basis. This coverage may be written on a claims-made basis but must include an extended reporting period or "tail coverage" of at least two (2) years after the Term;

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

iii. If the Contract involves the provision of services by medical professionals, a policy limit not less than two million ($2,000,000) per claim and three million dollars ($3,000,000) in the aggregate for medical malpractice insurance.

HIPAA Compliance

Contractors: The Contractor must execute a business associate agreement ("BAA") if: (a) the contracting State Agency is a "covered entity" as defined by the Privacy Rules; and (b) the Contractor will provide services to the contracting State Agency that involve Contractor's access to protected health information ("PHI") as defined by the Privacy Rules.

Subcontractors: The Contractor must execute a BAA with a subcontractor if the subcontractor creates, receives, maintains, or transmits PHI on behalf of the Contractor.

Annual and Final Reports

~~The following Section is rarely appropriate in a fee-for-service contract. Add the following ONLY if the Contractor is a *subrecipient* (refer to Central Procurement Office Policy # 2013-007, Grant and Subrecipient Monitoring).~~

Do NOT insert an Annual and Final Reports provision in a contract prepared using the FA Template. If an Annual and Final Reports provision is appropriate because a subrecipient relationship exists, use one of the CPO's grant templates or models.

~~D.#. Annual and Final Reports. The Contractor shall submit, within three (3) months of the conclusion of each year of the Term, an annual report. For contracts with a term of less than one (1) year, the Contractor shall submit a final report within three (3) months of the conclusion of the Term. For contracts with multiyear terms, the final report will take the place of the annual report for the final year of the term. The Contractor shall submit annual and final reports to the contracting state agency and the Department of Finance and Administration. Electronic copies of annual and final reports may be submitted to the Department of Finance and Administration at faaudit@tn.gov. At minimum, annual and final reports shall include: (a) the Contractor's name; (b) the Contract's Edison identification number, Term, and Maximum Liability; (c) a narrative section that describes the program's goals, outcomes, successes and setbacks, whether the Contractor used benchmarks or indicators to determine progress, and whether any proposed activities were not completed; and (d) other relevant details requested by the contracting state agency. Annual and final report documents to be completed by the Contractor shall appear on the contracting state agency's website or as an attachment to this Contract.~~

Audit Report

~~Add the following Section as appropriate. If unsure whether the Section is applicable, consult the CPO~~
Do NOT insert an Audit Report provision in a contract prepared using the FA Template. If an Audit Report provision is appropriate because a subrecipient relationship exists, use one of the CPO's grant templates or models.

~~legal team.~~

~~D.#. Audit Report. When the Contractor has received seven hundred fifty thousand dollars ($750,000.00) or more in aggregate federal and state funding for all of its programs within the Contractor's fiscal year, the Contractor shall provide audited financial statement to the Tennessee Comptroller of the Treasury. The Contractor may, with the prior approval of the Comptroller of the Treasury, engage a licensed independent public accountant to perform the audit. The audit contract between the Contractor and the licensed independent public accountant shall be on a contract form prescribed by the Tennessee Comptroller of the Treasury. When an audit is required under this section, the audit shall be performed in accordance with U.S. Office of Management and Budget's Uniform Administration Requirements, Audit Requirements, and Cost Principles.~~

~~The Contractor shall be responsible for reimbursing the Tennessee Comptroller of the Treasury for any costs of an audit prepared by the Tennessee Comptroller of the Treasury.~~

~~The Contractor shall be responsible for payment of fees for an audit prepared by a licensed independent public accountant. Payment of the audit fees for the licensed independent public accountant by the Contractor shall be subject to the provision relating to such fees contained within this Contract. Copies of such audit reports shall be provided to the designated cognizant state agency, the state contracting agency, the Tennessee Comptroller of the Treasury, and the Department of Finance and Administration.~~

~~Audit reports shall be made available to the public.~~

E. SPECIAL TERMS AND CONDITIONS

Add the following sections as appropriate and in the order below. An approved Rule Exception Request is required to add any Section E terms that are not among the options below. Should any of these special terms and conditions conflict with the mandatory terms and conditions in Section D of this Contract, the mandatory terms and conditions shall control.

Confidentiality of Records

Add the following Section as appropriate. If unsure whether the Section is applicable, consult the CPO legal team.

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

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

Printing Authorization

Add the following Section as appropriate.

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

State Ownership of Goods

Add the following Section as appropriate.

E.#. State Ownership of Goods. The State shall have ownership, right, title, and interest in all goods provided by Contractor under this Contract including full rights to use the goods and transfer title in the goods to any third parties.

Ownership of Software & Work Products

Add the following Section as appropriate. If escrow language is contemplated, contact the CPO legal team for assistance. The terms of any license Contractor grants the State should be included in Section A.

E.#. Ownership of Software and Work Products.

a. Definitions.

(1) "Contractor-Owned Software," shall mean commercially available software the rights to which are owned by Contractor, including but not limited to commercial "off-the-shelf" software which is not developed using State's money or resources.

(2) "Custom-Developed Application Software," shall mean customized application software developed by Contractor solely for State.

(3) "Rights Transfer Application Software," shall mean any pre-existing application software owned by Contractor or a third party, provided to State and to which Contractor will grant and assign, or will facilitate the granting and assignment of, all rights, including the source code, to State.

(4) "Third-Party Software," shall mean software not owned by the State or the

Contractor.

(5) "Work Product," shall mean all deliverables exclusive of hardware, such as software, software source code, documentation, planning, etc., that are created, designed, developed, or documented by the Contractor exclusively for the State during the course of the project using State's money or resources, including Custom-Developed Application Software. If the deliverables under this Contract include Rights Transfer Application Software, the definition of Work Product shall also include such software. Work Product shall not include Contractor-Owned Software or Third-Party Software.

b. Rights and Title to the Software

(1) All right, title and interest in and to the Contractor-Owned Software shall at all times remain with Contractor, subject to any license granted under this Contract.

(2) All right, title and interest in and to the Work Product, and to modifications thereof made by State, including without limitation all copyrights, patents, trade secrets and other intellectual property and other proprietary rights embodied by and arising out of the Work Product, shall belong to State. To the extent such rights do not automatically belong to State, Contractor hereby assigns, transfers, and conveys all right, title and interest in and to the Work Product, including without limitation the copyrights, patents, trade secrets, and other intellectual property rights arising out of or embodied by the Work Product. Contractor and its employees, agents, contractors or representatives shall execute any other documents that State or its counsel deem necessary or desirable to document this transfer or allow State to register its claims and rights to such intellectual property rights or enforce them against third parties.

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

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

Software License Warranty

Add the following if the Contract involves software.

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

Software Support and Maintenance Warranty

Add the following if the Contract involves software.

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

Extraneous Terms and Conditions

Add the following term **only after** consulting with the Central Procurement Office's Legal Team and obtaining Central Procurement Office approval.

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

Reimbursement

Add the following section if the contract payment terms provide for Contractor reimbursement for goods, materials, supplies, equipment, or contracted services.

E.#. Reimbursement. This Contract provides for reimbursement of the cost of goods, materials, supplies, equipment, or contracted services. Any goods, materials, supplies, equipment or contracted services procured by Contractor under this Contract shall be procured on a competitive basis when practicable. The Contractor shall maintain documentation supporting Contractor's request for reimbursement. In each instance where it is determined that use of a competitive procurement method was not practicable, Contractor shall seek approval of the State Agency Head's Title to procure by non-competitive procurement as a condition for reimbursement.

State Furnished Property

Add the following Section as appropriate.

E.#. State Furnished Property. The Contractor shall be responsible for the correct use, maintenance, and protection of all articles of nonexpendable, tangible personal property furnished by the State for the Contractor's use under this Contract. Upon termination of this Contract, all property furnished by the State shall be returned to the State in the same condition as when received, less reasonable wear and tear. Should the property be destroyed, lost, or stolen, the Contractor shall be responsible to the State for the fair market value of the property at the time of loss.

Work Papers Subject to Review

Add the following Section only if the contract requires the performance of audit, accounting or financial analysis services.

E.#. Work Papers Subject to Review. The Contractor shall make all audit, accounting, or financial analysis work papers, notes, and other documentation available for review by the Comptroller of the Treasury or his representatives, upon request, during normal working hours either while the analysis is in progress or subsequent to the completion of this Contract.

Prohibited Advertising or Marketing

Add the following Section as appropriate.

E.#. Prohibited Advertising or Marketing. The Contractor shall not suggest or imply in advertising or marketing materials that Contractor's goods or services are endorsed by the State. The restrictions on Contractor advertising or marketing materials under this Section shall survive the termination of

this Contract.

Public Accountability

Add the following Section as appropriate.

E.#. Public Accountability. If the Contractor is subject to Tenn. Code Ann. §§ 8-4-401, *et seq.*, or if this Contract involves the provision of services to citizens by the Contractor on behalf of the State, the Contractor agrees to establish a system through which recipients of services may present grievances about Contractor's operation of the service program. The Contractor shall also display in a prominent place, located near the passageway through which the public enters in order to receive contract-supported services, a sign at least eleven inches (11") in height and seventeen inches (17") in width stating the following:

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

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

Environmental Tobacco Smoke

Add the following Section as appropriate.

E.#. Environmental Tobacco Smoke. Pursuant to the provisions of the federal "Pro-Children Act of 1994" and the Tennessee "Children's Act for Clean Indoor Air of 1995," the Contractor shall prohibit smoking of tobacco products within any indoor premises in which services are provided pursuant to this Contract to individuals under the age of eighteen (18) years. The Contractor shall post "no smoking" signs in appropriate, permanent sites within such premises. This prohibition shall be applicable during all hours, not just the hours in which children are present. Violators of the prohibition may be subject to civil penalties and fines. This prohibition shall apply to and be made part of any subcontract related to this Contract.

Lobbying

Add the following Section if the contract will be funded in whole or in part by federal funds.

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

a. No federally appropriated funds have been paid or will be paid, by or on behalf of the Contractor, to any person for influencing or attempting to influence an officer or employee of an agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.

b. If any funds other than federally appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a

member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with any contract, grant, loan, or cooperative agreement, the Contractor shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

c. The Contractor shall require that the language of this certification be included in the award documents for all sub-awards at all tiers (including subcontracts, sub-grants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

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

Contractor Commitment to Diversity

Add the following Section as appropriate (typically in contracts resulting from a standard RFP).

E.#. Contractor Commitment to Diversity. The Contractor shall comply with and make reasonable business efforts to exceed the commitment to diversity represented by the Contractor's Response to Solicitation Number (Attachment Reference) and resulting in this Contract.

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

Performance Bond

For contracts that do not involve public works projects, a performance bond should be required only when necessary to protect against contract risk to the State. For agency term contracts, choose option #1 or option #2. For statewide contracts that do not involve awards to multiple contractors, choose option #3 or option #4. If unsure whether a performance bond is appropriate or which option is best, contact the CPO Risk Manager.

Option 1

E.#. Performance Bond. The Contractor shall provide to the State a performance bond guaranteeing full and faithful performance of all undertakings and obligations under this Contract, specifically faithful performance of the work in accordance with the plans, specifications, and contract documents. The performance bond shall be in an amount equal to one hundred percent (100%) of the Maximum Liability, Written Dollar Amount ($Number). The State reserves the right to review the bond amount and bonding requirements at any time during the Term. The Contractor shall submit the bond no later than the day immediately preceding the Effective Date and in the manner and form prescribed by the State at Attachment Reference. The bond shall be issued by a company licensed to issue such a bond in the state of Tennessee. The performance bond shall guarantee full and faithful performance of all undertakings and obligations for the Term, as the Contract is extended or renewed.

Failure to provide to the State the performance bond(s) as required under this Contract may result in this Contract being terminated by the State. The performance bond required under this

Contract shall not be reduced during the Term without the State of Tennessee Central Procurement Office's prior written approval.

Option 2—Insert the term below only after obtaining an approved Rule Exception Request.

E. #. Performance Bond. The Contractor shall provide to the State a performance bond guaranteeing full and faithful performance of all undertakings and obligations under this Contract specifically faithful performance of the work in accordance with the plans, specifications, and Contract documents. The Contractor shall submit the bond no later than the day immediately preceding the Effective Date and in the manner and form prescribed by the State at Attachment Reference. The bond shall be issued by a company licensed to issue such a bond in the state of Tennessee. The performance bond shall guarantee full and faithful performance of all undertakings and obligations under this Contract for the first year of the Term in the amount of Written Dollar Amount ($Number) and, thereafter, a new performance bond in an amount of one hundred percent (100%) of the Maximum Liability, Written Dollar Amount ($Number) covering each subsequent year of the Term, including any renewals or extensions. The State reserves the right to review the bond amount and bonding requirements at any time during the Term. The Contractor shall provide performance bonds to the State prior to the Effective Date and thirty (30) days prior to the beginning of each renewal or extended Term.

Failure to provide to the State the performance bond(s) as required under this Contract may result in this Contract being terminated by the State. The performance bond required under this Contract shall not be reduced during the Term without the State's prior written approval.

Option 3

E.#. Performance Bond. The Contractor shall provide to the State a performance bond guaranteeing full and faithful performance of all undertakings and obligations under this Contract, specifically faithful performance of the work in accordance with the plans, specifications, and Contract documents. The performance bond shall be in an amount equal to one hundred percent (100%) of the Estimated Liability Written Dollar Amount ($Number). The State reserves the right to review the bond amount and bonding requirements at any time during the Term. The Contractor shall submit the bond no later than the day immediately preceding the Effective Date and in the manner and form prescribed by the State at Attachment Reference. The bond shall be issued by a company licensed to issue such a bond in the state of Tennessee. The performance bond shall guarantee full and faithful performance of all undertakings and obligations for the Term, as the Contract is extended or renewed.

Failure to provide to the State the performance bond as required under this Contract may result in this Contract being terminated by the State. The performance bond required under this Contract shall not be reduced during the Term without the State's prior written approval.

Option 4—Insert the term below only after obtaining an approved Rule Exception Request.

E.#. Performance Bond. The Contractor shall provide to the State a performance bond guaranteeing full and faithful performance of all undertakings and obligations under this Contract, specifically faithful performance of the work in accordance with the plans, specifications, and Contract documents. The performance bond shall be in an amount equal to one hundred percent (100%) of the Estimated Liability, Written Dollar Amount ($Number). The State reserves the right to review the bond amount and bonding requirements at any time during the Term. The Contractor shall submit the bond no later than the day immediately preceding the Effective Date and in the manner and form prescribed by the State at Attachment Reference. The bond shall be issued by a company licensed to issue such a bond in the state of Tennessee. The performance bond shall

guarantee full and faithful performance of all undertakings and obligations under this Contract for the first year of the Term in the amount of Written Dollar Amount ($Number) and, thereafter, a new performance bond in the amount of Written Dollar Amount ($Number) covering each subsequent year of the Term, including any renewals or extensions of the Contract. The Contractor shall provide performance bonds to the State prior to the Effective Date and thirty (30) days prior to the beginning of each renewal or extended Term.

Failure to provide to the State the performance bond as required under this Contract may result in this Contract being terminated by the State. The performance bond required under this Contract shall not be reduced during the Term without the State's prior written approval.

Payment Bond

Tenn. Code Ann. § 12-4-201 requires a payment bond for all public works projects in excess of one hundred thousand dollars ($100,000). Insert option #1 for agency term contracts; insert option #2 for statewide contracts that do not involve awards to multiple contractors. If unsure whether a payment bond is appropriate, contact the CPO Risk Manager.

Option 1

E.#. Payment Bond. The Contractor shall provide to the State a payment bond guaranteeing that the Contractor's subcontractors, laborers, and material suppliers will be paid for performance under this Contract with the additional obligation that such contractor shall promptly make payment of all taxes, licenses, assessments, contributions, penalties, and interest. The payment bond will be in an amount equal to twenty-five percent (25%) of the Maximum Liability Written Dollar Amount ($ Number). The State reserves the right to review the bond amount and bonding requirements at any time during the Term. The Contractor shall submit the bond no later than the day immediately preceding the Effective Date and in the manner and form prescribed by the State at Attachment Reference. The bond shall be issued by a company licensed to issue such a bond in the State of Tennessee. The payment bond shall guarantee that the Contractor's subcontractors, laborers, and material suppliers will be paid for performance during the Term and all extensions or renewals of the Contract.

Failure to provide to the State the payment bond as required under this Contract may result in this Contract being terminated by the State. The payment bond required under this Contract shall not be reduced during the Term without the State of Tennessee Central Procurement Office's prior written approval.

Option 2

E.#. Payment Bond. The Contractor shall provide to the State a payment bond guaranteeing that the Contractor's subcontractors, laborers, and material suppliers will be paid for performance under this Contract with the additional obligation that such contractor shall promptly make payment of all taxes, licenses, assessments, contributions, penalties, and interest. The payment bond will be in an amount equal to twenty-five percent (25%) of the Estimated Liability Written Dollar Amount ($ Number). The State reserves the right to review the bond amount and bonding requirements at any time during the Term. The Contractor shall submit the bond no later than the day immediately preceding the Effective Date and in the manner and form prescribed by the State at Attachment Reference. The bond shall be issued by a company licensed to issue such a bond in the State of Tennessee. The payment bond shall guarantee that the Contractor's subcontractors, laborers, and material suppliers will be paid for performance during the Term and all extensions or renewals of the Contract.

Failure to provide to the State the payment bond as required under this Contract may result in this Contract being terminated by the State. The payment bond required under this Contract shall not be reduced during the Term without the State's prior written approval.

Intellectual Property

Add the following Section as appropriate. If unsure whether the Section is applicable, consult the CPO legal team.

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

Option: Liquidated Damages

Add the following Section as appropriate. If unsure whether the Section is applicable, consult the CPO legal team.

E.#. Liquidated Damages. If <insert description of event giving rise to liquidated damages> occurs, ("Liquidated Damages Event"), the State may assess damages on Contractor ("Liquidated Damages"). The State shall notify the Contractor of amounts to be assessed as Liquidated Damages. The Parties agree that due to the complicated nature of the Contractor's obligations under this Contract it would be difficult to specifically designate a monetary amount for Contractor's failure to fulfill its obligations regarding the Liquidated Damages Event as these amounts are likely to be uncertain and not easily proven. Contractor has carefully reviewed the Liquidated Damages contained in Attachment Reference and agrees that these amounts represent a reasonable relationship between the amount and what might reasonably be expected in the event of a Liquidated Damages Event, and are a reasonable estimate of the damages that would occur from a Liquidated Damages Event. The Parties agree that the Liquidated Damages represent solely the damages and injuries sustained by the State in losing the benefit of the bargain with Contractor and do not include any injury or damage sustained by a third party. The Contractor agrees that the Liquidated Damages are in addition to any amounts Contractor may owe the State pursuant to the indemnity provision or any other sections of this Contract.

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

Partial Takeover

Add the following Section as appropriate. If unsure whether the Section is applicable, consult the CPO legal team.

E.#. Partial Takeover of Contract. The State may, at its convenience and without cause, exercise a partial takeover of any service that the Contractor is obligated to perform under this Contract, including any service which is the subject of a subcontract between Contractor and a third party (a "Partial Takeover"). A Partial Takeover of this Contract by the State shall not be deemed a breach of contract. The Contractor shall be given at least thirty (30) days prior written notice of a Partial Takeover. The notice shall specify the areas of service the State will assume and the date the State will be assuming. The State's exercise of a Partial Takeover shall not alter the Contractor's other duties and responsibilities under this Contract. The State reserves the right to withhold from the Contractor any amounts the Contractor would have been paid but for the State's exercise of a Partial Takeover. The amounts shall be withheld effective as of the date the State exercises its right to a Partial Takeover. The State's exercise of its right to a Partial Takeover of this Contract shall not entitle the Contractor to any actual, general, special, incidental, consequential, or any other damages irrespective of any description or amount.

Unencumbered Personnel

Add the following Section as appropriate. If unsure whether the Section is applicable, consult the CPO legal team.

E.#. Unencumbered Personnel. The Contractor shall not restrict its employees, agents, subcontractors or principals who perform services for the State under this Contract from performing the same or similar services for the State after the termination of this Contract, either as a State employee, an independent contractor, or an employee, agent, subcontractor or principal of another contractor with the State.

Disclosure of Personally Identifiable Information

Add the following Section as appropriate. If unsure whether the Section is applicable, consult the CPO legal team.

E# Personally Identifiable Information. While performing its obligations under this Contract, Contractor may have access to Personally Identifiable Information held by the State ("PII"). For the purposes of this Contract, "PII" includes "Nonpublic Personal Information" as that term is defined in Title V of the Gramm-Leach-Bliley Act of 1999 or any successor federal statute, and the rules and regulations thereunder, all as may be amended or supplemented from time to time ("GLBA") and personally identifiable information and other data protected under any other applicable laws, rule or regulation of any jurisdiction relating to disclosure or use of personal information ("Privacy Laws"). Contractor agrees it shall not do or omit to do anything which would cause the State to be in breach of any Privacy Laws. Contractor shall, and shall cause its employees, agents and representatives to: (i) keep PII confidential and may use and disclose PII only as necessary to carry out those specific aspects of the purpose for which the PII was disclosed to Contractor and in accordance with this Contract, GLBA and Privacy Laws; and (ii) implement and maintain appropriate technical and organizational measures regarding information security to: (A) ensure the security and confidentiality of PII; (B) protect against any threats or hazards to the security or integrity of PII; and (C) prevent unauthorized access to or use of PII. Contractor shall immediately notify State: (1) of any disclosure or use of any PII by Contractor or any of its employees, agents and representatives in breach of this Contract; and (2) of any disclosure of any PII to Contractor or its employees, agents and representatives where the purpose of such disclosure is not known to Contractor or its employees, agents and representatives. The State reserves the right to review Contractor's policies and procedures used to maintain the security and confidentiality of PII and Contractor shall, and cause its employees, agents and representatives to, comply with all reasonable requests or directions from the State to enable the State to verify and/or procure that Contractor is in full compliance with its obligations under this Contract in relation to PII. Upon termination or expiration

of the Contract or at the State's direction at any time in its sole discretion, whichever is earlier, Contractor shall immediately return to the State any and all PII which it has received under this Contract and shall destroy all records of such PII.

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

Federal Funding Accountability and Transparency Act

Add the following Section if the contract will be funded in whole or part by a federal grant or contract of $25,000 or more and the contract will provide for the expenditure of $25,000 or more in federal funds.

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

The Contractor shall comply with the following:

a. Reporting of Total Compensation of the Contractor's Executives.

(1) The Contractor shall report the names and total compensation of each of its five most highly compensated executives for the Contractor's preceding completed fiscal year, if in the Contractor's preceding fiscal year it received:

i. 80 percent or more of the Contractor's annual gross revenues from federal procurement contracts and federal financial assistance subject to the Transparency Act, as defined at 2 CFR 170.320 (and subawards); and

ii. $25,000,000 or more in annual gross revenues from federal procurement contracts (and subcontracts), and federal financial assistance subject to the Transparency Act (and subawards); and

iii. The public does not have access to information about the compensation of the executives through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(a), 78o(d)) or section 6104 of the Internal Revenue Code of 1986. (To determine if the public has access to the compensation information, see the U.S. Security and Exchange Commission total compensation filings at http://www.sec.gov/answers/execomp.htm.).

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

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

i. Salary and bonus.

ii. Awards of stock, stock options, and stock appreciation rights. Use the dollar amount recognized for financial statement reporting purposes with respect to the fiscal year in accordance with the Statement of Financial Accounting Standards No. 123 (Revised 2004) (FAS 123R), Shared Based Payments.

iii. Earnings for services under non-equity incentive plans. This does not include group life, health, hospitalization or medical reimbursement plans that do not discriminate in favor of executives, and are available generally to all salaried employees.

iv. Change in pension value. This is the change in present value of defined benefit and actuarial pension plans.

v. Above-market earnings on deferred compensation which is not tax qualified.

vi. Other compensation, if the aggregate value of all such other compensation (e.g. severance, termination payments, value of life insurance paid on behalf of the employee, perquisites or property) for the executive exceeds $10,000.

b. The Contractor must report executive total compensation described above to the State by the end of the month during which this Contract is awarded.

c. If this Contract is amended to extend the Term, the Contractor must submit an executive total compensation report to the State by the end of the month in which the term extension becomes effective.

d. The Contractor will obtain a Data Universal Numbering System (DUNS) number and maintain its DUNS number for the term of this Contract. More information about obtaining a DUNS Number can be found at: http://fedgov.dnb.com/webform/

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

Protection of Federal Tax Information

Add one of the following options below ***as a separate attachment*** to the Contract for Contractors having access to Federal Tax Information ("FTI") during performance of the Contract. If unsure whether to include one of the options below, contact the Central Procurement Office's legal team.

FTI means any return or return information, as defined by I.R.C. § 6103(b)(2), received from the Internal Revenue Service or secondary source, such as the Social Security Administration, Federal Office of Child Support Enforcement, or Bureau of Fiscal Service. FTI includes any information created by the recipient that is derived from return or return information. If the Contract involves disclosing FTI to a Contractor, the contracting State Agency shall provide the IRS at least forty-five (45) days notice before executing the Contract. Use Option #1 when the Contractor may have access to electronic forms of FTI. Use Option #2 when the Contractor may have access to hard copies of FTI.

Option 1

FEDERALLY MANDATED REQUIREMENTS FOR TECHNOLOGY SERVICES CONTRACTS WITH ACCESS TO FEDERAL TAX RETURN INFORMATION

Federal Tax Information ("FTI") means any return or return information, as defined by I.R.C. § 6103(b)(2), received from the Internal Revenue Service or secondary source, such as the Social Security Administration, Federal Office of Child Support Enforcement, or Bureau of Fiscal Service. FTI includes any information created by the recipient that is derived from return or return information.

1. PERFORMANCE

In performance of this Contract, the Contractor agrees to comply with and assume responsibility for compliance by his or her employees with the following requirements:

1.1 All work will be done under the supervision of the Contractor or the Contractor's employees.

1.2 Any return or return information made available in any format shall be used only for the purpose of carrying out the provisions of this Contract. Information contained in such material will be treated as confidential and will not be divulged or made known in any manner to any person except as may be necessary in the performance of this Contract. Disclosure to anyone other than an officer or employee of the Contractor will be prohibited.

1.3 All returns and return information will be accounted for upon receipt and properly stored before, during, and after processing. In addition, all related output will be given the same level of protection as required for the source material.

1.4 The Contractor certifies that the data processed during the performance of this Contract will be completely purged from all data storage components of his or her computer facility, and no output will be retained by the Contractor at the time the work is completed. If immediate purging of all data storage components is not possible, the Contractor certifies that any IRS data remaining in any storage component will be safeguarded to prevent unauthorized disclosures.

1.5 Any spoilage or any intermediate hard copy printout that may result during the processing of IRS data will be given to the State. When this is not possible, the Contractor will be responsible for the destruction of the spoilage or any intermediate hard copy printouts, and will provide the State with a statement containing the date of destruction, description of material destroyed, and the method used.

1.6 All computer systems receiving, processing, storing, or transmitting FTI must meet the requirements defined in IRS Publication 1075. To meet functional and assurance requirements, the security features of the environment must provide for the managerial, operational, and technical controls. All security features must be available and activated to protect against unauthorized use of and access to Federal Tax Information.

1.7 No work involving Federal Tax Information furnished under this Contract will be subcontracted without prior written approval of the IRS.

1.8 The Contractor will maintain a list of employees authorized access. Such list will be provided to the State and, upon request, to the IRS reviewing office.

1.9 The State will have the right to void the Contract if the Contractor fails to provide the safeguards described above.

2. CRIMINAL/CIVIL SANCTIONS:

2.1 Each officer or employee of any person to whom returns or return information is or may be disclosed will be notified in writing by such person that returns or return information disclosed to such officer or employee can be used only for a purpose and to the extent authorized herein, and that further disclosure of any such returns or return information for a purpose or to an extent unauthorized herein constitutes a felony punishable upon conviction by a fine of as much as five thousand dollars ($5,000) or imprisonment for as long as five (5) years, or both, together with the costs of prosecution. Such person shall also notify each such officer and employee that any such unauthorized further disclosure of returns or return information may also result in an award of civil damages against the officer or employee in an amount not less than one thousand dollars ($1,000) with respect to each instance of unauthorized disclosure. These penalties are prescribed by I.R.C. §§ 7213 and 7431 and set forth at 26 CFR 301.6103(n)-1.

2.2 Each officer or employee of any person to whom returns or return information is or may be disclosed shall be notified in writing by such person that any return or return information made available in any format shall be used only for the purpose of carrying out the provisions of this

Contract. Information contained in such material shall be treated as confidential and shall not be divulged or made known in any manner to any person except as may be necessary in the performance of the Contract. Inspection by or disclosure to anyone without an official need-to-know constitutes a criminal misdemeanor punishable upon conviction by a fine of as much as one thousand dollars ($1,000) or imprisonment for as long as one (1) year, or both, together with the costs of prosecution. Such person shall also notify each such officer and employee that any such unauthorized inspection or disclosure of returns or return information may also result in an award of civil damages against the officer or employee in an amount equal to the sum of the greater of one thousand dollars ($1,000) for each act of unauthorized inspection or disclosure with respect to which such defendant is found liable or the sum of the actual damages sustained by the plaintiff as a result of such unauthorized inspection or disclosure plus in the case of a willful inspection or disclosure which is the result of gross negligence, punitive damages, plus the costs of the action. These penalties are prescribed by I.R.C. §§ 7213A and 7431.

2.3 Additionally, it is incumbent upon the Contractor to inform its officers and employees of the penalties for improper disclosure imposed by the Privacy Act of 1974, 5 U.S.C. § 552a. Specifically, 5 U.S.C. § 552a(i)(1), which is made applicable to contractors by 5 § U.S.C. 552a(m)(1), provides that any officer or employee of a contractor, who by virtue of his or her employment or official position, has possession of or access to State records which contain individually identifiable information, the disclosure of which is prohibited by the Privacy Act or regulations established thereunder, and who knowing that disclosure of the specific material is prohibited, willfully discloses the material in any manner to any person or agency not entitled to receive it, shall be guilty of a misdemeanor and fined not more than five thousand dollars ($5,000).

2.4 Granting a Contractor access to FTI must be preceded by certifying that each individual understands the State's security policy and procedures for safeguarding IRS information. Contractors must maintain their authorization to access FTI through annual recertification. The initial certification and recertification must be documented and placed in the State's files for review. As part of the certification and at least annually afterwards, Contractors must be advised of the provisions of I.R.C. §§ 7431, 7213, and 7213A. The training provided before the initial certification and annually thereafter must also cover the incident response policy and procedure for reporting unauthorized disclosures and data breaches. For both the initial certification and the annual certification, the Contractor must sign, either with ink or electronic signature, a confidentiality statement certifying their understanding of the security requirements.

3. INSPECTION:

The IRS and the State shall have the right to send its officers and employees into the offices and plants of the Contractor for inspection of the facilities and operations provided for the performance of any work under this Contract. On the basis of such inspection, specific measures may be required in cases where the Contractor is found to be noncompliant with Contract safeguards.

Option 2

FEDERALLY MANDATED REQUIREMENTS FOR GENERAL SERVICES CONTRACTS WITH ACCESS TO FEDERAL TAX RETURN INFORMATION

Federal Tax Information ("FTI") means any return or return information, as defined by I.R.C. § 6103(b)(2), received from the Internal Revenue Service or secondary source, such as the Social Security Administration, Federal Office of Child Support Enforcement, or Bureau of Fiscal Service. FTI includes any information created by the recipient that is derived from return or return information.

1. PERFORMANCE

In performance of this Contract, the Contractor agrees to comply with and assume responsibility for compliance by his or her employees with the following requirements:

1.1 All work will be done under the supervision of the Contractor or the Contractor's employees.

1.2 Any federal tax returns or return information (hereafter referred to as returns or return information) made available shall be used only for the purpose of carrying out the provisions of this Contract. Information contained in such material shall be treated as confidential and shall not be divulged or made known in any manner to any person except as may be necessary in the performance of this contract. Inspection by or disclosure to anyone other than an officer or employee of the contractor is prohibited.

1.3 All returns and return information will be accounted for upon receipt and properly stored before, during, and after processing. In addition, all related output will be given the same level of protection as required for the source material.

1.4 No work involving returns and return information furnished under this Contract will be subcontracted without prior written approval of the IRS.

1.5 The Contractor will maintain a list of employees authorized access. Such list will be provided to the State and, upon request, to the IRS reviewing office.

1.6 The State will have the right to void the Contract if the Contractor fails to provide the safeguards described above.

2. CRIMINAL/CIVIL SANCTIONS:

2.1 Each officer or employee of any person to whom returns or return information is or may be disclosed will be notified in writing by such person that returns or return information disclosed to such officer or employee can be used only for a purpose and to the extent authorized herein, and that further disclosure of any such returns or return information for a purpose or to an extent unauthorized herein constitutes a felony punishable upon conviction by a fine of as much as five thousand dollars ($5,000) or imprisonment for as long as five (5) years, or both, together with the costs of prosecution. Such person shall also notify each such officer and employee that any such unauthorized further disclosure of returns or return information may also result in an award of civil damages against the officer or employee in an amount not less than one thousand dollars ($1,000) with respect to each instance of unauthorized disclosure. These penalties are prescribed by IRC §§ 7213 and 7431 and set forth at 26 CFR 301.6103(n)-1.

2.2 Each officer or employee of any person to whom returns or return information is or may be disclosed shall be notified in writing by such person that any return or return information made available in any format shall be used only for the purpose of carrying out the provisions of this Contract. Information contained in such material shall be treated as confidential and shall not be divulged or made known in any manner to any person except as may be necessary in the performance of the Contract. Inspection by or disclosure to anyone without an official need-to-know constitutes a criminal misdemeanor punishable upon conviction by a fine of as much as one thousand dollars ($1,000) or imprisonment for as long as one (1) year, or both, together with the costs of prosecution. Such person shall also notify each such officer and employee that any such unauthorized inspection or disclosure of returns or return information may also result in an award of civil damages against the officer or employee in an amount equal to the sum of the greater of one thousand ($1,000) for each act of unauthorized inspection or disclosure with respect to which such defendant is found liable or the sum of the actual damages sustained by the plaintiff as a result of such unauthorized inspection or disclosure plus in the case of a willful inspection or disclosure which is the result of gross negligence, punitive damages, plus the costs of the action. These penalties are prescribed by IRC §§ 7213A and 7431.

2.3 Additionally, it is incumbent upon the Contractor to inform its officers and employees of the penalties for improper disclosure imposed by the Privacy Act of 1974, 5 U.S.C. § 552a. Specifically, 5 U.S.C. § 552a(i)(1), which is made applicable to contractors by 5 U.S.C. § 552a(m)(1), provides that any officer or employee of a contractor, who by virtue of his or her employment or official position, has possession of or access to State records which contain individually identifiable information, the disclosure of which is prohibited by the Privacy Act or regulations established thereunder, and who knowing that disclosure of the specific material is prohibited, willfully discloses the material in any manner to any person or agency not entitled to receive it, shall be guilty of a misdemeanor and fined not more than five thousand dollars ($5,000).

2.4 Granting a Contractor access to FTI must be preceded by certifying that each individual understands the State's security policy and procedures for safeguarding IRS information. Contractors must maintain their authorization to access FTI through annual recertification. The

initial certification and recertification must be documented and placed in the State's files for review. As part of the certification and at least annually afterwards, Contractors must be advised of the provisions of IRC §§ 7431, 7213, and 7213A. The training provided before the initial certification and annually thereafter must also cover the incident response policy and procedure for reporting unauthorized disclosures and data breaches. For both the initial certification and the annual certification, the Contractor must sign, either with ink or electronic signature, a confidentiality statement certifying their understanding of the security requirements.

3. **INSPECTION:**
The IRS and the State shall have the right to send its officers and employees into the offices and plants of the Contractor for inspection of the facilities and operations provided for the performance of any work under this Contract. On the basis of such inspection, specific measures may be required in cases where the Contractor is found to be noncompliant with Contract safeguards.

Survival

Add one of the two survival options as appropriate. If unsure whether a survival provision is appropriate, consult the CPO legal team.

Option 1

E.#	Survival. The terms, provisions, representations, and warranties contained in this Contract which by their sense and context are intended to survive the performance and termination of this Contract, shall so survive the completion of performance and termination of this Contract.

Option 2

E.#	Survival. The terms, provisions, representations, and warranties contained in Sections <list numbered Sections> of this Contract shall survive the completion of performance, termination or expiration of this Contract.

SIGNATURES

Draft the Contract so that the signature section immediately follows the previous section text separated by only one blank line. Do NOT insert an arbitrary page break prior to the signature section.

By contract signature, the contracting agency head shall assure and affirm that:

1. if there is a Maximum Liability included in the Contract, then there is a balance in the appropriation from which obligations under the Contract are required to be paid that is not already encumbered to pay other obligations;
2. the contracting agency maintains documentation of a fair and impartial contractor selection in full compliance with the approved procurement methodology as indicated by the summary cover sheet; and,
3. the proposed Scope is clear and correct, adequate for all legal and enforcement purposes, and sufficiently detailed to ensure Contractor accountability and results.

Document comparison by Workshare Compare on Tuesday, June 16, 2015 4:04:57 PM

Input:	
Document 1 ID	file://\\Ag0319006wf525\ba_co\USERS\BA10408\C.Mallea's documents\Policy subcommittee\Procurement Commission\5.21.15 Meeting\FA Template_approved 5.21.15.docx
Description	FA Template_approved 5.21.15
Document 2 ID	file://\\Ag0319006wf525\ba_co\USERS\BA10408\C.Mallea's documents\Policy subcommittee\Ready for AC review\6.24.15 Meeting\FA Template_clean.docx
Description	FA Template_clean
Rendering set	Standard

Legend:	
Insertion	
~~Deletion~~	
~~Moved from~~	
Moved to	
Style change	
Format change	
~~Moved deletion~~	
Inserted cell	
Deleted cell	
Moved cell	
Split/Merged cell	
Padding cell	

Statistics:	
	Count
Insertions	42
Deletions	21
Moved from	1
Moved to	1
Style change	0
Format changed	0

Total changes	65

FEE FOR GOODS OR SERVICES CONTRACT TEMPLATE (FA) - NEW INSTRUCTIONS AND OPTIONAL PROVISIONS

CLEAN VERSION

FEE FOR GOODS OR SERVICES CONTRACT TEMPLATE (FA)

This template prescribes the format and content for contracts involving the purchase of goods or services from an individual, business, or non-profit. This contract template requires the expenditure of State funds.

Procurement professionals shall adhere to this template with revisions only as instructions permit. Changes to this template require a Rule Exception as set forth in Tenn. Comp. R. & Regs. 0690-03-01-.17 and the *Procurement Procedures Manual of the Central Procurement Office.*

Procurement professionals shall complete text fields and follow, replace, or otherwise address red instructional text (*e.g.*, State Agency Name, amount, will/will not) as indicated with appropriate font and color. The standard FA Template begins on the following page. Additional instructions, considerations, and options follow the standard FA Template.

CONTRACT

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

Begin Date	End Date	Agency Tracking #	Edison Record ID

Contractor Legal Entity Name	Edison Vendor ID

Goods or Services Caption (one line only)

Contractor	CFDA #
☒ Contractor	

Funding —

FY	State	Federal	Interdepartmental	Other	TOTAL Contract Amount
TOTAL:					

Contractor Ownership Characteristics:

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

☐ Woman Business Enterprise (WBE)

☐ Tennessee Service Disabled Veteran Enterprise (SDVBE)

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

☐ Other:

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

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

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

Speed Chart (optional)	Account Code (optional)

CONTRACT
BETWEEN THE STATE OF TENNESSEE,
STATE AGENCY NAME
AND
CONTRACTOR NAME

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

The Contractor is a/an Individual, For-Profit Corporation, Non-Profit Corporation, Special Purpose Corporation Or Association, Partnership, Joint Venture, Or Limited Liability Company.
Contractor Place of Incorporation or Organization: Location
Contractor Edison Registration ID # Number

A. SCOPE:

A.1. The Contractor shall provide all goods or services and deliverables as required, described, and detailed below and shall meet all service and delivery timelines as specified by this Contract.

A.#. Specify the goods, services, deliverables, technical specifications, timelines, and delivery requirements that the Contractor must provide and meet (sufficient detail is required to ensure contractor accountability and definitive results).

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

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

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

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

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

B. TERM OF CONTRACT:

This Contract shall be effective on DATE ("Effective Date") and extend for a period of number (#) months after the Effective Date ("Term"). The State shall have no obligation for goods or services provided by the Contractor prior to the Effective Date.

C. PAYMENT TERMS AND CONDITIONS:

C.1. Maximum Liability. In no event shall the maximum liability of the State under this Contract exceed Written Dollar Amount ($Number) ("Maximum Liability"). This Contract does not grant the Contractor any exclusive rights. The State does not guarantee that it will buy any minimum quantity of goods or services under this Contract. Subject to the terms and conditions of this Contract, the Contractor will only be paid for goods or services provided under this Contract after a purchase order is issued to Contractor by the State or as otherwise specified by this Contract.

C.2. Compensation Firm. The payment methodology in Section C.3. of this Contract shall constitute the entire compensation due the Contractor for all goods or services provided under this Contract regardless of the difficulty, materials or equipment required. The payment methodology includes all applicable taxes, fees, overhead, and all other direct and indirect costs incurred or to be incurred by the Contractor.

C.3. Payment Methodology. The Contractor shall be compensated based on the payment methodology for goods or services authorized by the State in a total amount as set forth in Section C.1.

a. The Contractor's compensation shall be contingent upon the satisfactory provision of goods or services as set forth in Section A.

b. The Contractor shall be compensated based upon the following payment methodology:

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

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

C.4. Travel Compensation. The Contractor shall not be compensated or reimbursed for travel time, travel expenses, meals, or lodging.

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

State Agency Billing Address

a. Each invoice, on Contractor's letterhead, shall clearly and accurately detail all of the following information (calculations must be extended and totaled correctly):

(1) Invoice number (assigned by the Contractor);
(2) Invoice date;
(3) Contract number (assigned by the State);
(4) Customer account name: State Agency & Division Name.

(5) Customer account number (assigned by the Contractor to the above-referenced Customer);
(6) Contractor name;
(7) Contractor Tennessee Edison registration ID number;
(8) Contractor contact for invoice questions (name, phone, or email);
(9) Contractor remittance address;
(10) Description of delivered goods or services provided and invoiced, including identifying information as applicable;
(11) Number of delivered or completed units, increments, hours, or days as applicable, of each good or service invoiced;
(12) Applicable payment methodology (as stipulated in Section C.3.) of each good or service invoiced;
(13) Amount due for each compensable unit of good or service; and
(14) Total amount due for the invoice period.

b. Contractor's invoices shall:

(1) Only include charges for goods delivered or services provided as described in Section A and in accordance with payment terms and conditions set forth in Section C;
(2) Only be submitted for goods delivered or services completed and shall not include any charge for future goods to be delivered or services to be performed;
(3) Not include Contractor's taxes, which includes without limitation Contractor's sales and use tax, excise taxes, franchise taxes, real or personal property taxes, or income taxes; and
(4) Include shipping or delivery charges only as authorized in this Contract.

c. The timeframe for payment (or any discounts) begins only when the State is in receipt of an invoice that meets the minimum requirements of this Section C.5.

C.6. Payment of Invoice. A payment by the State shall not prejudice the State's right to object to or question any payment, invoice, or other matter. A payment by the State shall not be construed as acceptance of goods delivered, any part of the services provided, or as approval of any amount invoiced.

C.7. Invoice Reductions. The Contractor's invoice shall be subject to reduction for amounts included in any invoice or payment that is determined by the State, on the basis of audits conducted in accordance with the terms of this Contract, to not constitute proper compensation for goods delivered or services provided.

C.8. Deductions. The State reserves the right to deduct from amounts, which are or shall become due and payable to the Contractor under this or any contract between the Contractor and the State of Tennessee, any amounts that are or shall become due and payable to the State of Tennessee by the Contractor.

C.9. Prerequisite Documentation. The Contractor shall not invoice the State under this Contract until the State has received the following, properly completed documentation. At the State's option, it may make payments to Contractor by automated clearing house ("ACH") or the State Purchasing Card ("P-Card").

a. The Contractor shall complete, sign, and present to the State:

(1) An "Authorization Agreement for Automatic Deposit Form" provided by the State. By doing so, the Contractor acknowledges and agrees that, once this form is received by the State, payments to the Contractor, under this or any other contract the Contractor has with the State of Tennessee, may be made by ACH; and

(2) An "Authorization to Receive Payments by Purchasing Card Form" provided by the State. By doing so, the Contractor agrees that payments to the Contractor under this Contract may be made using the State P-Card.

b. The Contractor shall complete, sign, and return to the State the State-provided W-9 form. The taxpayer identification number on the W-9 form must be the same as the Contractor's Federal Employer Identification Number or Social Security Number referenced in the Contractor's Edison registration information.

D. MANDATORY TERMS AND CONDITIONS:

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

D.2. Communications and Contacts. All instructions, notices, consents, demands, or other communications required or contemplated by this Contract shall be in writing and shall be made by certified, first class mail, return receipt requested and postage prepaid, by overnight courier service with an asset tracking system, or by email or facsimile transmission with recipient confirmation. All communications, regardless of method of transmission, shall be addressed to the respective Party at the appropriate mailing address, facsimile number, or email address as stated below or any other address provided in writing by a Party.

The State:

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

The Contractor:

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

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

D.3. Modification and Amendment. This Contract may be modified only by a written amendment signed by all Parties and approved by all applicable State officials.

D.4. Subject to Funds Availability. The Contract is subject to the appropriation and availability of State or federal funds. In the event that the funds are not appropriated or are otherwise unavailable, the State reserves the right to terminate this Contract upon written notice to the Contractor. The State's exercise of its right to terminate this Contract shall not constitute a breach of Contract by the State. Upon receipt of the written notice, the Contractor shall cease all work associated with the Contract. If the State terminates this Contract due to lack of funds availability, the Contractor shall be entitled to compensation for all conforming goods requested and accepted by the State and for all satisfactory and authorized services completed as of the termination date. Should the State exercise its right to terminate this Contract due to unavailability of funds, the Contractor

shall have no right to recover from the State any actual, general, special, incidental, consequential, or any other damages of any description or amount.

D.5. Termination for Convenience. The State may terminate this Contract for convenience without cause and for any reason. The State shall give the Contractor at least thirty (30) days written notice before the termination date. The Contractor shall be entitled to compensation for all conforming goods delivered and accepted by the State or for satisfactory, authorized services completed as of the termination date. In no event shall the State be liable to the Contractor for compensation for any goods neither requested nor accepted by the State or for any services neither requested by the State nor satisfactorily performed by the Contractor. In no event shall the State's exercise of its right to terminate this Contract for convenience relieve the Contractor of any liability to the State for any damages or claims arising under this Contract.

D.6. Termination for Cause. If the Contractor fails to properly perform its obligations under this Contract in a timely or proper manner, or if the Contractor materially violates any terms of this Contract ("Breach Condition"),the State shall have the right to immediately terminate the Contract and withhold payments in excess of compensation for completed services or provided goods. Notwithstanding the above, the Contractor shall not be relieved of liability to the State for damages sustained by virtue of any Breach Condition and the State may seek other remedies allowed at law or in equity for breach of this Contract.

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

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

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

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

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

a. The Contractor agrees that the Contractor shall not knowingly utilize the services of an illegal immigrant in the performance of this Contract and shall not knowingly utilize the services of any subcontractor who will utilize the services of an illegal immigrant in the performance of this Contract. The Contractor shall reaffirm this attestation, in writing, by submitting to the State a completed and signed copy of the document at Attachment Reference, semi-annually during the Term. If the Contractor is a party to more than one

contract with the State, the Contractor may submit one attestation that applies to all contracts with the State. All Contractor attestations shall be maintained by the Contractor and made available to State officials upon request.

b. Prior to the use of any subcontractor in the performance of this Contract, and semi-annually thereafter, during the Term, the Contractor shall obtain and retain a current, written attestation that the subcontractor shall not knowingly utilize the services of an illegal immigrant to perform work under this Contract and shall not knowingly utilize the services of any subcontractor who will utilize the services of an illegal immigrant to perform work under this Contract. Attestations obtained from subcontractors shall be maintained by the Contractor and made available to State officials upon request.

c. The Contractor shall maintain records for all personnel used in the performance of this Contract. Contractor's records shall be subject to review and random inspection at any reasonable time upon reasonable notice by the State.

d. The Contractor understands and agrees that failure to comply with this section will be subject to the sanctions of Tenn. Code Ann. § 12-3-309 for acts or omissions occurring after its effective date.

e. For purposes of this Contract, "illegal immigrant" shall be defined as any person who is not: (i) a United States citizen; (ii) a Lawful Permanent Resident; (iii) a person whose physical presence in the United States is authorized; (iv) allowed by the federal Department of Homeland Security and who, under federal immigration laws or regulations, is authorized to be employed in the U.S.; or (v) is otherwise authorized to provide services under the Contract.

D.11. Records. The Contractor shall maintain documentation for all charges under this Contract. The books, records, and documents of the Contractor, for work performed or money received under this Contract, shall be maintained for a period of five (5) full years from the date of the final payment and shall be subject to audit at any reasonable time and upon reasonable notice by the State, the Comptroller of the Treasury, or their duly appointed representatives. The financial statements shall be prepared in accordance with generally accepted accounting principles.

D.12. Monitoring. The Contractor's activities conducted and records maintained pursuant to this Contract shall be subject to monitoring and evaluation by the State, the Comptroller of the Treasury, or their duly appointed representatives.

D.13. Progress Reports. The Contractor shall submit brief, periodic, progress reports to the State as requested.

D.14. Strict Performance. Failure by any Party to this Contract to require, in any one or more cases, the strict performance of any of the terms, covenants, conditions, or provisions of this Contract shall not be construed as a waiver or relinquishment of any term, covenant, condition, or provision. No term or condition of this Contract shall be held to be waived, modified, or deleted except by a written amendment signed by the Parties.

D.15. Independent Contractor. The Parties shall not act as employees, partners, joint venturers, or associates of one another. The Parties are independent contracting entities. Nothing in this Contract shall be construed to create an employer/employee relationship or to allow either Party to exercise control or direction over the manner or method by which the other transacts its business affairs or provides its usual services. The employees or agents of one Party are not employees or agents of the other Party.

D.16 Patient Protection and Affordable Care Act. The Contractor agrees that it will be responsible for compliance with the Patient Protection and Affordable Care Act ("PPACA") with respect to itself and its employees, including any obligation to report health insurance coverage, provide health insurance coverage, or pay any financial assessment, tax, or penalty for not providing health insurance. The Contractor shall indemnify the State and hold it harmless for any costs to the

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

D.17. Limitation of State's Liability. The State shall have no liability except as specifically provided in this Contract. In no event will the State be liable to the Contractor or any other party for any lost revenues, lost profits, loss of business, decrease in the value of any securities or cash position, time, money, goodwill, or any indirect, special, incidental, punitive, exemplary or consequential damages of any nature, whether based on warranty, contract, statute, regulation, tort (including but not limited to negligence), or any other legal theory that may arise under this Contract or otherwise. The State's total liability under this Contract (including any exhibits, schedules, amendments or other attachments to the Contract) or otherwise shall under no circumstances exceed the Maximum Liability. This limitation of liability is cumulative and not per incident.

D.18. Limitation of Contractor's Liability. In accordance with Tenn. Code Ann. § 12-3-701, the Contractor's liability for all claims arising under this Contract shall be limited to an amount equal to two (2) times the Maximum Liability amount detailed in Section C.1. and as may be amended, PROVIDED THAT in no event shall this Section limit the liability of the Contractor for: (i) intellectual property or any Contractor indemnity obligations for infringement for third-party intellectual property rights; (ii) any claims covered by any specific provision in the Contract providing for liquidated damages; or (iii) any claims for intentional torts, criminal acts, fraudulent conduct, or acts or omissions that result in personal injuries or death.

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

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

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

a. Contractor warrants to the State that it is familiar with the requirements of the Privacy Rules, and will comply with all applicable requirements in the course of this Contract.

b. Contractor warrants that it will cooperate with the State, including cooperation and coordination with State privacy officials and other compliance officers required by the Privacy Rules, in the course of performance of the Contract so that both parties will be in compliance with the Privacy Rules.

c. The State and the Contractor will sign documents, including but not limited to business associate agreements, as required by the Privacy Rules and that are reasonably necessary to keep the State and Contractor in compliance with the Privacy Rules. This provision shall not apply if information received or delivered by the parties under this Contract is NOT "protected health information" as defined by the Privacy Rules, or if the Privacy Rules permit the parties to receive or deliver the information without entering into a business associate agreement or signing another document.

d. The Contractor will indemnify the State and hold it harmless for any violation by the Contractor or its subcontractors of the Privacy Rules. This includes the costs of responding to a breach of protected health information, the costs of responding to a government enforcement action related to the breach, and any fines, penalties, or damages paid by the State because of the violation.

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

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

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

a. are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any federal or state department or agency;

b. have not within a three (3) year period preceding this Contract been convicted of, or had a civil judgment rendered against them from commission of fraud, or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, state, or local) transaction or grant under a public transaction; violation of federal or state antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification, or destruction of records, making false statements, or receiving stolen property;

c. are not presently indicted or otherwise criminally or civilly charged by a government entity (federal, state, or local) with commission of any of the offenses detailed in section b. of this certification; and

d. have not within a three (3) year period preceding this Contract had one or more public transactions (federal, state, or local) terminated for cause or default.

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

D.24. Force Majeure. "Force Majeure Event" means fire, flood, earthquake, elements of nature or acts of God, wars, riots, civil disorders, rebellions or revolutions, acts of terrorism or any other similar cause beyond the reasonable control of the Party except to the extent that the non-performing Party is at fault in failing to prevent or causing the default or delay, and provided that the default or delay cannot reasonably be circumvented by the non-performing Party through the use of alternate sources, workaround plans or other means. A strike, lockout or labor dispute shall not excuse either Party from its obligations under this Contract. Except as set forth in this Section, any failure or delay by a Party in the performance of its obligations under this Contract arising from a Force Majeure Event is not a default under this Contract or grounds for termination. The non-performing Party will be excused from performing those obligations directly affected by the Force Majeure Event, and only for as long as the Force Majeure Event continues, provided that the Party continues to use diligent, good faith efforts to resume performance without delay. The

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

D.25. State and Federal Compliance. The Contractor shall comply with all applicable state and federal laws and regulations in the performance of this Contract.

D.26. Governing Law. This Contract shall be governed by and construed in accordance with the laws of the State of Tennessee. The Tennessee Claims Commission or the state or federal courts in Tennessee shall be the venue for all claims, disputes, or disagreements arising under this Contract. The Contractor acknowledges and agrees that any rights, claims, or remedies against the State of Tennessee or its employees arising under this Contract shall be subject to and limited to those rights and remedies available under Tenn. Code Ann. §§ 9-8-101 - 407.

D.27. Entire Agreement. This Contract is complete and contains the entire understanding between the Parties relating to its subject matter, including all the terms and conditions of the Parties' agreement. This Contract supersedes any and all prior understandings, representations, negotiations, and agreements between the Parties, whether written or oral.

D.28. Severability. If any terms and conditions of this Contract are held to be invalid or unenforceable as a matter of law, the other terms and conditions of this Contract shall not be affected and shall remain in full force and effect. The terms and conditions of this Contract are severable.

D.29. Headings. Section headings of this Contract are for reference purposes only and shall not be construed as part of this Contract.

D.30. Incorporation of Additional Documents. Each of the following documents is included as a part of this Contract by reference. In the event of a discrepancy or ambiguity regarding the Contractor's duties, responsibilities, and performance under this Contract, these items shall govern in order of precedence below:

a. any amendment to this Contract, with the latter in time controlling over any earlier amendments;
b. this Contract with any attachments or exhibits (excluding the items listed at subsections c. through f., below), which includes [identify attachments and exhibits];
c. any clarifications of or addenda to the Contractor's proposal seeking this Contract;
d. the State solicitation, as may be amended, requesting responses in competition for this Contract;
e. any technical specifications provided to proposers during the procurement process to award this Contract; and
f. the Contractor's response seeking this Contract.

E. SPECIAL TERMS AND CONDITIONS:

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

Add Appropriate and Contingently Required Special Terms & Conditions (refer to instructions for details)

IN WITNESS WHEREOF,

CONTRACTOR LEGAL ENTITY NAME:

CONTRACTOR SIGNATURE **DATE**

PRINTED NAME AND TITLE OF CONTRACTOR SIGNATORY (above)

STATE AGENCY NAME:

NAME & TITLE **DATE**

ATTACHMENT REFERENCE

ATTESTATION RE PERSONNEL USED IN CONTRACT PERFORMANCE

If the attestation applies to more than one contract, modify this row accordingly. SUBJECT CONTRACT NUMBER:	
CONTRACTOR LEGAL ENTITY NAME:	
FEDERAL EMPLOYER IDENTIFICATION NUMBER: (or Social Security Number)	

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

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

CONTRACTOR SIGNATURE

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

PRINTED NAME AND TITLE OF SIGNATORY

DATE OF ATTESTATION

FA TEMPLATE INSTRUCTIONS, CONSIDERATIONS, and OPTIONS

The following pages contain additional instructions, considerations, and options. Replace or modify the Standard FA Template by including the following content as appropriate. Content included with a box around it is intended to be inserted into the standard FA Template, as appropriate.

Procurement professionals should complete text fields and follow, replace, or otherwise address red instructional text (*e.g.*, State Agency Name, amount, will/will not) as indicated and with conforming font and color.

SUMMARY COVER SHEET

A summary cover sheet properly completed and in accordance with the Template is required for every copy of the contracting document. Complete summary cover sheet fields as indicated within the Template and the following field descriptions.

Agency Tracking #	a unique number comprised of: 5-digit business unit # + unique, 5-digit # example: 31707-12345
Funding	amounts by fiscal year & funding source and with row & column totals; the sum of the TOTAL Contract Amount column (the grand total amount for all fiscal years & all sources of funding) MUST equal the contract maximum liability
Contractor Ownership Characteristics	Minority Business Enterprise (MBE): select if a minority-owned business, which means a continuing, independent, for profit business that performs a commercially useful function, and is at least fifty-one percent (51%) owned and controlled by one (1) or more minority individuals who are impeded from normal entry into the economic mainstream because of past practices of discrimination based on race or ethnic background. Identify the applicable Minority if known. Minority means a person who is a citizen or lawful permanent resident of the United States and who is: (A) African American, a person having origins in any of the black racial groups of Africa; (B) Asian American, a person having origins in any of the original peoples of the Far East, Southeast Asia, the Indian subcontinent, or the Pacific Islands; (C) Hispanic American, a person of Mexican, Puerto Rican, Cuban, Central or South American, or other Spanish culture or origin, regardless of race; (D) Native American, a person having origins in any of the original peoples of North America. Woman Business Enterprise (WBE): select if a woman-owned business, which means a woman-owned business that is a continuing, independent, for profit business that performs a commercially useful function, and is at least fifty-one percent (51%) owned and controlled by one or more women; or, in the case of any publicly owned business, at least fifty-one-percent (51%) of the stock of which is owned and controlled by one (1) or more women and whose management and daily business operations are under the control of one (1) or more women. Tennessee Service Disabled Veteran Enterprise (SDVBE): select if a Tennessee service-disabled veteran-owned business, which means a service-disabled veteran-owned business that is a continuing, independent, for profit business located in this state that performs a commercially useful function and: (A) Is at least fifty-one percent (51%) owned and controlled by one (1) or more service-disabled veterans; (B) In the case of a business solely owned by one (1) service-disabled veteran and such person's spouse, is at least fifty percent (50%) owned and controlled by the service-disabled veteran; or (C) In the case of any publicly owned business, at least fifty-one percent (51%) of the stock of which is owned and controlled by one (1) or more service-disabled veterans and whose management and daily business operations are under the control of one (1) or more service-disabled veteran.

Tennessee Small Business Enterprise (SBE): select if a Tennessee small business, which means a business that is a continuing, independent, for profit business which performs a commercially useful function with residence in Tennessee and has gross receipts of no more than ten million dollars ($10,000,000) averaged over a three-year period or employs no more than ninety-nine (99) persons on a full-time basis.

Other: select if none of the above options. There is an option to provide additional details here, e.g., type governmental entity in the space provided if the Contractor is a governmental entity. For additional guidance, please visit: http://www.tn.gov/businessopp/program_elig.html.

PREAMBLE

Add additional information only if necessary.

In a contract with an individual, delete the Template preamble phrase, "Place of Incorporation or Organization: Location."

A. SCOPE OF SERVICES OR SPECIFICATIONS OF GOODS ("Scope")

Do NOT include payment terms in the Scope. Define any Contractor milestones without reference to payment. Section C should address payment at milestones.

Draft the Scope to clearly, specifically, and definitively detail contractor duties, responsibilities, and associated performance requirements and describe, in detail, the Scope and deliverable requirements and all related specifications. Include a definition section, key performance indicators, or any other specifications as needed.

It is the contracting state agency's responsibility to adequately draft a Scope, and oversight examiners will rely on the contracting state agency head's signature on the contract document as certification and assurance that the proposed Scope is clear and correct, adequate for all legal and enforcement purposes, and sufficiently detailed to ensure contractor accountability and results.

Option: Warranty when Contractor is reselling goods

Replace the standard warranty provision with the following to require Contractor to provide a warranty of the greater of one year or to pass through the original manufacturer's warranty.

A.#. Warranty for Resale of Goods. For all goods provided under this Contract, Contractor shall pass-through to the State any manufacturers' warranties. In addition, for a period of one (1) year after any receipt of any goods under this Contract, Contractor expressly warrants that all such goods are: (a) merchantable; (b) of good quality and workmanship; (c) free from defects; (d) in conformity with the intended purpose and for the particular purpose for which they were designed; and (e) in conformity with Contractor's samples, if any.

Option: Warranty period that is shorter than the Term

Replace the standard warranty provision with the following to obtain a warranty period that is shorter than the Term. The Contract shall not include a warranty period of less than one (1) year.

A.#. Warranty. Contractor represents and warrants that the term of the warranty ("Warranty Period") shall be the greater of: (a) number (#) months or years after the provision and acceptance by the State of goods or services provided by Contractor; or (b) any other warranty generally offered by Contractor, its suppliers, or manufacturers to customers of its goods or services. During the Warranty Period, any nonconformance of the goods or services to the terms and conditions of

this Contract shall constitute a "Defect" and shall be considered "Defective." If Contractor receives notice of a Defect during the Warranty Period, then Contractor shall correct the Defect at no additional charge.

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

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

Option: Acceptable Alternative to *Change Orders*.

The RFP Contract Amendment section does not preclude the State from "locking in" payment rates for any additional work per potential contract amendments. Therefore, if deemed appropriate, add the following sections to the *pro forma* contract Scope:

#. Correction of Deficiencies. Any corrections of deficiencies relating to the Contract Scope of Services requirements or deliverables and any investigation necessary to determine the source of such deficiencies shall be completed by the Contractor at no cost to the State.

AND...

#. Additional Work. The State may request, at its sole discretion, additional work involving the enhancement or modification of a deliverable under the Contract Scope, provided that this Contract is amended, pursuant to section #. Remuneration for any such additional work shall be based on the applicable "contingent," payment rate(s) detailed in Section C.3 of this Contract.

AND...

#. Contingent Rates— In accordance with section REFERENCE of this Contract, The State may request and the Contractor may agree to perform additional work involving the enhancement or modification of deliverables under the Contract Scope of Services, provided that this Contract is amended to require such work.

i. Remuneration for any such additional work shall be based on the applicable contingent, payment rate(s) detailed below and as approved by the State.

SERVICE	**AMOUNT PER HOUR**
SERVICE DESCRIPTION	$ AMOUNT

ii. The Contractor shall not be compensated for travel time to the primary location of service provision.

Option: *Change Orders*.

The incorporation of *pro forma* contract language permitting Change Orders will be stringently considered and may require oversight authority executive-level approval prior to a solicitation being approved for release.

Propose a Change Order process within a draft document only as appropriate, and provide clear justification as to why it is deemed necessary. **At minimum, draft the solicitation document to include: (1)** appropriate RFP text permitting Change Orders within specified parameters; **(2)** a clear,

comprehensive change order process in the *pro forma* contract's scope; and **(3)** clear, non-conflicting payment provisions in the *pro forma* contract's payment methodology section.

(1) Add the following to the solicitation document after RFP Section 4.11:

> Notwithstanding the above, *pro forma* Contract section REFERENCE provides for limited service "change orders" without a formal Contract Amendment upon the documented mutual agreement by the Parties.

(2) Add the following to the *pro forma* contract's scope:

> A.#. The State may, at its sole discretion and with written notice to the Contractor, request changes in the Scope that are necessary but were inadvertently unspecified in this Contract.
>
> a. Change Order Creation— After receipt of a written request for additional services from the State, the Contractor shall respond to the State, within a maximum of ten (10) business days, with a written proposal for completing the service. Contractor's proposal must specify:
>
> (1) the effect, if any, of implementing the requested change(s) on all other services required under this Contract;
>
> (2) the specific effort involved in completing the change(s);
>
> (3) the expected schedule for completing the change(s);
>
> (4) the maximum number of person hours required for the change(s); and
>
> (5) the maximum cost for the change(s)— this maximum cost shall in no instance exceed the product of the person hours required multiplied by the appropriate payment rate proposed for such work.
>
> The Contractor shall not perform any additional service until the State has approved the proposal. If approved, the State will sign the proposal, and it shall constitute a Change Order between the Contract Parties pertaining to the specified change(s) and shall be incorporated, hereby, as a part of this Contract.
>
> b. Change Order Performance— Subsequent to creation of a Change Order, the Contractor shall complete the required services. The State will be the sole judge of the acceptable completion of work and, upon such determination, shall provide the Contractor written approval.
>
> c. Change Order Remuneration— The State will remunerate the Contractor only for acceptable work. All acceptable work performed pursuant to an approved Change Order, without a formal amendment of this Contract, shall be remunerated in accordance with and further limited by Contract Section C.3.c., PROVIDED THAT, the State shall be liable to the Contractor only for the cost of the actual goods or services provided to complete the necessary work, not to exceed the maximum cost for the change detailed in the Change Order. In no instance shall the State be liable to the Contractor for any amount exceeding the maximum cost specified by the Change Order authorizing the goods or services. Upon State approval of the work, the Contractor shall invoice the State in accordance with the relevant provisions of this Contract.

(3) Add the following to the *pro forma* contract's payment methodology section:

[C.3.]x. The Contractor shall be compensated for changes requested and performed pursuant to Contract Section Reference, without a formal amendment of this Contract based upon the payment rates detailed in the schedule below and as agreed pursuant to Section Reference, PROVIDED THAT compensation to the Contractor for such "change order" work shall not exceed NUMBER NOT TO EXCEED SEVEN PERCENT (Number %) of the sum of milestone payment rates detailed in Section C.3.b., above (which is the total cost for the milestones and associated deliverables set forth in Contract Sections A.3., through A.7.). If, at any point during the Term, the State determines that the cost of necessary "change order" work would exceed the maximum amount, the State may amend this Contract to address the need.

Service Description	**Amount** (per compensable increment)
	$ Amount per hour
NOTE: The Contractor shall not be compensated for travel time to the primary location of service provision.	

B. TERM OF CONTRACT

Procurement professionals should obtain the Contractor's signature first before submitting the Contract for state signatures or approvals. Procurement professionals shall obtain all required approvals prior to the Effective Date written in the Contract and submit it for Central Procurement Office approval no less than thirty (30) days before the Effective Date.

If a signed contract is not submitted to the Central Procurement Office at least thirty (30) days prior to the Effective Date, then the CPO may request that the Contract be resubmitted with a new Effective Date or request that the procurement professional provide a written explanation as to why the Contract was submitted less than thirty (30) days before the Effective Date. In no event shall the Contractor deliver goods or perform services prior to the Effective Date.

Procurement professionals should plan procurements and draft contracts with a Term of no longer than sixty (60) months, including extensions or renewals. Contracts requiring a Term greater than sixty (60) months shall require an approved Rule Exception Request.

Option: Renewal or Extension Term

To reserve the right to renew or extend the Term, change the section designation under B. to B.1., and add either or both of the following sections.

B.#. Renewal Options. This Contract may be renewed upon satisfactory completion of the Term. The State reserves the right to execute up to number (#) renewal options under the same terms and conditions for a period not to exceed twelve (12) months each by the State, at the State's sole option. In no event, however, shall the maximum Term, including all renewals or extensions, exceed a total of sixty (60) months.

B.#. Term Extension. The State may extend the Term an additional period of time, not to exceed one hundred-eighty (180) days beyond the expiration date of this Contract, under the same terms and conditions, at the State's sole option. In no event, however, shall the maximum Term, including all renewals or extensions, exceed a total of sixty (60) months.

C. PAYMENT TERMS AND CONDITIONS

Revise Payment Terms and Conditions sections only as instructed.

Option: Statewide Contract Estimated Liability.

For statewide contracts with no Maximum Liability, replace C.1. with the following:

C.1. Estimated Liability. The total purchases of any goods or services under the Contract are not known. The State estimates the purchases during the Term shall be DOLLAR AMOUNT ($NUMBER) ("Estimated Liability"). This Contract does not grant the Contractor any exclusive rights. The State does not guarantee that it will buy any minimum quantity of goods or services under this Contract. Subject to the terms and conditions of this Contract, the Contractor will only be paid for goods or services provided under this Contract after a purchase order is issued to Contractor by the State or as otherwise specified by this Contract.

Option: Price Changes Authorized for Equitable Adjustment

C.2. Price Changes. Prices listed in awarded published catalog, price lists or price schedule shall remain firm for Number (#) days ("Firm Price Period").

a. Price Decreases. After the Firm Price Period, prices shall be equitably adjusted to reflect a decrease in Contractor's costs.

b. Price Increases. After the Firm Price Period, Contractor may request price increases. The request shall: include copies of the new price lists or catalog that reflect a change in the Contractor's cost; not constitute an increase in profit; and apply to all of the Contractor's customers.

c. Approval of Price Changes. The State may at its sole option: (1) grant the Contractor's request; (2) cancel the Contract and award it to the next apparent best evaluated Respondent; (3) cancel the Contract and reissue the solicitation; or (4) deny the Contractor's request. If approved, any price changes of less than seven percent (7%) will become effective upon the State's approval in writing. Price changes exceeding seven percent (7%) shall require a Contract amendment. The Contractor shall honor all purchase orders dated prior to the approved price change. Upon request from the State, the Contractor shall furnish the approved catalog, price schedule or price list as applicable to the State at no charge.

Option: Contracts That Detail Payment Methodology in an Appendix

Reference any appendix with line items as applicable.

C.3. Payment Methodology. The Contractor shall be compensated based on the payment rates for goods or services contained in Contract Appendix # and as authorized by the State in a total amount as set forth in Section C.1. The Contractor's compensation shall be contingent upon the satisfactory provision of goods or services as set forth in Section A.

The reimbursement of actual costs in a fee-for-service contract is NOT recommended. If the Contract includes payment terms providing for a reimbursement of actual costs (other than travel compensation in accordance with state rates), the payment terms MUST also include provisions that describe EXACTLY how the State will audit

Contractor expenditures to ensure that the State pays for actual, reasonable, necessary and allowed costs only and that such costs resulted from competitive procurements.

Payment Methodology

The default payment methodology used in the Template provides for unit, milestone and temporal rate payments.

Requirement: *Pro Rata* Payments

If temporal payment rates effect payment for service periods greater than an hour (*e.g.*, daily payment rates), add a new subsection (similar to the following example) that defines the payment period and provides for *pro rata* payments for completed periods of service less than the payment rate period.

c. A "day" shall be defined as a minimum of eight (8) hours of service. If the Contractor provides fewer than eight hours of service in a standard twenty-four hour day, the Contractor shall bill *pro rata* for only those portions of the day in which service was actually delivered. The Contractor shall not bill more than the daily rate even if the Contractor works more than eight hours in a day.

Option: Rate Escalation

Replace paragraph C.3.b. with the following if specific rate escalation during the Term is appropriate.

b. The Contractor shall be compensated based upon the following payment rates:

(1) For service performed from Date, through Date, the following rates shall apply:

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

(2) For service performed from Date, through Date, the Contractor shall be compensated based upon the payment rates in Section Reference (*e.g.*, C.3.b.(1)) above but adjusted by the percentage increase, if any, between the Consumer Price Index for All Urban Consumers (CPI-U): U.S. city average, All Items /Medical Care expenditure category, not seasonally adjusted, index base period: 1982-84=100) published by the United States Department of Labor, Bureau of Labor Statistics in Month & Year (just before prior period end month) and that figure published in the same month, 12-months prior, up to a maximum of Written Number percent (Number%).

Repeat Previous Subsection for Each Subsequent Term

Option: Payment Upon Completion

Replace sections in the Template with the following sections if the Contract specifies one, lump sum payment after completion of all work.

C.3. Payment Methodology. Upon Contractor's satisfactory provision of goods or services set forth in Section A, the Contractor shall be compensated Written Dollar Amount ($Number).

C.4. Travel Compensation. The Contractor shall not be compensated or reimbursed for travel, meals, or lodging.

C.5. Invoice Requirements. The Contractor shall invoice the State only after completion of all work, described in Section A of this Contract, and present invoices no more often than monthly, with all necessary supporting documentation, to:

State Agency Billing Address

a. Each invoice, on Contractor's letterhead, shall clearly and accurately detail all of the following information (calculations must be extended and totaled correctly):

(1) Invoice number (assigned by the Contractor);
(2) Invoice date;
(3) Contract number (assigned by the State);
(4) Customer account name: State Agency & Division Name;
(5) Customer account number (assigned by the Contractor to the above-referenced Customer);
(6) Contractor name;
(7) Contractor Tennessee Edison registration ID number;
(8) Contractor contact for invoice questions (name, phone, or email);
(9) Contractor remittance address;
(10) Description of delivered goods or services provided and invoiced, including identifying information as applicable; and
(11) Total amount due for delivered goods or services provided (as stipulated in Section C.3. above).

b. The Contractor understands and agrees that an invoice under this Contract shall:

(1) only include charges for goods delivered or services provided as described in Section A and in accordance with payment terms and conditions set forth in Contract Section C;
(2) only be submitted for goods delivered or services completed and shall not include any charge for future goods to be delivered or services to be performed;
(3) not include Contractor's taxes which includes without limitation Contractor's sales and use tax, excise taxes, franchise taxes, real or personal property taxes, or income taxes; and
(4) begin the timeframe for payment (and any discounts) only when the State is in receipt of the invoice, and the invoice meets the minimum requirements of this Section C.5.

Travel Compensation

Replace the Section with the following as appropriate (and revise the Compensation Firm Section as indicated).

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

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

AND replace the second sentence of the Compensation Firm Section with the following:

The payment methodology in Section C.3 and the Travel Compensation provided in Section C.4.shall constitute the entire compensation due the Contractor for all goods or services provided under this Contract regardless of the difficulty, materials or equipment required. The payment methodology includes all applicable taxes, fees, overhead, and all other direct or indirect costs incurred or to be incurred by the Contractor.

Invoice Requirements

Add clear, non-conflicting, invoice requirements to this Section as appropriate.

Revise the Section to require or permit invoices more or less often than monthly.

Option: Retention of Final Payment

Add the following Section as appropriate. If unsure whether the Section is applicable, consult the CPO legal team.

C.#. Retention of Final Payment. The amount of Written Dollar Amount ($Number) shall be withheld by the State until Written Number (Number) days after final provision of goods or services under this Contract.

D. MANDATORY TERMS AND CONDITIONS

Modification and Amendment

Add the following section if the Contract includes a Renewal Option or Term Extension provision.

D.3. Modification and Amendment. This Contract may be modified only by a written amendment signed by all Parties and approved by all applicable State officials. The State's exercise of a valid Renewal Option or Term Extension does not constitute an amendment so long as there are no other changes to the Contract's terms and conditions.

Option: Revise Termination for Convenience Time Period

Specify whether the termination is immediate, increase or decrease notice requirement days as appropriate.

D.5. Termination for Convenience. The State may terminate this Contract for convenience without cause for any reason. The State's election to terminate this Contract for convenience shall be effective upon the date specified and shall not be deemed a breach of contract by the State. The Contractor shall be entitled to compensation for all conforming goods delivered and accepted by the State or for satisfactory, authorized services completed as of the termination date. In no event shall the State be liable to the Contractor for compensation for any good or service that has not been provided, nor shall the Contractor be relieved of any liability to the State for any damages or claims arising under this Contract.

Option: Bilateral Termination

Replace the standard Termination for Convenience Section with the following bilateral termination Section only if the contracting agency can justify that bilateral termination is in the best interest of the State.

D.5. Termination for Convenience. Either Party may terminate this Contract without cause for any reason. A party's exercise of its right to terminate this Contract for convenience shall not be deemed a breach of contract by either Party. The terminating Party shall give the other Party at least thirty (30) days written notice before the termination date. The Contractor shall be entitled to compensation for all conforming goods delivered and accepted by the State or for satisfactory, authorized services completed as of the termination date, but in no event shall the State be liable to the Contractor for compensation for any good or service that has not been provided, nor shall the Contractor be relieved of any liability to the State for any damages or claims arising under this Contract.

Termination for Cause

Option: Termination for Cause Providing for Notice of Breach and an Opportunity to Cure

Replace the Section with either of the following as appropriate. The first option requires the State to give notice of breach and provide Contractor an opportunity to cure the condition prior to termination. The second option allows the Contractor as well as the State to declare the other Party in breach while requiring a cure period prior to termination.

D.6. Termination for Cause. If the Contractor fails to properly perform its obligations under this Contract, or if the Contractor materially violates any terms of this Contract ("Breach Condition"), the State shall provide written notice to Contractor specifying the Breach Condition. If within thirty (30) days of notice, the Contractor has not cured the Breach Condition, the State may terminate the Contract and withhold payments in excess of compensation for completed services or provided goods. Notwithstanding the above, the Contractor shall not be relieved of liability to the State for damages sustained by virtue of any breach of this Contract by the Contractor and the State may seek other remedies allowed at law or in equity for breach of this Contract.

D.6. Termination for Cause. If a Party ("Breaching Party") fails to properly perform its obligations under this Contract, or if a Party materially violates any terms of this Contract ("Breach Condition"), the other Party ("Non-breaching Party") may provide written notice to the Breaching Party specifying the Breach Condition. If within thirty (30) days of notice, the Breaching Party has not cured the Breach Condition, the Non-breaching Party may terminate the Contract. In the event the Non-breaching Party is the State, the State may withhold payments in excess of compensation for completed services or provided goods. The Breaching Party shall not be relieved of liability to the Non-breaching Party for damages sustained by virtue of any breach of this Contract, and the Non-breaching Party may seek other remedies allowed at law or in equity for breach of this Contract.

Nondiscrimination

Replace the standard nondiscrimination provision with the following ONLY if contracting with a RELIGIOUS ORGANIZATION.

D.#. Nondiscrimination. The Contractor hereby agrees, warrants, and assures that no person shall be excluded from participation in, be denied benefits of, or be otherwise subjected to discrimination in the performance of this Contract or in the employment practices of the Contractor on the basis of any classification protected by federal, Tennessee State constitutional, or statutory law. The Contractor shall, upon request, show proof of such nondiscrimination and shall post in conspicuous places, available to all employees and applicants, notices of nondiscrimination.

Equal Opportunity

Replace the standard nondiscrimination provision with the following only if the goods or services under the Contract are paid for with federal funds. If the Contractor is a party to a federally funded contract and the Contractor enters into subcontracts, this Section must be included in the subcontracts.

D.#. Equal Opportunity. During the performance of this Contract, the Contractor agrees as follows:

a. The Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. The Contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to the following:

(1) Employment, upgrading, demotion, or transfer, recruitment or recruitment advertising;
(2) Layoff or termination;
(3) Rates of pay or other forms of compensation; and
(4) Selection for training, including apprenticeship.

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

b. The Contractor will, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive considerations for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.

c. If the State approves any subcontract, the subcontract shall include paragraphs (a) and (b) above.

Prevailing Wage Rates

Add the following section if the Contractor will be performing work on a State highway construction project.

D.#. Prevailing Wage Rates. All State contracts for highway construction projects, which are for the purpose of building, rebuilding, locating, relocating or repairing any streets, highways or bridges, require compliance with the prevailing wage laws as provided in Tenn. Code Ann. §§ 12-4-401 – 12-4-415.

Limitation of Liability

If the Contractor's Limitation of Liability will vary from Tenn. Code Ann. § 12-3-701, an approved Limitation of Liability Request is required.

D.18. Limitation of Contractor's Liability. The Contractor's liability for all claims arising under this Contract shall be limited to an amount equal to NUMBER (#), PROVIDED THAT in no event shall this Section limit the liability of the Contractor for intentional torts, criminal acts, fraudulent conduct or acts or omissions that result in personal injuries or death.

Option: Statewide Contracts Estimated Liability

For statewide contracts with no Maximum Liability, replace D.17. and D.18. with the following:

D.17. Limitation of State's Liability. The State shall have no liability except as specifically provided in this Contract. In no event will the State be liable to the Contractor or any other party for any lost revenues, lost profits, loss of business, decrease in the value of any securities or cash position, time, money, goodwill, or any indirect, special, incidental, punitive, exemplary or consequential damages of any nature, whether based on warranty, contract, statute, regulation, tort (including but not limited to negligence), or any other legal theory that may arise under this Contract or otherwise. Notwithstanding anything else herein, the State's total liability under this Contract (including without limitation any exhibits, schedules, amendments or other attachments to the Contract) or otherwise shall under no circumstances exceed the Estimated Liability. This limitation of liability is cumulative and not per incident.

D.18. Limitation of Contractor's Liability. In accordance with Tenn. Code Ann. § 12-3-701, the Contractor's liability for all claims arising under this Contract shall be limited to an amount equal to two (2) times the Estimated Liability amount detailed in Section C.1. and as may be amended, PROVIDED THAT in no event shall this Section limit the liability of the Contractor for: (i) intellectual property or any Contractor indemnity obligations for infringement for third-party intellectual property rights; (ii) any claims covered by any specific provision in the Contract providing for liquidated damages; or (iii) any claims for intentional torts, criminal acts, fraudulent conduct, or acts or omissions that result in personal injuries or death.

Insurance Options

Select up to four (4) insurance options below. In the event that one of the insurance options is appropriate, insert the six (6) paragraphs immediately below before inserting the desired insurance option or options.

D.#. Insurance. Contractor shall provide the State a certificate of insurance ("COI") evidencing the coverages and amounts specified below. The COI shall be provided ten (10) business days prior to the Effective Date and again upon renewal or replacement of coverages required by this Contract. If insurance expires during the Term, the State must receive a new COI at least thirty (30) calendar days prior to the insurance's expiration date. If the Contractor loses insurance coverage, does not renew coverage, or for any reason becomes uninsured during the Term, the Contractor shall notify the State immediately.

The COI shall be on a form approved by the Tennessee Department of Commerce and Insurance ("TDCI") and signed by an authorized representative of the insurer. The COI shall list each insurer's national association of insurance commissioners (also known as NAIC) number or federal employer identification number and list the State of Tennessee, Risk Manager, 312 Rosa

L. Parks Ave., 3rd floor Central Procurement Office, Nashville, TN 37243 in the certificate holder section. At any time, the State may require the Contractor to provide a valid COI detailing coverage description; insurance company; policy number; exceptions; exclusions; policy effective date; policy expiration date; limits of liability; and the name and address of insured. The Contractor's failure to maintain or submit evidence of insurance coverage is considered a material breach of this Contract.

If the Contractor desires to self-insure, then a COI will not be required to prove coverage. In place of the COI, the Contractor must provide a certificate of self-insurance or a letter on the Contractor's letterhead detailing its coverage, liability policy amounts, and proof of funds to reasonably cover such expenses. Compliance with Tenn. Code Ann. § 50-6-405 and the rules of the TDCI is required for the Contractor to self-insure workers' compensation.
All insurance companies must be: (a) acceptable to the State; (b) authorized by the TDCI to transact business in the State of Tennessee; and (c) rated A- VII or better by A. M. Best. The Contractor shall provide the State evidence that all subcontractors maintain the required insurance or that the subcontractors are included under the Contractor's policy.

The Contractor agrees to name the State as an additional insured on any insurance policies with the exception of workers' compensation (employer liability) and professional liability (errors and omissions) ("Professional Liability") insurance. Also, all policies shall contain an endorsement for a waiver of subrogation in favor of the State.

The deductible and any premiums are the Contractor's sole responsibility. Any deductible over fifty thousand dollars ($50,000) must be approved by the State. The Contractor agrees that the insurance requirements specified in this Section do not reduce any liability the Contractor has assumed under this Contract including any indemnification or hold harmless requirements.
The State agrees that it shall give written notice to the Contractor as soon as practicable after the State becomes aware of any claim asserted or made against the State, but in no event later than thirty (30) calendar days after the State becomes aware of such claim. The failure of the State to give notice shall only relieve the Contractor of its obligations under this Section to the extent that the Contractor can demonstrate actual prejudice arising from the failure to give notice. This Section shall not grant the Contractor or its insurer, through its attorneys, the right to represent the State in any legal matter, as the right to represent the State is governed by Tenn. Code Ann. § 8-6-106.

All coverage required shall be on a primary basis and noncontributory with any other insurance coverage or self-insurance carried by the State. The State reserves the right to amend or require additional endorsements, types of coverage, and higher or lower limits of coverage depending on the nature of the work. Purchases or contracts involving any hazardous activity or equipment, tenant, concessionaire and lease agreements, alcohol sales, cyber-liability risks, environmental risks, special motorized equipment, or property may require customized insurance requirements (e.g. umbrella liability insurance) in addition to the general requirements listed below.

The Contractor shall obtain and maintain, at a minimum, the following insurance coverages and policy limits.

Option 1: Commercial General Liability Insurance
Add the following if the Contractor will: (1) provide services to the State; or (2) deliver goods on State property.

a Commercial General Liability Insurance

1) The Contractor shall maintain commercial general liability insurance, which shall be written on an Insurance Services Office, Inc. (also known as ISO) occurrence form (or a substitute form providing equivalent coverage) and shall cover liability

arising from property damage, premises/operations, independent contractors, contractual liability, completed operations/products, personal and advertising injury, and liability assumed under an insured contract (including the tort liability of another assumed in a business contract).

2) The Contractor shall maintain bodily injury/property damage with a combined single limit not less than one million dollars ($1,000,000) per occurrence and two million dollars ($2,000,000) aggregate for bodily injury and property damage, including products and completed operations coverage with an aggregate limit of at least two million dollars ($2,000,000).

Option 2: Workers' Compensation and Employer Liability Insurance

Add the following if the Contractor will provide services to the State. All contractors who provide services to the State must have a workers' compensation and employer liability insurance policy ***unless*** the contractor is statutorily exempt or self-insured.

a. Workers' Compensation and Employer Liability Insurance

1) For Contractors statutorily required to carry workers' compensation and employer liability insurance, the Contractor shall maintain:

i. Workers' compensation and employer liability insurance in the amounts required by appropriate state statutes; or

ii. In an amount not less than one million dollars ($1,000,000) including employer liability of one million dollars ($1,000,000) per accident for bodily injury by accident, one million dollars ($1,000,000) policy limit by disease, and one million dollars ($1,000,000) per employee for bodily injury by disease.

2) If the Contractor certifies that it is exempt from the requirements of Tenn. Code Ann. §§ 50-6-101 – 103, then the Contractor shall furnish written proof of such exemption for one or more of the following reasons:

i. The Contractor employees fewer than five (5) employees;

ii. The Contractor is a sole proprietor;

iii. The Contractor is in the construction business or trades with no employees;

iv. The Contractor is in the coal mining industry with no employees;

v. The Contractor is a state or local government; or

vi. The Contractor self-insures its workers' compensation and is in compliance with the TDCI rules and Tenn. Code Ann. § 50-6-405.

Option 3: Automobile Liability Insurance

Add the following if the Contractor will use a vehicle when providing goods or services under the Contract.

D.#.

c. Automobile Liability Insurance

i. The Contractor shall maintain automobile liability insurance which shall cover liability arising out of any automobile (including owned, leased, hired, and non-owned automobiles).

ii. The Contractor shall maintain bodily injury/property damage with a limit not less than one million dollars ($1,000,000) per occurrence or combined single limit.

Option 4: Professional Liability Insurance

Add the following if the Contract involves professional service providers, e.g., architects, engineers, consultants, counselors, medical professionals, attorneys, accountants.

D.#.

c. Professional Liability Insurance

i. Professional liability insurance shall be written on an occurrence basis. This coverage may be written on a claims-made basis but must include an extended reporting period or "tail coverage" of at least two (2) years after the Term;

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

iii. If the Contract involves the provision of services by medical professionals, a policy limit not less than two million ($2,000,000) per claim and three million dollars ($3,000,000) in the aggregate for medical malpractice insurance.

HIPAA Compliance

Contractors: The Contractor must execute a business associate agreement ("BAA") if: (a) the contracting State Agency is a "covered entity" as defined by the Privacy Rules; and (b) the Contractor will provide services to the contracting State Agency that involve Contractor's access to protected health information ("PHI") as defined by the Privacy Rules.

Subcontractors: The Contractor must execute a BAA with a subcontractor if the subcontractor creates, receives, maintains, or transmits PHI on behalf of the Contractor.

Annual and Final Reports

Do NOT insert an Annual and Final Reports provision in a contract prepared using the FA Template. If an Annual and Final Reports provision is appropriate because a subrecipient relationship exists, use one of the CPO's grant templates or models.

Audit Report

Do NOT insert an Audit Report provision in a contract prepared using the FA Template. If an Audit Report provision is appropriate because a subrecipient relationship exists, use one of the CPO's grant templates or models.

E. SPECIAL TERMS AND CONDITIONS

Add the following sections as appropriate and in the order below. An approved Rule Exception Request is required to add any Section E terms that are not among the options below. Should any of these special terms and conditions conflict with the mandatory terms and conditions in Section D of this Contract, the mandatory terms and conditions shall control.

Confidentiality of Records

Add the following Section as appropriate. If unsure whether the Section is applicable, consult the CPO legal team.

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

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

Printing Authorization

Add the following Section as appropriate.

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

State Ownership of Goods

Add the following Section as appropriate.

E.#. State Ownership of Goods. The State shall have ownership, right, title, and interest in all goods provided by Contractor under this Contract including full rights to use the goods and transfer title in the goods to any third parties.

Ownership of Software & Work Products

Add the following Section as appropriate. If escrow language is contemplated, contact the CPO legal team for assistance. The terms of any license Contractor grants the State should be included in Section A.

E.#. Ownership of Software and Work Products.

a. Definitions.

(1) "Contractor-Owned Software," shall mean commercially available software the rights to which are owned by Contractor, including but not limited to commercial "off-the-shelf" software which is not developed using State's money or resources.

(2) "Custom-Developed Application Software," shall mean customized application software developed by Contractor solely for State.

(3) "Rights Transfer Application Software," shall mean any pre-existing application software owned by Contractor or a third party, provided to State and to which Contractor will grant and assign, or will facilitate the granting and assignment of, all rights, including the source code, to State.

(4) "Third-Party Software," shall mean software not owned by the State or the Contractor.

(5) "Work Product," shall mean all deliverables exclusive of hardware, such as software, software source code, documentation, planning, etc., that are created, designed, developed, or documented by the Contractor exclusively for the State during the course of the project using State's money or resources, including Custom-Developed Application Software. If the deliverables under this Contract include Rights Transfer Application Software, the definition of Work Product shall also include such software. Work Product shall not include Contractor-Owned Software or Third-Party Software.

b. Rights and Title to the Software

(1) All right, title and interest in and to the Contractor-Owned Software shall at all times remain with Contractor, subject to any license granted under this Contract.

(2) All right, title and interest in and to the Work Product, and to modifications thereof made by State; including without limitation all copyrights, patents, trade secrets and other intellectual property and other proprietary rights embodied by and arising out of the Work Product, shall belong to State. To the extent such rights do not automatically belong to State, Contractor hereby assigns, transfers, and conveys all right, title and interest in and to the Work Product, including without limitation the copyrights, patents, trade secrets, and other intellectual property rights arising out of or embodied by the Work Product. Contractor and its employees, agents, contractors or representatives shall execute any other documents that State or its counsel deem necessary or desirable to document this transfer or allow State to register its claims and rights to such intellectual property rights or enforce them against third parties.

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

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

Software License Warranty

Add the following if the Contract involves software.

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

Software Support and Maintenance Warranty

Add the following if the Contract involves software.

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

Extraneous Terms and Conditions

Add the following term **only after** consulting with the Central Procurement Office's Legal Team and obtaining Central Procurement Office approval.

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

Reimbursement

Add the following section if the contract payment terms provide for Contractor reimbursement for goods, materials, supplies, equipment, or contracted services.

E.#.	Reimbursement. This Contract provides for reimbursement of the cost of goods, materials, supplies, equipment, or contracted services. Any goods, materials, supplies, equipment or contracted services procured by Contractor under this Contract shall be procured on a competitive basis when practicable. The Contractor shall maintain documentation supporting Contractor's request for reimbursement. In each instance where it is determined that use of a competitive procurement method was not practicable, Contractor shall seek approval of the State Agency Head's Title to procure by non-competitive procurement as a condition for reimbursement.

State Furnished Property

Add the following Section as appropriate.

E.#.	State Furnished Property. The Contractor shall be responsible for the correct use, maintenance, and protection of all articles of nonexpendable, tangible personal property furnished by the State for the Contractor's use under this Contract. Upon termination of this Contract, all property furnished by the State shall be returned to the State in the same condition as when received, less reasonable wear and tear. Should the property be destroyed, lost, or stolen, the Contractor shall be responsible to the State for the fair market value of the property at the time of loss.

Work Papers Subject to Review

Add the following Section only if the contract requires the performance of audit, accounting or financial analysis services.

E.#.	Work Papers Subject to Review. The Contractor shall make all audit, accounting, or financial analysis work papers, notes, and other documentation available for review by the Comptroller of the Treasury or his representatives, upon request, during normal working hours either while the analysis is in progress or subsequent to the completion of this Contract.

Prohibited Advertising or Marketing

Add the following Section as appropriate.

E.#.	Prohibited Advertising or Marketing. The Contractor shall not suggest or imply in advertising or marketing materials that Contractor's goods or services are endorsed by the State. The restrictions on Contractor advertising or marketing materials under this Section shall survive the termination of this Contract.

Public Accountability

Add the following Section as appropriate.

E.#.	Public Accountability. If the Contractor is subject to Tenn. Code Ann. §§ 8-4-401, *et seq.*, or if this Contract involves the provision of services to citizens by the Contractor on behalf of the State, the Contractor agrees to establish a system through which recipients of services may present grievances about Contractor's operation of the service program. The Contractor shall also display in a prominent place, located near the passageway through which the public enters in order to receive contract-supported services, a sign at least eleven inches (11") in height and seventeen inches (17") in width stating the following: NOTICE: THIS AGENCY IS A RECIPIENT OF TAXPAYER FUNDING. IF YOU OBSERVE AN AGENCY DIRECTOR OR EMPLOYEE ENGAGING IN ANY ACTIVITY THAT YOU CONSIDER TO BE ILLEGAL, IMPROPER, OR WASTEFUL, PLEASE CALL THE STATE COMPTROLLER'S TOLL-FREE HOTLINE: 1-800-232-5454 The sign shall be of the form prescribed by the Comptroller of the Treasury. The contracting state agency shall request copies of the sign from the Comptroller of the Treasury and provide signs to contractors.

Environmental Tobacco Smoke

Add the following Section as appropriate.

E.#.	Environmental Tobacco Smoke. Pursuant to the provisions of the federal "Pro-Children Act of 1994" and the Tennessee "Children's Act for Clean Indoor Air of 1995," the Contractor shall prohibit smoking of tobacco products within any indoor premises in which services are provided pursuant to this Contract to individuals under the age of eighteen (18) years. The Contractor shall post "no smoking" signs in appropriate, permanent sites within such premises. This prohibition shall be applicable during all hours, not just the hours in which children are present. Violators of the prohibition may be subject to civil penalties and fines. This prohibition shall apply to and be made part of any subcontract related to this Contract.

Lobbying

Add the following Section if the contract will be funded in whole or in part by federal funds.

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

a. No federally appropriated funds have been paid or will be paid, by or on behalf of the Contractor, to any person for influencing or attempting to influence an officer or employee of an agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.

b. If any funds other than federally appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with any contract, grant, loan, or cooperative agreement, the Contractor shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

c. The Contractor shall require that the language of this certification be included in the award documents for all sub-awards at all tiers (including subcontracts, sub-grants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

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

Contractor Commitment to Diversity

Add the following Section as appropriate (typically in contracts resulting from a standard RFP).

E.#. Contractor Commitment to Diversity. The Contractor shall comply with and make reasonable business efforts to exceed the commitment to diversity represented by the Contractor's Response to Solicitation Number (Attachment Reference) and resulting in this Contract.

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

Performance Bond

For contracts that do not involve public works projects, a performance bond should be required only when necessary to protect against contract risk to the State. For agency term contracts, choose option #1 or option #2. For statewide contracts that do not involve awards to multiple contractors, choose option #3 or option #4. If unsure whether a performance bond is appropriate or which option is best, contact the CPO Risk Manager.

Option 1

E.#. Performance Bond. The Contractor shall provide to the State a performance bond guaranteeing full and faithful performance of all undertakings and obligations under this Contract, specifically faithful performance of the work in accordance with the plans, specifications, and contract documents. The performance bond shall be in an amount equal to one hundred percent (100%) of the Maximum Liability, Written Dollar Amount ($Number). The State reserves the right to review the bond amount and bonding requirements at any time during the Term. The Contractor shall submit the bond no later than the day immediately preceding the Effective Date and in the manner and form prescribed by the State at Attachment Reference. The bond shall be issued by a company licensed to issue such a bond in the state of Tennessee. The performance bond shall guarantee full and faithful performance of all undertakings and obligations for the Term, as the Contract is extended or renewed.

Failure to provide to the State the performance bond(s) as required under this Contract may result in this Contract being terminated by the State. The performance bond required under this Contract shall not be reduced during the Term without the State of Tennessee Central Procurement Office's prior written approval.

Option 2—Insert the term below only after obtaining an approved Rule Exception Request.

E. #. Performance Bond. The Contractor shall provide to the State a performance bond guaranteeing full and faithful performance of all undertakings and obligations under this Contract specifically faithful performance of the work in accordance with the plans, specifications, and Contract documents. The Contractor shall submit the bond no later than the day immediately preceding the Effective Date and in the manner and form prescribed by the State at Attachment Reference. The bond shall be issued by a company licensed to issue such a bond in the state of Tennessee. The performance bond shall guarantee full and faithful performance of all undertakings and obligations under this Contract for the first year of the Term in the amount of Written Dollar Amount ($Number) and, thereafter, a new performance bond in an amount of one hundred percent (100%) of the Maximum Liability, Written Dollar Amount ($Number) covering each subsequent year of the Term, including any renewals or extensions. The State reserves the right to review the bond amount and bonding requirements at any time during the Term. The Contractor shall provide performance bonds to the State prior to the Effective Date and thirty (30) days prior to the beginning of each renewal or extended Term.

Failure to provide to the State the performance bond(s) as required under this Contract may result in this Contract being terminated by the State. The performance bond required under this Contract shall not be reduced during the Term without the State's prior written approval.

Option 3

E.#. Performance Bond. The Contractor shall provide to the State a performance bond guaranteeing full and faithful performance of all undertakings and obligations under this Contract, specifically faithful performance of the work in accordance with the plans, specifications, and Contract documents. The performance bond shall be in an amount equal to one hundred percent (100%) of the Estimated Liability Written Dollar Amount ($Number). The State reserves the right to review the bond amount and bonding requirements at any time during the Term. The Contractor shall submit the bond no later than the day immediately preceding the Effective Date and in the manner and form prescribed by the State at Attachment Reference. The bond shall be issued by a company licensed to issue such a bond in the state of Tennessee. The performance bond shall guarantee full and faithful performance of all undertakings and obligations for the Term, as the Contract is extended or renewed.

Failure to provide to the State the performance bond as required under this Contract may result in this Contract being terminated by the State. The performance bond required under this

Contract shall not be reduced during the Term without the State's prior written approval.

Option 4—Insert the term below only after obtaining an approved Rule Exception Request.

E.#. Performance Bond. The Contractor shall provide to the State a performance bond guaranteeing full and faithful performance of all undertakings and obligations under this Contract, specifically faithful performance of the work in accordance with the plans, specifications, and Contract documents. The performance bond shall be in an amount equal to one hundred percent (100%) of the Estimated Liability, Written Dollar Amount ($Number). The State reserves the right to review the bond amount and bonding requirements at any time during the Term. The Contractor shall submit the bond no later than the day immediately preceding the Effective Date and in the manner and form prescribed by the State at Attachment Reference. The bond shall be issued by a company licensed to issue such a bond in the state of Tennessee. The performance bond shall guarantee full and faithful performance of all undertakings and obligations under this Contract for the first year of the Term in the amount of Written Dollar Amount ($Number) and, thereafter, a new performance bond in the amount of Written Dollar Amount ($Number) covering each subsequent year of the Term, including any renewals or extensions of the Contract. The Contractor shall provide performance bonds to the State prior to the Effective Date and thirty (30) days prior to the beginning of each renewal or extended Term.

Failure to provide to the State the performance bond as required under this Contract may result in this Contract being terminated by the State. The performance bond required under this Contract shall not be reduced during the Term without the State's prior written approval.

Payment Bond

Tenn. Code Ann. § 12-4-201 requires a payment bond for all public works projects in excess of one hundred thousand dollars ($100,000). Insert option #1 for agency term contracts; insert option #2 for statewide contracts that do not involve awards to multiple contractors. If unsure whether a payment bond is appropriate, contact the CPO Risk Manager.

Option 1

E.#. Payment Bond. The Contractor shall provide to the State a payment bond guaranteeing that the Contractor's subcontractors, laborers, and material suppliers will be paid for performance under this Contract with the additional obligation that such contractor shall promptly make payment of all taxes, licenses, assessments, contributions, penalties, and interest. The payment bond will be in an amount equal to twenty-five percent (25%) of the Maximum Liability Written Dollar Amount ($ Number). The State reserves the right to review the bond amount and bonding requirements at any time during the Term. The Contractor shall submit the bond no later than the day immediately preceding the Effective Date and in the manner and form prescribed by the State at Attachment Reference. The bond shall be issued by a company licensed to issue such a bond in the State of Tennessee. The payment bond shall guarantee that the Contractor's subcontractors, laborers, and material suppliers will be paid for performance during the Term and all extensions or renewals of the Contract.

Failure to provide to the State the payment bond as required under this Contract may result in this Contract being terminated by the State. The payment bond required under this Contract shall not be reduced during the Term without the State of Tennessee Central Procurement Office's prior written approval.

Option 2

E.#. Payment Bond. The Contractor shall provide to the State a payment bond guaranteeing that the Contractor's subcontractors, laborers, and material suppliers will be paid for performance under this Contract with the additional obligation that such contractor shall promptly make payment of all taxes, licenses, assessments, contributions, penalties, and interest. The payment bond will be in an amount equal to twenty-five percent (25%) of the Estimated Liability Written Dollar Amount ($ Number). The State reserves the right to review the bond amount and bonding requirements at any time during the Term. The Contractor shall submit the bond no later than the day immediately preceding the Effective Date and in the manner and form prescribed by the State at Attachment Reference. The bond shall be issued by a company licensed to issue such a bond in the State of Tennessee. The payment bond shall guarantee that the Contractor's subcontractors, laborers, and material suppliers will be paid for performance during the Term and all extensions or renewals of the Contract.

Failure to provide to the State the payment bond as required under this Contract may result in this Contract being terminated by the State. The payment bond required under this Contract shall not be reduced during the Term without the State's prior written approval.

Intellectual Property

Add the following Section as appropriate. If unsure whether the Section is applicable, consult the CPO legal team.

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

Option: Liquidated Damages

Add the following Section as appropriate. If unsure whether the Section is applicable, consult the CPO legal team.

E.#. Liquidated Damages. If <insert description of event giving rise to liquidated damages> occurs, ("Liquidated Damages Event"), the State may assess damages on Contractor ("Liquidated Damages"). The State shall notify the Contractor of amounts to be assessed as Liquidated Damages. The Parties agree that due to the complicated nature of the Contractor's obligations under this Contract it would be difficult to specifically designate a monetary amount for Contractor's failure to fulfill its obligations regarding the Liquidated Damages Event as these amounts are likely to be uncertain and not easily proven. Contractor has carefully reviewed the Liquidated Damages contained in Attachment Reference and agrees that these amounts represent a reasonable relationship between the amount and what might reasonably be expected in the event of a Liquidated Damages Event, and are a reasonable estimate of the damages that would occur from a Liquidated Damages Event. The Parties agree that the Liquidated Damages represent solely the damages and injuries sustained by the State in losing the benefit of the

bargain with Contractor and do not include any injury or damage sustained by a third party. The Contractor agrees that the Liquidated Damages are in addition to any amounts Contractor may owe the State pursuant to the indemnity provision or any other sections of this Contract.

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

Partial Takeover

Add the following Section as appropriate. If unsure whether the Section is applicable, consult the CPO legal team.

E.#. Partial Takeover of Contract. The State may, at its convenience and without cause, exercise a partial takeover of any service that the Contractor is obligated to perform under this Contract, including any service which is the subject of a subcontract between Contractor and a third party (a "Partial Takeover"). A Partial Takeover of this Contract by the State shall not be deemed a breach of contract. The Contractor shall be given at least thirty (30) days prior written notice of a Partial Takeover. The notice shall specify the areas of service the State will assume and the date the State will be assuming. The State's exercise of a Partial Takeover shall not alter the Contractor's other duties and responsibilities under this Contract. The State reserves the right to withhold from the Contractor any amounts the Contractor would have been paid but for the State's exercise of a Partial Takeover. The amounts shall be withheld effective as of the date the State exercises its right to a Partial Takeover. The State's exercise of its right to a Partial Takeover of this Contract shall not entitle the Contractor to any actual, general, special, incidental, consequential, or any other damages irrespective of any description or amount.

Unencumbered Personnel

Add the following Section as appropriate. If unsure whether the Section is applicable, consult the CPO legal team.

E.#. Unencumbered Personnel. The Contractor shall not restrict its employees, agents, subcontractors or principals who perform services for the State under this Contract from performing the same or similar services for the State after the termination of this Contract, either as a State employee, an independent contractor, or an employee, agent, subcontractor or principal of another contractor with the State.

Disclosure of Personally Identifiable Information

Add the following Section as appropriate. If unsure whether the Section is applicable, consult the CPO legal team.

E# Personally Identifiable Information. While performing its obligations under this Contract, Contractor may have access to Personally Identifiable Information held by the State ("PII"). For the purposes of this Contract, "PII" includes "Nonpublic Personal Information" as that term is defined in Title V of the Gramm-Leach-Bliley Act of 1999 or any successor federal statute, and the rules and regulations thereunder, all as may be amended or supplemented from time to time ("GLBA") and personally identifiable information and other data protected under any other applicable laws, rule or regulation of any jurisdiction relating to disclosure or use of personal information ("Privacy Laws"). Contractor agrees it shall not do or omit to do anything which would

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

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

Federal Funding Accountability and Transparency Act

Add the following Section if the contract will be funded in whole or part by a federal grant or contract of $25,000 or more and the contract will provide for the expenditure of $25,000 or more in federal funds.

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

The Contractor shall comply with the following:

a. Reporting of Total Compensation of the Contractor's Executives.

(1) The Contractor shall report the names and total compensation of each of its five most highly compensated executives for the Contractor's preceding completed fiscal year, if in the Contractor's preceding fiscal year it received:

i. 80 percent or more of the Contractor's annual gross revenues from federal procurement contracts and federal financial assistance subject to the Transparency Act, as defined at 2 CFR 170.320 (and subawards);

and

ii. $25,000,000 or more in annual gross revenues from federal procurement contracts (and subcontracts), and federal financial assistance subject to the Transparency Act (and subawards); and

iii. The public does not have access to information about the compensation of the executives through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(a), 78o(d)) or section 6104 of the Internal Revenue Code of 1986. (To determine if the public has access to the compensation information, see the U.S. Security and Exchange Commission total compensation filings at http://www.sec.gov/answers/execomp.htm.).

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

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

i. Salary and bonus.

ii. Awards of stock, stock options, and stock appreciation rights. Use the dollar amount recognized for financial statement reporting purposes with respect to the fiscal year in accordance with the Statement of Financial Accounting Standards No. 123 (Revised 2004) (FAS 123R), Shared Based Payments.

iii. Earnings for services under non-equity incentive plans. This does not include group life, health, hospitalization or medical reimbursement plans that do not discriminate in favor of executives, and are available generally to all salaried employees.

iv. Change in pension value. This is the change in present value of defined benefit and actuarial pension plans.

v. Above-market earnings on deferred compensation which is not tax qualified.

vi. Other compensation, if the aggregate value of all such other compensation (e.g. severance, termination payments, value of life insurance paid on behalf of the employee, perquisites or property) for the executive exceeds $10,000.

b. The Contractor must report executive total compensation described above to the State by the end of the month during which this Contract is awarded.

c. If this Contract is amended to extend the Term, the Contractor must submit an executive total compensation report to the State by the end of the month in which the term extension becomes effective.

d. The Contractor will obtain a Data Universal Numbering System (DUNS) number and maintain its DUNS number for the term of this Contract. More information about obtaining a DUNS Number can be found at: http://fedgov.dnb.com/webform/

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

Protection of Federal Tax Information

Add one of the following options below ***as a separate attachment*** to the Contract for Contractors having access to Federal Tax Information ("FTI") during performance of the Contract. If unsure whether to include one of the options below, contact the Central Procurement Office's legal team.

FTI means any return or return information, as defined by I.R.C. § 6103(b)(2), received from the Internal Revenue Service or secondary source, such as the Social Security Administration, Federal Office of Child Support Enforcement, or Bureau of Fiscal Service. FTI includes any information created by the recipient that is derived from return or return information. If the Contract involves disclosing FTI to a Contractor, the contracting State Agency shall provide the IRS at least forty-five (45) days notice before executing the Contract. Use Option #1 when the Contractor may have access to electronic forms of FTI. Use Option #2 when the Contractor may have access to hard copies of FTI.

Option 1

FEDERALLY MANDATED REQUIREMENTS FOR TECHNOLOGY SERVICES CONTRACTS WITH ACCESS TO FEDERAL TAX RETURN INFORMATION

Federal Tax Information ("FTI") means any return or return information, as defined by I.R.C. § 6103(b)(2), received from the Internal Revenue Service or secondary source, such as the Social Security Administration, Federal Office of Child Support Enforcement, or Bureau of Fiscal Service. FTI includes any information created by the recipient that is derived from return or return information.

1. PERFORMANCE

In performance of this Contract, the Contractor agrees to comply with and assume responsibility for compliance by his or her employees with the following requirements:

1.1 All work will be done under the supervision of the Contractor or the Contractor's employees.

1.2 Any return or return information made available in any format shall be used only for the purpose of carrying out the provisions of this Contract. Information contained in such material will be treated as confidential and will not be divulged or made known in any manner to any person except as may be necessary in the performance of this Contract. Disclosure to anyone other than an officer or employee of the Contractor will be prohibited.

1.3 All returns and return information will be accounted for upon receipt and properly stored before, during, and after processing. In addition, all related output will be given the same level of protection as required for the source material.

1.4 The Contractor certifies that the data processed during the performance of this Contract will be completely purged from all data storage components of his or her computer facility, and no output will be retained by the Contractor at the time the work is completed. If immediate purging of all data storage components is not possible, the Contractor certifies that any IRS data remaining in any storage component will be safeguarded to prevent unauthorized disclosures.

1.5 Any spoilage or any intermediate hard copy printout that may result during the processing of IRS data will be given to the State. When this is not possible, the Contractor will be responsible for the destruction of the spoilage or any intermediate hard copy printouts, and will provide the State with a statement containing the date of destruction, description of material destroyed, and the method used.

1.6 All computer systems receiving, processing, storing, or transmitting FTI must meet the requirements defined in IRS Publication 1075. To meet functional and assurance requirements, the security features of the environment must provide for the managerial, operational, and technical controls. All security features must be available and activated to protect against unauthorized use of and access to Federal Tax Information.

1.7 No work involving Federal Tax Information furnished under this Contract will be subcontracted without prior written approval of the IRS.

1.8 The Contractor will maintain a list of employees authorized access. Such list will be provided to the State and, upon request, to the IRS reviewing office.

1.9 The State will have the right to void the Contract if the Contractor fails to provide the safeguards described above.

2. CRIMINAL/CIVIL SANCTIONS:

2.1 Each officer or employee of any person to whom returns or return information is or may be disclosed will be notified in writing by such person that returns or return information disclosed to such officer or employee can be used only for a purpose and to the extent authorized herein, and that further disclosure of any such returns or return information for a purpose or to an extent unauthorized herein constitutes a felony punishable upon conviction by a fine of as much as five thousand dollars ($5,000) or imprisonment for as long as five (5) years, or both, together with the costs of prosecution. Such person shall also notify each such officer and employee that any such unauthorized further disclosure of returns or return information may also result in an award of civil damages against the officer or employee in an amount not less than one thousand dollars ($1,000) with respect to each instance of unauthorized disclosure. These penalties are prescribed by I.R.C. §§ 7213 and 7431 and set forth at 26 CFR 301.6103(n)-1.

2.2 Each officer or employee of any person to whom returns or return information is or may be disclosed shall be notified in writing by such person that any return or return information made available in any format shall be used only for the purpose of carrying out the provisions of this Contract. Information contained in such material shall be treated as confidential and shall not be divulged or made known in any manner to any person except as may be necessary in the performance of the Contract. Inspection by or disclosure to anyone without an official need-to-know constitutes a criminal misdemeanor punishable upon conviction by a fine of as much as one thousand dollars ($1,000) or imprisonment for as long as one (1) year, or both, together with the costs of prosecution. Such person shall also notify each such officer and employee that any such unauthorized inspection or disclosure of returns or return information may also result in an award of civil damages against the officer or employee in an amount equal to the sum of the greater of one thousand dollars ($1,000) for each act of unauthorized inspection or disclosure with respect to which such defendant is found liable or the sum of the actual damages sustained by the plaintiff as a result of such unauthorized inspection or disclosure plus in the case of a willful inspection or disclosure which is the result of gross negligence, punitive damages, plus the costs of the action. These penalties are prescribed by I.R.C. §§ 7213A and 7431.

2.3 Additionally, it is incumbent upon the Contractor to inform its officers and employees of the penalties for improper disclosure imposed by the Privacy Act of 1974, 5 U.S.C. § 552a. Specifically, 5 U.S.C. § 552a(i)(1), which is made applicable to contractors by 5 § U.S.C. 552a(m)(1), provides that any officer or employee of a contractor, who by virtue of his or her employment or official position, has possession of or access to State records which contain individually identifiable information, the disclosure of which is prohibited by the Privacy Act or regulations established thereunder, and who knowing that disclosure of the specific material is prohibited, willfully discloses the material in any manner to any person or agency not entitled to receive it, shall be guilty of a misdemeanor and fined not more than five thousand dollars ($5,000).

2.4 Granting a Contractor access to FTI must be preceded by certifying that each individual understands the State's security policy and procedures for safeguarding IRS information. Contractors must maintain their authorization to access FTI through annual recertification. The initial certification and recertification must be documented and placed in the State's files for review. As part of the certification and at least annually afterwards, Contractors must be advised of the provisions of I.R.C. §§ 7431, 7213, and 7213A. The training provided before the initial certification and annually thereafter must also cover the incident response policy and procedure for reporting unauthorized disclosures and data breaches. For both the initial certification and the annual certification, the Contractor must sign, either with ink or electronic signature, a confidentiality statement certifying their understanding of the security requirements.

3. INSPECTION:

The IRS and the State shall have the right to send its officers and employees into the offices and plants of the Contractor for inspection of the facilities and operations provided for the performance of any work under this Contract. On the basis of such inspection, specific measures

may be required in cases where the Contractor is found to be noncompliant with Contract safeguards.

Option 2

FEDERALLY MANDATED REQUIREMENTS FOR GENERAL SERVICES CONTRACTS WITH ACCESS TO FEDERAL TAX RETURN INFORMATION

Federal Tax Information ("FTI") means any return or return information, as defined by I.R.C. § 6103(b)(2), received from the Internal Revenue Service or secondary source, such as the Social Security Administration, Federal Office of Child Support Enforcement, or Bureau of Fiscal Service. FTI includes any information created by the recipient that is derived from return or return information.

1. PERFORMANCE

In performance of this Contract, the Contractor agrees to comply with and assume responsibility for compliance by his or her employees with the following requirements:

1.1 All work will be done under the supervision of the Contractor or the Contractor's employees.

1.2 Any federal tax returns or return information (hereafter referred to as returns or return information) made available shall be used only for the purpose of carrying out the provisions of this Contract. Information contained in such material shall be treated as confidential and shall not be divulged or made known in any manner to any person except as may be necessary in the performance of this contract. Inspection by or disclosure to anyone other than an officer or employee of the contractor is prohibited.

1.3 All returns and return information will be accounted for upon receipt and properly stored before, during, and after processing. In addition, all related output will be given the same level of protection as required for the source material.

1.4 No work involving returns and return information furnished under this Contract will be subcontracted without prior written approval of the IRS.

1.5 The Contractor will maintain a list of employees authorized access. Such list will be provided to the State and, upon request, to the IRS reviewing office.

1.6 The State will have the right to void the Contract if the Contractor fails to provide the safeguards described above.

2. CRIMINAL/CIVIL SANCTIONS:

2.1 Each officer or employee of any person to whom returns or return information is or may be disclosed will be notified in writing by such person that returns or return information disclosed to such officer or employee can be used only for a purpose and to the extent authorized herein, and that further disclosure of any such returns or return information for a purpose or to an extent unauthorized herein constitutes a felony punishable upon conviction by a fine of as much as five thousand dollars ($5,000) or imprisonment for as long as five (5) years, or both, together with the costs of prosecution. Such person shall also notify each such officer and employee that any such unauthorized further disclosure of returns or return information may also result in an award of civil damages against the officer or employee in an amount not less than one thousand dollars ($1,000) with respect to each instance of unauthorized disclosure. These penalties are prescribed by IRC §§ 7213 and 7431 and set forth at 26 CFR 301.6103(n)-1.

2.2 Each officer or employee of any person to whom returns or return information is or may be disclosed shall be notified in writing by such person that any return or return information made available in any format shall be used only for the purpose of carrying out the provisions of this Contract. Information contained in such material shall be treated as confidential and shall not be divulged or made known in any manner to any person except as may be necessary in the performance of the Contract. Inspection by or disclosure to anyone without an official need-to-know constitutes a criminal misdemeanor punishable upon conviction by a fine of as much as one thousand dollars ($1,000) or imprisonment for as long as one (1) year, or both, together with the costs of prosecution. Such person shall also notify each such officer and employee that any such unauthorized inspection or disclosure of returns or return information may also result in an award

of civil damages against the officer or employee in an amount equal to the sum of the greater of one thousand ($1,000) for each act of unauthorized inspection or disclosure with respect to which such defendant is found liable or the sum of the actual damages sustained by the plaintiff as a result of such unauthorized inspection or disclosure plus in the case of a willful inspection or disclosure which is the result of gross negligence, punitive damages, plus the costs of the action. These penalties are prescribed by IRC §§ 7213A and 7431.

2.3 Additionally, it is incumbent upon the Contractor to inform its officers and employees of the penalties for improper disclosure imposed by the Privacy Act of 1974, 5 U.S.C. § 552a. Specifically, 5 U.S.C. § 552a(i)(1), which is made applicable to contractors by 5 U.S.C. § 552a(m)(1), provides that any officer or employee of a contractor, who by virtue of his or her employment or official position, has possession of or access to State records which contain individually identifiable information, the disclosure of which is prohibited by the Privacy Act or regulations established thereunder, and who knowing that disclosure of the specific material is prohibited, willfully discloses the material in any manner to any person or agency not entitled to receive it, shall be guilty of a misdemeanor and fined not more than five thousand dollars ($5,000).

2.4 Granting a Contractor access to FTI must be preceded by certifying that each individual understands the State's security policy and procedures for safeguarding IRS information. Contractors must maintain their authorization to access FTI through annual recertification. The initial certification and recertification must be documented and placed in the State's files for review. As part of the certification and at least annually afterwards, Contractors must be advised of the provisions of IRC §§ 7431, 7213, and 7213A. The training provided before the initial certification and annually thereafter must also cover the incident response policy and procedure for reporting unauthorized disclosures and data breaches. For both the initial certification and the annual certification, the Contractor must sign, either with ink or electronic signature, a confidentiality statement certifying their understanding of the security requirements.

3. INSPECTION:

The IRS and the State shall have the right to send its officers and employees into the offices and plants of the Contractor for inspection of the facilities and operations provided for the performance of any work under this Contract. On the basis of such inspection, specific measures may be required in cases where the Contractor is found to be noncompliant with Contract safeguards.

Survival

Add one of the two survival options as appropriate. If unsure whether a survival provision is appropriate, consult the CPO legal team.

Option 1

E.#	Survival. The terms, provisions, representations, and warranties contained in this Contract which by their sense and context are intended to survive the performance and termination of this Contract, shall so survive the completion of performance and termination of this Contract.

Option 2

E.#	Survival. The terms, provisions, representations, and warranties contained in Sections <list numbered Sections> of this Contract shall survive the completion of performance, termination or expiration of this Contract.

SIGNATURES

Draft the Contract so that the signature section immediately follows the previous section text separated by only one blank line. Do NOT insert an arbitrary page break prior to the signature section.

By contract signature, the contracting agency head shall assure and affirm that:

1. if there is a Maximum Liability included in the Contract, then there is a balance in the appropriation from which obligations under the Contract are required to be paid that is not already encumbered to pay other obligations;
2. the contracting agency maintains documentation of a fair and impartial contractor selection in full compliance with the approved procurement methodology as indicated by the summary cover sheet; and,
3. the proposed Scope is clear and correct, adequate for all legal and enforcement purposes, and sufficiently detailed to ensure Contractor accountability and results.

PREREQUISITE DOCUMENTATION PROVISION FOR THE

FA TEMPLATE AND GU MODEL

REDLINE VERSION

REQUEST: Replace the Prerequisite Documentation provision in the FA Template and GU Model with the following:

Prerequisite Documentation. The Contractor shall not invoice the State under this Contract until the State has received the following, properly completed documentation. At the State's option, it may make payments to Contractor by automated clearing house ("ACH") or the State Purchasing Card ("P-Card").

a. The Contractor shall complete, sign, and present to the State:

(1) An "Authorization Agreement for Automatic Deposit Form" provided by the State. By doing so, the Contractor acknowledges and agrees that, once this form is received by the State, payments to the Contractor, under this or any other contract the Contractor has with the State of Tennessee, may be made by ACH; and

(2) An "Authorization to Receive Payments by Purchasing Card Form" provided by the State. By doing so, the Contractor agrees that payments to the Contractor under this Contract may be made using the State P-Card and Contractor will serve as a level 3 merchant.

b. The Contractor shall complete, sign, and return to the State the State-provided W-9 form. The taxpayer identification number on the W-9 form must be the same as the Contractor's Federal Employer Identification Number or Social Security Number referenced in the Contractor's Edison registration information.

Document comparison by Workshare Compare on Friday, June 05, 2015 5:20:49 PM

Input:	
Document 1 ID	file://C:\Users\BA10408\Desktop\Prerequisite doc_current.docx
Description	Prerequisite doc_current
Document 2 ID	file://C:\Users\BA10408\Desktop\Prerequisite doc_proposed.docx
Description	Prerequisite doc_proposed
Rendering set	Standard

Legend:	
Insertion	
~~Deletion~~	
~~Moved from~~	
Moved to	
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

PREREQUISITE DOCUMENTATION PROVISION FOR THE

FA TEMPLATE AND GU MODEL

CLEAN VERSION

REQUEST: Replace the Prerequisite Documentation provision in the FA Template and GU Model with the following:

Prerequisite Documentation. The Contractor shall not invoice the State under this Contract until the State has received the following, properly completed documentation. At the State's option, it may make payments to Contractor by automated clearing house ("ACH") or the State Purchasing Card ("P-Card").

a. The Contractor shall complete, sign, and present to the State:

(1) An "Authorization Agreement for Automatic Deposit Form" provided by the State. By doing so, the Contractor acknowledges and agrees that, once this form is received by the State, payments to the Contractor, under this or any other contract the Contractor has with the State of Tennessee, may be made by ACH; and
(2) An "Authorization to Receive Payments by Purchasing Card Form" provided by the State. By doing so, the Contractor agrees that payments to the Contractor under this Contract may be made using the State P-Card and Contractor will serve as a level 3 merchant.

b. The Contractor shall complete, sign, and return to the State the State-provided W-9 form. The taxpayer identification number on the W-9 form must be the same as the Contractor's Federal Employer Identification Number or Social Security Number referenced in the Contractor's Edison registration information.

AUTHORIZATION TO RECEIVE PAYMENTS BY PURCHASING CARD

(NEW)

AUTHORIZATION TO RECEIVE PAYMENTS BY PURCHASING CARD

Name

Edison Vendor ID Number

By my signature below, I agree to receive any payments due under a contract or grant contract with the State of Tennessee ("State") from the State's Purchasing Card ("P-Card"). In the event the State makes payments using the P-Card, I agree to accept these payments as a level 3 merchant at no cost to the State.

Signed:

Contractor or Grantee's Authorized Signatory Date

Printed Name and Title of Authorized Signatory

AUDIT REPORT PROVISION FOR GR TEMPLATE

REDLINE VERSION

~~Audit Report. When the Grantee has received seven hundred fifty thousand dollars ($750,000.00) or more in aggregate federal and state funding for all of its programs within the Grantee's fiscal year, the~~Audit Report. For purposes of this Section, pass-through entity means a non-federal entity that provides a subaward to a subrecipient to carry out part of a federal program.

The Grantee shall provide audited financial statements to the Tennessee Comptroller of the Treasury~~. The Grantee may, with the prior approval of the Comptroller of the Treasury, engage~~ ("Comptroller") if during the Grantee's fiscal year, the Grantee: (1) expends seven hundred fifty thousand dollars ($750,000) or more in direct and indirect federal financial assistance and the State is a pass-through entity; (2) expends seven hundred fifty thousand dollars ($750,000) or more in state funds from the State; or (3) expends seven hundred fifty thousand dollars ($750,000) or more in federal financial assistance and state funds from the State, and the State is a pass-through entity. At least ninety (90) days before the end of its fiscal year, the Grantee shall complete Attachment [reference the Notice of Audit Report document] to notify the State whether or not Grantee is subject to an audit. The Grantee should submit only one, completed document during the Grantee's fiscal year. Any Grantee that is subject to an audit and so indicates on Attachment [reference the Notice of Audit Report document] shall complete Attachment [reference the Parent Child Information document]. If the Grantee is subject to an audit, Grantee shall obtain the Comptroller's approval before engaging a licensed, independent public accountant to perform the audit. The ~~audit contract between the Grantee and the licensed independent public accountant shall be on a contract form prescribed by the Tennessee Comptroller of the Treasury. When an~~Grantee may contact the Comptroller for assistance identifying auditors.

All audits shall be performed in accordance with the Comptroller's requirements, as posted on its web site. When a federal single audit is required ~~under this Section~~, the audit shall be performed in accordance with U.S. Office of Management and Budget's *Uniform ~~Administration~~Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards.*

A copy of the audit report shall be provided to the Comptroller by the licensed, independent public accountant. Audit reports shall be made available to the public.

The audit contract between the Grantee ~~shall be responsible for reimbursing the Tennessee Comptroller of the Treasury for any costs of an audit prepared by the Tennessee Comptroller of the Treasury~~and the Auditor shall be on a contract form prescribed by the Comptroller. The Grantee shall be responsible for payment of fees for an audit prepared by a licensed, independent public accountant. Payment of the audit fees ~~for the licensed independent public accountant~~ by the Grantee shall be subject to the provision relating to such fees contained within this Grant Contract. ~~Copies of such audit reports shall be provided to the designated cognizant state agency, the Grantor State Agency, the Tennessee Comptroller of the Treasury, the Central Procurement Office, and the Commissioner of Finance and Administration.~~ The Grantee shall be responsible for reimbursing the Comptroller for any costs of an audit prepared by the Comptroller.

~~Audit reports shall be made available to the public.~~

Document comparison by Workshare Compare on Friday, June 05, 2015 2:33:58 PM

Input:	
Document 1 ID	file://C:\Users\BA10408\Desktop\GR audit report_current.docx
Description	GR audit report_current
Document 2 ID	file://C:\Users\BA10408\Desktop\GR audit report_proposed.docx
Description	GR audit report_proposed
Rendering set	Standard

Legend:	
Insertion	
~~Deletion~~	
~~Moved from~~	
Moved to	
Style change	
Format change	
~~Moved deletion~~	
Inserted cell	
Deleted cell	
Moved cell	
Split/Merged cell	
Padding cell	

Statistics:	
	Count
Insertions	17
Deletions	13
Moved from	9
Moved to	9
Style change	0
Format changed	0
Total changes	48

AUDIT REPORT PROVISION FOR GR TEMPLATE

CLEAN VERSION

REQUEST: Replace the Audit Report provisions in the GR Template with the following:

Audit Report. For purposes of this Section, pass-through entity means a non-federal entity that provides a subaward to a subrecipient to carry out part of a federal program.

The Grantee shall provide audited financial statements to the Tennessee Comptroller of the Treasury ("Comptroller") if during the Grantee's fiscal year, the Grantee: (1) expends seven hundred fifty thousand dollars ($750,000) or more in direct and indirect federal financial assistance and the State is a pass-through entity; (2) expends seven hundred fifty thousand dollars ($750,000) or more in state funds from the State; or (3) expends seven hundred fifty thousand dollars ($750,000) or more in federal financial assistance and state funds from the State, and the State is a pass-through entity. At least ninety (90) days before the end of its fiscal year, the Grantee shall complete Attachment [reference the Notice of Audit Report document] to notify the State whether or not Grantee is subject to an audit. The Grantee should submit only one, completed document during the Grantee's fiscal year. Any Grantee that is subject to an audit and so indicates on Attachment [reference the Notice of Audit Report document] shall complete Attachment [reference the Parent Child Information document]. If the Grantee is subject to an audit, Grantee shall obtain the Comptroller's approval before engaging a licensed, independent public accountant to perform the audit. The Grantee may contact the Comptroller for assistance identifying auditors.

All audits shall be performed in accordance with the Comptroller's requirements, as posted on its web site. When a federal single audit is required, the audit shall be performed in accordance with U.S. Office of Management and Budget's *Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards*.

A copy of the audit report shall be provided to the Comptroller by the licensed, independent public accountant. Audit reports shall be made available to the public.

The audit contract between the Grantee and the Auditor shall be on a contract form prescribed by the Comptroller. The Grantee shall be responsible for payment of fees for an audit prepared by a licensed, independent public accountant. Payment of the audit fees by the Grantee shall be subject to the provision relating to such fees contained within this Grant Contract. The Grantee shall be responsible for reimbursing the Comptroller for any costs of an audit prepared by the Comptroller.

AUDIT REPORT ATTACHMENT FOR GR TEMPLATE

(NEW)

ATTACHMENT REFERENCE

Notice of Audit Report

Check one of the two boxes below and complete the remainder of this document as instructed. Send completed documents as a PDF file to cpo.auditnotice@tn.gov. ***The Grantee should submit only one, completed "Notice of Audit Report" document to the State during the Grantee's fiscal year.***

☐ Grantee Legal Entity Name is subject to an audit for fiscal year #.

☐ Grantee Legal Entity Name is not subject to an audit for fiscal year #.

Any Grantee that is subject to an audit must complete the information below.

Grantee's Edison Vendor ID Number:

Type of funds expended	Estimated amount of funds expended by end of Grantee's fiscal year
Federal pass-through funds a. Funds passed through the State of Tennessee b. Funds passed through any other entity	a. b.
Funds received directly from the federal government	
Non-federal funds received directly from the State of Tennessee	

Auditor's name:

Auditor's address:

Auditor's phone number:

Auditor's email:

AUDIT REPORT PROVISIONS FOR GG TEMPLATE

REDLINE VERSION

REQUEST 1: Replace the default Audit Report provision in the GG Template with the following:

Default Audit Report provision:

Tennessee law provides specific audit requirements based upon the classification of the Grantee. In those circumstances, the Grantee must be audited in compliance with Tennessee statutory requirements. These instances include, without limitation, the following when the Grantee is considered a:

1) State government under Tenn. Code Ann. § 4-3-301;
2) TNInvestco under Tenn. Code Ann. § 4-28-110(a)(4);
3) Municipality under Tenn. Code Ann. § 6-56-105;
4) Tourism development authority under Tenn. Code Ann. § 7-69-105;
5) Utility district under Tenn. Code Ann. § 7-82-401;
6) Emergency communication district under Tenn. Code Ann. § 7-86-113;
7) Public building authority under Tenn. Code Ann § 12-10-109;
8) Insurance pool under Tenn. Code Ann. § 29-20-401(g)(1)(A);
9) Community corrections fund under Tenn. Code Ann. § 40-36-303(d);
10) School under Tenn. Code Ann. § 49-2-112;
11) Charter school under Tenn. Code Ann. § 49-13-111;
12) Medicaid provider under Tenn. Code Ann. § 71-5-130;
13) Contractor with the Department of Intellectual and Developmental Disabilities under the Medicaid waiver program;
14) Human resource agency under Tenn. Code Ann. § 13-26-106; or
15) Developmental district under Tenn. Code Ann. § 13-14-112.

If the Grantee is not statutorily subject to an audit, insert the Audit Report provision in the "Instructions, Considerations, and Options" section of the template.

D. 19. Audit Report. The Grantee shall be audited in accordance with applicable Tennessee law.

If the Grantee is subject to an audit under this provision, then the Grantee shall complete Attachment [reference the Parent Child Information document].

When ~~the Grantee has received seven hundred fifty thousand dollars ($750,000.00) or more in aggregate federal and state funding for all of its programs within the Grantee's fiscal year, the~~a federal single audit is required, the audit shall be performed in accordance with U.S. Office of Management and Budget's *Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards.*

A copy of the audit report shall be provided to the Comptroller by the licensed, independent public accountant. Audit reports shall be made available to the public.

REQUEST 2: Add the following as an optional term in the GG Term:

Optional Audit Report provision:

If the Grantee is not statutorily subject to an audit, insert the following:

Audit Report. For purposes of this Section, pass-through entity means a non-federal entity that provides a subaward to a subrecipient to carry out part of a federal program.

The Grantee shall provide audited financial statements to the Tennessee Comptroller of the Treasury. The Grantee may, with the prior approval of the Comptroller of the Treasury, engage ("Comptroller") if during the Grantee's fiscal year, the Grantee: (1) expends seven hundred fifty thousand dollars ($750,000) or more in direct and indirect federal financial assistance and the State is a pass-through entity; (2) expends seven hundred fifty thousand dollars ($750,000) or more in state funds from the State; or (3) expends seven hundred fifty thousand dollars ($750,000) or more in federal financial assistance and state funds from the State, and the State is a pass-through entity. At least ninety (90) days before the end of its fiscal year, the Grantee shall complete Attachment [reference the Notice of Audit Report document] to notify the State whether or not Grantee is subject to an audit. The Grantee should submit only one, completed Notice of Audit Report document during the Grantee's fiscal year. Any Grantee that is subject to an audit and so indicates on Attachment [reference the Notice of Audit Report document] shall complete Attachment [reference the Parent Child Information document]. If the Grantee is subject to an audit, Grantee shall obtain the Comptroller's approval before engaging a licensed, independent public accountant to perform the audit. The Grantee may contact the Comptroller for assistance identifying auditors.

All audits shall be performed in accordance with the Comptroller's requirements, as posted on its web site. When a federal single audit is required, the audit shall be performed in accordance with U.S. Office of Management and Budget's *Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards.*

A copy of the audit report shall be provided to the Comptroller by the licensed, independent public accountant. Audit reports shall be made available to the public.

The audit contract between the Grantee and the licensed independent public accountantAuditor shall be on a contract form prescribed by the Tennessee Comptroller of the Treasury. When an audit is required under this Section, the audit shall be performed in accordance with U.S. Office of Management and Budget's Uniform Administration Requirements, Cost Principles, and Audit Requirements for Federal Awards.

The Grantee shall be responsible for reimbursing the Tennessee Comptroller of the Treasury for any costs of an audit prepared by the Tennessee Comptroller of the Treasury. The Grantee shall be responsible for payment of fees for an audit prepared by a licensed, independent public accountant. Payment of the audit fees for the licensed independent public accountant by the Grantee shall be subject to the provision relating to such fees contained within this Grant Contract. Copies of such audit reports shall be provided to the designated cognizant state agency, the Grantor State Agency, the Tennessee Comptroller of the Treasury, the Central Procurement Office, and the Commissioner of Finance and

~~Administration.~~ The Grantee shall be responsible for reimbursing the Comptroller for any costs of an audit prepared by the Comptroller.

~~Audit reports shall be made available to the public.~~

Document comparison by Workshare Compare on Friday, June 05, 2015 2:32:07 PM

Input:	
Document 1 ID	file://C:\Users\BA10408\Desktop\GG_audit report_current.docx
Description	GG_audit report_current
Document 2 ID	file://C:\Users\BA10408\Desktop\GG audit report_proposed.docx
Description	GG audit report_proposed
Rendering set	Standard

Legend:	
Insertion	
~~Deletion~~	
~~Moved from~~	
Moved to	
Style change	
Format change	
~~Moved deletion~~	
Inserted cell	
Deleted cell	
Moved cell	
Split/Merged cell	
Padding cell	

Statistics:	
	Count
Insertions	52
Deletions	10
Moved from	2
Moved to	2
Style change	0
Format changed	0
Total changes	66

AUDIT REPORT PROVISIONS FOR GG TEMPLATE

CLEAN VERSION

REQUEST 1: Replace the default Audit Report provision in the GG Template with the following:

Tennessee law provides specific audit requirements based upon the classification of the Grantee. In those circumstances, the Grantee must be audited in compliance with Tennessee statutory requirements. These instances include, without limitation, the following when the Grantee is considered a:

1) State government under Tenn. Code Ann. § 4-3-301;
2) TNInvestco under Tenn. Code Ann. § 4-28-110(a)(4);
3) Municipality under Tenn. Code Ann. § 6-56-105;
4) Tourism development authority under Tenn. Code Ann. § 7-69-105;
5) Utility district under Tenn. Code Ann. § 7-82-401;
6) Emergency communication district under Tenn. Code Ann. § 7-86-113;
7) Public building authority under Tenn. Code Ann § 12-10-109;
8) Insurance pool under Tenn. Code Ann. § 29-20-401(g)(1)(A);
9) Community corrections fund under Tenn. Code Ann. § 40-36-303(d);
10) School under Tenn. Code Ann. § 49-2-112;
11) Charter school under Tenn. Code Ann. § 49-13-111;
12) Medicaid provider under Tenn. Code Ann. § 71-5-130;
13) Contractor with the Department of Intellectual and Developmental Disabilities under the Medicaid waiver program;
14) Human resource agency under Tenn. Code Ann. § 13-26-106; or
15) Developmental district under Tenn. Code Ann. § 13-14-112.

If the Grantee is not statutorily subject to an audit, insert the Audit Report provision in the "Instructions, Considerations, and Options" section of the template.

D. 19. Audit Report. The Grantee shall be audited in accordance with applicable Tennessee law.

If the Grantee is subject to an audit under this provision, then the Grantee shall complete Attachment [reference the Parent Child Information document].

When a federal single audit is required, the audit shall be performed in accordance with U.S. Office of Management and Budget's *Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards*.

A copy of the audit report shall be provided to the Comptroller by the licensed, independent public accountant. Audit reports shall be made available to the public.

Request 2: Add the following as an optional term in the GG Term:

If the Grantee is not statutorily subject to an audit, insert the following:

Audit Report. For purposes of this Section, pass-through entity means a non-federal entity that provides a subaward to a subrecipient to carry out part of a federal program.

The Grantee shall provide audited financial statements to the Tennessee Comptroller of the Treasury ("Comptroller") if during the Grantee's fiscal year, the Grantee: (1) expends seven hundred fifty thousand dollars ($750,000) or more in direct and indirect federal financial assistance and the State is a pass-through entity; (2) expends seven hundred fifty thousand dollars ($750,000) or more in state funds from the State; or (3) expends seven hundred fifty thousand dollars ($750,000) or more in federal financial assistance and state funds from the State, and the State is a pass-through entity. At least ninety (90) days before the end of its fiscal year, the Grantee shall complete Attachment [reference the Notice of Audit Report document] to notify the State whether or not Grantee is subject to an audit. The Grantee should submit only one, completed Notice of Audit Report document during the Grantee's fiscal year. Any Grantee that is subject to an audit and so indicates on Attachment [reference the Notice of Audit Report document] shall complete Attachment [reference the Parent Child Information document]. If the Grantee is subject to an audit, Grantee shall obtain the Comptroller's approval before engaging a licensed, independent public accountant to perform the audit. The Grantee may contact the Comptroller for assistance identifying auditors.

All audits shall be performed in accordance with the Comptroller's requirements, as posted on its web site. When a federal single audit is required, the audit shall be performed in accordance with U.S. Office of Management and Budget's *Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards*.

A copy of the audit report shall be provided to the Comptroller by the licensed, independent public accountant. Audit reports shall be made available to the public.

The audit contract between the Grantee and the Auditor shall be on a contract form prescribed by the Comptroller. The Grantee shall be responsible for payment of fees for an audit prepared by a licensed, independent public accountant. Payment of the audit fees by the Grantee shall be subject to the provision relating to such fees contained within this Grant Contract. The Grantee shall be responsible for reimbursing the Comptroller for any costs of an audit prepared by the Comptroller.

AUDIT REPORT ATTACHMENT FOR GG TEMPLATE

(NEW)

ATTACHMENT REFERENCE

Notice of Audit Report

Check one of the two boxes below and complete the remainder of this document as instructed. Send completed documents as a PDF file to cpo.auditnotice@tn.gov. ***The Grantee should submit only one, completed "Notice of Audit Report" document to the State during the Grantee's fiscal year.***

☐ Grantee Legal Entity Name is subject to an audit for fiscal year #.

☐ Grantee Legal Entity Name is not subject to an audit for fiscal year #.

Any Grantee that is subject to an audit must complete the information below.

Grantee's Edison Vendor ID Number:

Type of funds expended	Estimated amount of funds expended by end of Grantee's fiscal year
Federal pass-through funds a. Funds passed through the State of Tennessee b. Funds passed through any other entity	a. b.
Funds received directly from the federal government	
Non-federal funds received directly from the State of Tennessee	

PARENT CHILD INFORMATION ATTACHMENT

(FOR GG AND GR TEMPLATES)

(NEW)

Parent Child Information

"Parent" means an entity whose IRS filing contains the information of at least one other entity.

"Child" means an entity whose information is contained in another entity's IRS filing.

Grantee's Edison Vendor ID number:

Is Grantee Legal Entity Name a parent? Yes ☐ No ☐

If yes, provide the name and Edison Vendor ID number, if applicable, of any child entities.

Is Grantee Legal Entity Name a child? Yes ☐ No ☐

If yes, complete the fields below.

Parent entity's name: _____

Parent entity's tax identification number: _____

Parent entity's contact information

Name of primary contact person: _____

Address: _____

Phone number: _____

Email address: _____

Parent entity's Edison Vendor ID number, if applicable: _____

RECORDS PROVISION IN GG TEMPLATE

REDLINE VERSION

D.15. Records. The Grantee and any approved subcontractor shall maintain documentation for all charges under this Grant Contract. The books, records, and documents of the Grantee and any approved subcontractor, insofar as they relate to work performed or money received under this Grant Contract, shall be maintained in accordance with ~~Tenn. Code Ann. §§ 10-7-404 or 10-7-702, as appropriate~~applicable Tennessee law. In no case shall the records be maintained for a period of less than five (5) full years from the date of the final payment. The Grantee's records shall be subject to audit at any reasonable time and upon reasonable notice by the Grantor State Agency, the Comptroller of the Treasury, or their duly appointed representatives.

The records shall be maintained in accordance with Governmental Accounting Standards Board (GASB) Accounting Standards or the Financial Accounting Standards Board (FASB) Accounting Standards Codification, as applicable, and any related AICPA Industry Audit and Accounting guides.

In addition, documentation of grant applications, budgets, reports, awards, and expenditures will be maintained in accordance with U.S. Office of Management and Budget's *Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards.*

Grant expenditures shall be made in accordance with local government purchasing policies and procedures and purchasing procedures for local governments authorized under state law.

The Grantee shall also comply with any recordkeeping and reporting requirements prescribed by the Tennessee Comptroller of the Treasury.

The Grantee shall establish a system of internal controls that utilize the COSO Internal Control - Integrated Framework model as the basic foundation for the internal control system. The Grantee shall incorporate any additional Comptroller of the Treasury directives into its internal control system.

Any other required records or reports which are not contemplated in the above standards shall follow the format designated by the head of the Grantor State Agency, the Central Procurement Office, or the Commissioner of Finance and Administration of the State of Tennessee.

Document comparison by Workshare Compare on Monday, June 15, 2015 11:46:35 AM

Input:	
Document 1 ID	file://C:\Users\BA10408\Desktop\Records_current.docx
Description	Records_current
Document 2 ID	file://C:\Users\BA10408\Desktop\Records_proposed.docx
Description	Records_proposed
Rendering set	Standard

Legend:	
Insertion	
~~Deletion~~	
~~Moved from~~	
Moved to	
Style change	
Format change	
~~Moved deletion~~	
Inserted cell	
Deleted cell	
Moved cell	
Split/Merged cell	
Padding cell	

Statistics:	
	Count
Insertions	1
Deletions	1
Moved from	0
Moved to	0
Style change	0
Format changed	0
Total changes	2

RECORDS PROVISION IN GG TEMPLATE

CLEAN VERSION

REQUEST: Make the following changes to the Records provision in the GG Template.

D.15. Records. The Grantee and any approved subcontractor shall maintain documentation for all charges under this Grant Contract. The books, records, and documents of the Grantee and any approved subcontractor, insofar as they relate to work performed or money received under this Grant Contract, shall be maintained in accordance with applicable Tennessee law. In no case shall the records be maintained for a period of less than five (5) full years from the date of the final payment. The Grantee's records shall be subject to audit at any reasonable time and upon reasonable notice by the Grantor State Agency, the Comptroller of the Treasury, or their duly appointed representatives.

The records shall be maintained in accordance with Governmental Accounting Standards Board (GASB) Accounting Standards or the Financial Accounting Standards Board (FASB) Accounting Standards Codification, as applicable, and any related AICPA Industry Audit and Accounting guides.

In addition, documentation of grant applications, budgets, reports, awards, and expenditures will be maintained in accordance with U.S. Office of Management and Budget's *Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards.*

Grant expenditures shall be made in accordance with local government purchasing policies and procedures and purchasing procedures for local governments authorized under state law.

The Grantee shall also comply with any recordkeeping and reporting requirements prescribed by the Tennessee Comptroller of the Treasury.

The Grantee shall establish a system of internal controls that utilize the COSO Internal Control - Integrated Framework model as the basic foundation for the internal control system. The Grantee shall incorporate any additional Comptroller of the Treasury directives into its internal control system.

Any other required records or reports which are not contemplated in the above standards shall follow the format designated by the head of the Grantor State Agency, the Central Procurement Office, or the Commissioner of Finance and Administration of the State of Tennessee.

REVISIONS TO REQUEST FOR PROPOSALS (RFP) AND REQUEST FOR QUALIFICATIONS (RFQ) TEMPLATES FOR PURCHASING CARD

REQUESTS:

(1) Revise the Section 4.9.3.3 of the RFP Template as follows.

4.9.3.3. The Respondent awarded the Contract resulting from this RFP shall accept the State's Purchasing Card ("P-Card") as a form of payment at no cost to the State and serve as a level 3 merchant.

(2) Revise Attachment E of the RFQ Template as follows.

The Respondent does, hereby, expressly affirm, declare, confirm, certify, and assure ALL of the following:

1. The Respondent will comply with all of the provisions and requirements of the RFQ.
2. The Respondent will provide all specified goods or services as required by the contract awarded pursuant to this RFQ.
3. The Respondent accepts and agrees to all terms and conditions set out in the contract awarded pursuant to this RFQ.
4. The Respondent awarded the Contract resulting from this RFQ shall accept the State Purchasing Card ("P-Card") as a form of payment at no cost to the State and serve as a level 3 merchant.

SIGNATURE CERTIFICATION AND AUTHORIZATION DOCUMENT

REDLINE VERSION

Signature Certification ~~&~~and Authorization

~~*for purposes of professional service contracting documents*~~

Complete the text fields and follow, replace, or otherwise address red instructional text as indicated.

State Agency	**Name**
Calendar ~~Year~~year of ~~Certification & Authorization(s):~~certification and authorization	———Year

This ~~Signature Certification & Authorization~~signature certification and authorization document supersedes all prior signature and certification documents of ~~this purpose for~~ the ~~agency~~State Agency identified ~~below and~~above. This document shall be effective immediately and remain ~~effective until~~in effect for the calendar year above unless superseded by a new document of this ~~purpose~~type properly filed~~, except it shall NOT be effective beyond the calendar year specified above.~~ with the Central Procurement Office.

~~I hereby declare the~~The following individuals ~~to be~~are authorized ~~signatories permitted to sign ALL professional service contracts as well as associated~~to sign procurement documents ~~and communications on my behalf EXCEPT requests for non-competitive contracts or amendments which I understand that I must sign personally~~on my behalf.

Printed ~~Name & Title~~name and title	Sample ~~Signature~~signature with ~~Initials~~initials *~~sample~~Sample of ~~agency~~State Agency head's name as it will be signed* *~~&~~and initialed by the authorized individual named*

~~add~~Add rows to ~~the schedule~~ as necessary

The following individuals are authorized to sign the Central Procurement Office's formal request documents, e.g., Contract Termination Request, Rule Exception Request, Special Contract Request, in their own capacity using a "wet" signature, digital signature, or other electronic approval.

Printed name and title	Sample signature

Add rows as necessary

Further, as the ~~chief executive~~head of the ~~agency~~State Agency identified ~~below~~above, I will sign all ~~professional service contract documents as well as associated~~ procurement documents ~~and communications~~ in the following manner:

***State** Agency ~~Chief Executive Signature & Date~~head's signature and date* _____

~~*Printed Name, Title &*~~*State Agency head's printed name* _____

Document comparison by Workshare Compare on Wednesday, June 17, 2015 9:36:18 AM

Input:	
Document 1 ID	file://C:\Users\BA10408\Desktop\Signature certification and authorization_current.doc
Description	Signature certification and authorization_current
Document 2 ID	file://\\Ag0319006wf525\ba_co\USERS\BA10408\C.Mallea's documents\Policy subcommittee\Ready for AC review\6.24.15 Meeting\Signature certification and authorization_clean.docx
Description	Signature certification and authorization_clean
Rendering set	Standard

Legend:	
Insertion	
~~Deletion~~	
~~Moved from~~	
Moved to	
Style change	
Format change	
~~Moved del~~	
Inserted cell	
Deleted cell	
Moved cell	
Split/Merged cell	
Padding cell	

Statistics:	
	Count
Insertions	38
Deletions	33
Moved from	0
Moved to	0
Style change	0
Format changed	0

Total changes	71

SIGNATURE CERTIFICATION AND AUTHORIZATION DOCUMENT

CLEAN VERSION

Signature Certification and Authorization

Complete the text fields and follow, replace, or otherwise address red instructional text as indicated.

State Agency	**Name**
Calendar year of certification and authorization	**Year**

This signature certification and authorization document supersedes all prior signature and certification documents of the State Agency identified above. This document shall be effective immediately and remain in effect for the calendar year above unless superseded by a new document of this type properly filed with the Central Procurement Office.

The following individuals are authorized to sign procurement documents on my behalf.

Printed name and title	**Sample signature with initials** *Sample of State Agency head's name as it will be signed and initialed by the authorized individual named*

Add rows to as necessary

The following individuals are authorized to sign the Central Procurement Office's formal request documents, e.g., Contract Termination Request, Rule Exception Request, Special Contract Request, in their own capacity using a "wet" signature, digital signature, or other electronic approval.

Printed name and title	Sample signature

Add rows as necessary

Further, as the head of the State Agency identified above, I will sign all procurement documents in the following manner:

State Agency head's signature and date _____

State Agency head's printed name _____

PERFORMANCE BOND TEMPLATE

(NEW)

PERFORMANCE BOND TEMPLATE

This template prescribes the format and content for a performance bond. Procurement professionals shall adhere to this template and follow, replace, or otherwise address red instructional text. Changes to this document other than those identified in the instructions require a Rule Exception as set forth in Tenn. Comp. R. & Regs. 0690-03-01-.17 and the *Procurement Procedures Manual of the Central Procurement Office*. A properly completed performance bond includes two separate notarizations.

BOND NO. #

PERFORMANCE BOND

KNOW ALL MEN BY THESE PRESENTS: that We,

Contractor name
Contractor address
Contractor telephone

(hereinafter called the "Principal"), whose principal business address and telephone number is as stated above; and

Surety name
Surety address
Surety telephone

(hereinafter called the "Surety"), whose principal address and telephone number is as stated above, a surety insurer chartered and existing under the laws of the State of state name and authorized to do business in the State of Tennessee;

are held and firmly bound unto the State of Tennessee Department of General Services Central Procurement Office ("State"), whose principal address is 312 Rosa L. Parks Avenue, 3rd Floor, Nashville, TN 37243, and whose principal telephone number is 615-741-1035 in the penal sum of written amount ($ number) for payment of which we bond ourselves, our heirs, our personal representatives, our successors and our assignees, jointly and severally.

WHEREAS, Principal has entered into a contract with State for solicitation name (Solicitation No. #) (the "Contract") in accordance with the scope of services and deliverables (the "Scope") set forth in Section reference of the Contract.

THE CONDITION OF THIS BOND is that if Principal:

1. Performs the Contract at the times and in the manner prescribed in the Contract; and

2. Pays State any and all losses, damages, costs and attorneys' fees, including appellate proceedings, that State sustains because of any default by Principal under the Contract, including, but not limited to, all delay damages, whether liquidated or actual, incurred by State; and

3. Performs, to the satisfaction of State the Scope under the Contract for the time specified in the Contract;

then this bond is void; otherwise it remains in full force.

The Surety, for value received, hereby stipulates and agrees that no changes, extensions of time, alterations or additions to the terms of the Contract or other work to be performed hereunder, or the specifications referred to in the Contract shall in anyway affect its obligation under this bond. The Surety waives notice of any such changes, extensions of time, alterations or additions to the terms of the Contract or to the Scope.

It is expressly understood the time provision under Tenn. Code Ann. § 12-3-502 shall apply to this bond. Bond must be received within fourteen (14) calendar days of receipt of request by the State or a Delegated State Agency.

By execution of this bond, the Surety acknowledges that it has read the Surety qualifications and obligations imposed by the Contract and hereby satisfies those conditions.

IN WITNESS WHEREOF, the above bounded parties have executed this instrument this _____ day of _____, 20___, the name of each party being affixed and these presents duly signed by its undersigned representative, pursuant to authority of its governing body.

Signed, sealed and delivered
In the presence of:

PRINCIPAL:

Contractor name

By:_____
(Contractor's authorized signatory)

_____
(Printed name and title)

STATE OF TENNESSEE
COUNTY OF _____
On this _____ day of _____, 20 _____, before me personally appeared _____, to me known to be the person (or persons) described in and who executed the foregoing instrument, and acknowledged that such person (or persons) executed the same as such person (or person's) free act and deed.

_____
Notary Public
Printed Name: _____
Commission Expires:

_____

DATE

Signed, sealed and delivered
In the presence of:

SURETY:

Surety name

By:_____
(Surety's authorized signatory)

_____
(Printed name and title)

STATE OF TENNESSEE
COUNTY OF _____
On this _____ day of _____, 20 _____, before me personally appeared _____, to me known to be the person (or persons) described in and who executed the foregoing instrument, and acknowledged that such person (or persons) executed the same as such person (or person's) free act and deed.

_____
Notary Public
Printed Name: _____
Commission Expires:

_____

SECTION 10.7 - BONDS, *PROCUREMENT PROCEDURES MANUAL OF THE CENTRAL PROCUREMENT OFFICE*

REDLINE VERSION

REQUEST: Replace section 10.7 of the *Procurement Procedures Manual of the Central Procurement Office* with the following.

10.7. *Bonds.*

The Central Procurement Office or a State Agency may require ~~a~~one or more of the following bonds: a proposal bond to secure a respondent's response to a solicitation ~~or~~, a performance bond after contract award to ensure completion of the contract, or a payment bond to ensure payment of contractor's subcontractors and material suppliers. Any bond required must be issued by a surety company licensed to do business ~~by~~in the State of Tennessee. When required, the amount of the proposal bond shall be stated as a percentage of the ~~contract price (but may~~contractor's bid or cost proposal total, but not to exceed ~~100 percent (100%) of the total contract price) and the amount~~five percent (5%). The amount of the performance bond shall be stated as one hundred percent (100%) of the maximum liability or estimated liability of the contract, which may be reduced proportionately, in the State's sole discretion, after contract award or successful performance under the contract ~~moves forward successfully. All bonds must be filed with the State of Tennessee within fourteen (14) calendar days after receipt of request.~~. The amount of the payment bond shall be the statutory requirement of twenty-five percent (25%) of the maximum liability or estimated liability of the contract. The awarded contractor shall provide the bond or evidence of any required bonding before the contract's effective date. Personal checks shall not be acceptable in the place of ~~performance~~any bonds~~. However~~ required by the State; however, bank cashier's checks shall be accepted. An irrevocable letter of credit or a certificate of deposit, which shall be held by the ~~CPO or Delegated State Agency~~Central Procurement Office, from a State or national bank or a State or federal savings and loan association having a physical presence in Tennessee may be accepted by the ~~CPO or Delegated State Agency~~Central Procurement Office in lieu of a ~~performance~~ bond, subject to approval of the terms and conditions of said irrevocable letter of credit or certificate of deposit.

Document comparison by Workshare Compare on Wednesday, June 03, 2015 10:43:55 AM

Input:	
Document 1 ID	file://C:\Users\BA10408\Desktop\PPM 10.7_current.docx
Description	PPM 10.7_current
Document 2 ID	file://\\Ag0319006wf525\ba_co\USERS\BA10408\C.Mallea's documents\Policy subcommittee\Ready for AC review\6.24.15 Meeting\PPM Section 10.7_clean.docx
Description	PPM Section 10.7_clean
Rendering set	Standard

Legend:	
Insertion	
~~Deletion~~	
~~Moved from~~	
Moved to	
Style change	
Format change	
~~Moved deletion~~	
Inserted cell	
Deleted cell	
Moved cell	
Split/Merged cell	
Padding cell	

Statistics:	
	Count
Insertions	16
Deletions	11
Moved from	0
Moved to	0
Style change	0
Format changed	0
Total changes	27

SECTION 10.7 - BONDS, *PROCUREMENT PROCEDURES MANUAL OF THE CENTRAL PROCUREMENT OFFICE*

CLEAN VERSION

REQUEST: Replace section 10.7 of the *Procurement Procedures Manual of the Central Procurement Office* with the following.

10.7. *Bonds.*

The Central Procurement Office or a State Agency may require one or more of the following bonds: a proposal bond to secure a respondent's response to a solicitation, a performance bond after contract award to ensure completion of the contract, or a payment bond to ensure payment of contractor's subcontractors and material suppliers. Any bond required must be issued by a surety company licensed to do business in the State of Tennessee. When required, the amount of the proposal bond shall be stated as a percentage of the contractor's bid or cost proposal total, but not to exceed five percent (5%). The amount of the performance bond shall be stated as one hundred percent (100%) of the maximum liability or estimated liability of the contract, which may be reduced proportionately, in the State's sole discretion, after contract award or successful performance under the contract. The amount of the payment bond shall be the statutory requirement of twenty-five percent (25%) of the maximum liability or estimated liability of the contract. The awarded contractor shall provide the bond or evidence of any required bonding before the contract's effective date. Personal checks shall not be acceptable in the place of any bonds required by the State; however, bank cashier's checks shall be accepted. An irrevocable letter of credit or a certificate of deposit, which shall be held by the Central Procurement Office, from a State or national bank or a State or federal savings and loan association having a physical presence in Tennessee may be accepted by the Central Procurement Office in lieu of a bond, subject to approval of the terms and conditions of said irrevocable letter of credit or certificate of deposit.

SECTION 10.8 – P-CARD PURCHASES, *PROCUREMENT PROCEDURES MANUAL OF THE CENTRAL PROCUREMENT OFFICE*

REDLINE VERSION

10.8. *P-Card Purchases.*

The Department of General Services, Central Procurement Office~~, and the Department of Finance and Administration, Division of Accounts, shall maintain any statewide credit and debit card~~ manages all statewide Purchasing Card services contracts, which enable State Agencies to provide direct payment for goods~~,~~ or services~~, and State travel~~. State Agencies must utilize these statewide contracts when seeking ~~credit and debit card~~Purchasing Card services. Agencies are prohibited from ~~developing alternative contracts or submitting applications outside of these contracts for payment card services. If an Agency requires~~seeking to procure or executing alternative Purchasing Card services contracts. If an Agency desires services ~~not available from a current~~unavailable under an existing Purchasing Card services contract, ~~such~~the Agency shall ~~consult with~~contact the Central Procurement Office to determine if a separate procurement for ~~such~~the desired services is necessary.

Except for purchases of equipment that require tagging under the Department of Finance and Administration's policies, ~~the Central Procurement Office's payment card program shall be~~Agencies should use the P-Card as the primary payment method ~~of payment~~ for purchases made ~~pursuant to an Agency's~~under their small purchase authority. Under Tenn. Code Ann. § 12-3-503(b) and ~~CPO~~Central Procurement Office Policy Number 2013-003, any State Agency may use its small purchase authority to make a purchase without soliciting quotes or proposals from multiple suppliers if the total value of the purchase is ten thousand dollars ($10,000) or less. Agencies shall not artificially divide transactions or accounts to constitute a ~~small~~local purchase. Agencies shall comply with ~~all applicable~~ Central Procurement Office ~~Rules and Policies when utilizing a payment card for a purchase.~~ Policy Number 2015-010 and all applicable procurement statutes, rules, policies, or procedures when using the P-Card.. Purchases of goods or equipment that require tagging under the Department of Finance and Administration's policies require the prior approval of the Department of Finance and Administration, Division of Accounts, as the business owner of the Asset Management Module.
~~Each Agency shall select an employee to serve as the "designated agency coordinator" for its payment card program. The coordinator shall assist the agency fiscal officer in providing day-to-day oversight of the Agency's payment card use, in accordance with the payment card procedures established by the Central Procurement Office.~~

The Central Procurement Office will utilize electronic reporting and centralized payment for all ~~credit and debit card~~ vendors that accept P-Card payments. Agencies shall be responsible for reconciling monthly payment card reports to agency transactions. ~~An Agency may grant an exception to payment card use if a business refuses to accept a payment card or use of the payment card is otherwise impractical. Any other exceptions to this Section shall be approved by the Chief Procurement Officer.~~

Document comparison by Workshare Compare on Monday, June 15, 2015 11:38:06 AM

Input:	
Document 1 ID	file://C:\Users\BA10408\Desktop\PPM 10.8_current.docx
Description	PPM 10.8_current
Document 2 ID	file://C:\Users\BA10408\Desktop\PPM 10.8_proposed.docx
Description	PPM 10.8_proposed
Rendering set	Standard

Legend:	
Insertion	
~~Deletion~~	
~~Moved from~~	
Moved to	
Style change	
Format change	
~~Moved deletion~~	
Inserted cell	
Deleted cell	
Moved cell	
Split/Merged cell	
Padding cell	

Statistics:	
	Count
Insertions	15
Deletions	20
Moved from	1
Moved to	1
Style change	0
Format changed	0
Total changes	37

SECTION 4 AND SECTION 10.8 – P-CARD PURCHASES, *PROCUREMENT PROCEDURES MANUAL OF THE CENTRAL PROCUREMENT OFFICE*

CLEAN VERSION

REQUESTS: Make the following changes to the Central Procurement Office's *Procurement Procedures Manual.*

(1) Add the following definitions to Section 4.

"P-Card Program" means the program established by the State and managed by the Central Procurement Office whereby cardholders and virtual P-Card users make purchases on behalf of the State of Tennessee.

"Purchasing Card" or "P-Card" means a commercial card that allows organizations to take advantage of the existing credit card infrastructure to make electronic payments for goods or services. A P-Card is similar to a consumer credit card, but the card-using organization must pay the card issuer in full each month.

(2) Delete Section 10.8 and replace it with the following.

10.8. *P-Card Purchases.*

The Department of General Services, Central Procurement Office manages all statewide Purchasing Card services contracts, which enable State Agencies to provide direct payment for goods or services. State Agencies must utilize these statewide contracts when seeking Purchasing Card services. Agencies are prohibited from seeking to procure or executing alternative Purchasing Card services contracts. If an Agency desires services unavailable under an existing Purchasing Card services contract, the Agency shall contact the Central Procurement Office to determine if a separate procurement for the desired services is necessary.

Except for purchases of equipment that require tagging under the Department of Finance and Administration's policies, Agencies should use the P-Card as the primary payment method for purchases made under their small purchase authority. Under Tenn. Code Ann. § 12-3-503(b) and Central Procurement Office Policy Number 2013-003, any State Agency may use its small purchase authority to make a purchase without soliciting quotes or proposals from multiple suppliers if the total value of the purchase is ten thousand dollars ($10,000) or less. Agencies shall not artificially divide transactions or accounts to constitute a local purchase. Agencies shall comply with Central Procurement Office Policy Number 2015-010 and all applicable procurement statutes, rules, policies, or procedures when using the P-Card.. Purchases of goods or equipment that require tagging under the Department of Finance and Administration's policies require the prior approval of the Department of Finance and Administration, Division of Accounts, as the business owner of the Asset Management Module.

The Central Procurement Office will utilize electronic reporting and centralized payment for all vendors that accept P-Card payments. Agencies shall be responsible for reconciling monthly payment card reports to agency transactions.