

CONTRACT
BETWEEN THE STATE OF TENNESSEE,
DEPARTMENT OF ENVIRONMENT AND CONSERVATION
AND
CONTRACTOR NAME

This Contract, by and between the State of Tennessee, Department of Environment and Conservation ("State") and **Contractor Legal Entity Name** ("Contractor"), is for the provision of **Parks Operating System for Hospitality Services**, as further defined in the "SCOPE." State and Contractor may be referred to individually as a "Party" or collectively as the "Parties" to this Contract.

The Contractor is **a/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. Project Management

- (1) Project Steering Committee: The State will convene a Project Steering Committee (PSC) made up of the Project Manager and other senior business and technical executives. This committee will evaluate project progress periodically, provide executive-level guidance to and approval of the project work, and review and approve (or reject) changes to the project scope. The committee will meet monthly or more often if needed. The State Project Manager and other State staff as deemed necessary will serve as staff to the committee. The Contractor shall make staff available to participate in PSC meetings as required by the State.
- (2) State Project Manager: The State will assign a Project Manager. The State Project Manager will provide day-to-day oversight of the project and serve as the primary point of contact between the State and Contractor during system implementation.
- (3) Contractor Project Manager: The Contractor shall assign a Project Manager to serve as the primary point of contact between the State and the Contractor during system implementation. The Contractor Project Manager must have the authority to allocate Contractor resources to the project as needed to meet the project schedule. The Contractor Project Manager must remain thoroughly familiar with progress on the project at all times. The Contractor Project Manager shall be available to the State as needed or designate an alternative point of contact if not available.
- (4) Project Management Plan: The Contractor shall deliver a detailed Project Work Plan to the State no later than five business days after the Contract start date. The Project Work Plan shall be consistent with the project plan and implementation schedule submitted in the Contractor's Proposal. The work plan shall show the Contractor and State tasks needed to implement the system within the State's time frame. The Contractor shall maintain the Project Work Plan throughout the project. The Contractor shall provide the current/updated Project Work Plan to the State upon request.
- (5) Status Reporting: The Contractor shall provide a written status report to the State on a bi-weekly basis. The report shall identify tasks on schedule. The report shall identify tasks behind schedule, document the reason(s) for slippage,

and describe actions being taken to resolve the slippage. The report shall describe any open issues (see below) that are impeding project progress and propose action(s) to resolve them.

- (6) The Contractor shall track “issues” (conditions that present risk to the project’s success) as they arise and to resolution. The State Project Manager shall notify the Contractor Project Manager of any State issues. The Contractor Project Manager shall notify the State Project Manager of any Contractor issues. The State and Contractor Project Managers will review issue status periodically and work together to assure progress toward resolution.

b. State Review and Acceptance

- (1) Deliverables: The Contractor shall submit all deliverables specified in this contract to the State for review and approval at least two weeks prior to scheduled use or as otherwise specified in this contract. (For example, all training materials should be submitted for review two weeks before the scheduled start of training.) The State will provide the Contractor with a written list of corrections or written approval of the submitted documents. The Contractor shall make all corrections the State requires and re-submit the deliverable(s) for review. The dependent activity (e.g., training) shall not begin until the State gives written approval of the associated documentation.
- (2) System Acceptance: The system will not be placed into production use status for the State until the State provides system acceptance approval in writing to the Contractor. The Contractor shall support the State in conducting a thorough acceptance test of the system. The system should be ready to accept reservations and transactions for all applicable locations on or before **October 1, 2017**.
 - i. Test System: The Contractor shall provide the State access to a “test” system. This system shall be configured as the production system will be with all State reference data (facilities, fees, etc.) and a representative sample of converted data. (The test system may have less processing power and storage than planned for production use). Where possible, interfaces to third-party systems shall be to those vendors’ test systems, or shall be simulated.
 - ii. Problem Resolution: The Contractor shall correct all system failures (“crashes”) or non-conformances with the requirements in this contract (“defects”). The State will report all such problems found to the Contractor in writing. The Contractor shall correct the reported problem(s) and notify the State in writing when such corrections are ready for re-testing. The State will notify the Contractor in writing when the corrections are satisfactory.
 - iii. Final Acceptance: Once the test system operates in a satisfactory manner, the State will provide written authorization to the Contractor to begin production implementation.
 - iv. Transition must include installation of necessary hardware, park employee training and data conversion from the existing reservation system. It is expected that the transition from the expiring contract to the new Contract will appear seamless to the general public. Some items and training can be completed after October 1, 2017, with the approval of the State. The Contractor must complete the transition effort with minimal disruptions to normal business functions during and after the transition time frame.

- A.2. The Contractor shall provide all software, network connectivity, process re-design, and system integration services required for the solution to be fully operational. All solutions components will be fully functional including servers, user workstations, communications, operating systems, protocols, applications, file formats, and any graphical user interfaces (GUI). The State will supply the basic personal computer (PC) interface (including computer, monitor, and keyboard), wide area network (WAN) connectivity and maintenance at the local park office for the central reservation system for locations specified at the start of the contract. The State will supply for any future locations added to the system with input from the Contractor on type of equipment. All hardware and data will be the property of the State during and at conclusion of the contract. The Contractor will supply all web, application, and central database servers. All the databases and systems described and detailed herein shall be completely integrated with each other to allow for any State employee to observe the customer record for any visitor and inform the visitor as to the status of their lodging (inn/campground/cabins/villas), marina, or golf reservation, regardless of the employee's current role.
- A.3. The Contractor shall provide a centralized database management system using the reservations data originated by the state park and will be publically available over the Internet for access by all users. Parks must have the capability of adding new registrations, provided that sites are available, for people arriving at the park without prior reservations. All information about these new registrations must be immediately inserted into the database. At a minimum, the logical database design will incorporate park inventory, including campsite maps, ADA-accessible site designations, cabins and villas, all reservations data originating from Internet web-based reservations and on-site park registrations. All reservations activity (park or web-based) will be site specific. The database and reservation/registration applications will support the tracking of designated ADA-accessible sites for accommodating reservations and park registrations by the disabled. A public accommodations facility inventory including camping area maps will be prepared by the State and provided to the Contractor.
- A.4. Contractor will provide system requirements for centralized database management system to the ability defined in Attachment 2.
- A.5. The Contractor will license to the State a real-time centralized reservations application for operation by state parks staff, and the general public via the Internet at Contractor's expense. The application will be the property of the Contractor. This application will automate the capture of information during customer transactions, including reservations, reservation modifications, and reservations cancellations. The overall application will handle monetary transactions managed at state parks and from the general public's usage of the system via the Internet. Park-based users will interact with the application via a web-browser for processing of all park registration information (e.g. visitor registrations). The Contractor will provide the most current installed and supported application version and/or upgrades available at the time of System "Go Live" production.
- A.6. The Contractor's system must provide a level of security that will minimize the loss or unauthorized alteration of records and any unauthorized system usage. All users will have a unique system login and password. The system will facilitate validating users and/or groups and their security permissions to the menu level. Security will also include complete compliance with the Payment Card Industry Data Security Standard (PCI DSS).

Exposure risks, such as update, delete, or alteration must be controlled. There must be park-dependent security level for Park Managers needing to add or remove inventory for which they are responsible. Wherever change authorities are allowed, an audit trail must be produced. The Contractor shall identify risk to the database and design minimal risk strategies and safeguards to protect each system component. Proxy/firewall protections must be employed so that the Internet business connection is restricted to that system. Any change or upgrades to the system must include a documented risk analysis. The Contractor shall devise and use a daily data backup as part of scheduled preventive maintenance. The system will provide the capability to query historical data.

- A.7. The system must provide for data access and exchange between the centralized database and State administration and state parks reservation/registration subsystems. System functionality must address communications needs in a manner that does not compromise staff time or system performance and stability. The state parks will register visitors and make future reservations on-site for available accommodations and the data generated must be used to update a centralized database in real-time. Temporary database access interruptions must not prevent parks from capturing registration/reservation information for later processing. For State administration, the system must allow interaction with the entire database including management and financial information for purposes of contract performance and financial auditing by the State.
- A.8. The system must be adaptable to both planned and unexpected changes in site inventory availability, park system additions and removals, and special promotions as implemented by the agency. In addition, the system must be flexible enough to accommodate multiple pricing categories due to seasonal pricing, discounts, and promotions. The system must be adaptable to future growth of reservable inventory and the potential for inclusion of park-based tours, special events, meeting facilities, community buildings, picnic shelters, and concession offerings as part of the reservable product available to customers. The State will determine the number of campsites, villas, and cabins that may be reserved at each park. The system must allow the State to change the number of campsites, inn rooms, villas, marinas/slips, cabins, golf courses, day-use facilities and other facilities subject to reservation.
- A.9. The Contractor shall provide on-site support services during the implementation of the system. Personnel provided by the Contractor must be knowledgeable of the products(s) provided and be capable of assisting the State with execution and successful completion of components installation, configuration, and fine-tuning in each park. Personnel provided by the Contractor must provide the State with programming and design services sufficient to implement any modifications, interfaces development, fine-tuning of the hardware and software configurations and provide any performance monitoring tools necessary for continued successful systems operation.
- A.10. The Contractor will provide continuous system support and sufficient maintenance of all system components provided by the Contractor after the system has undergone evaluation and acceptance to ensure continued operation of the communications infrastructure and park-based components for the duration of the Contract. The State will maintain state parks' hardware and connectivity.
- A.11. State personnel will accept reservations by telephone and walk in and enter the reservation data into the system. Guests may also make reservations over the Internet. Reservations will be accepted by telephone and secure Internet connections if payment is by credit card or by instant check debit. The Contractor system will be responsible for processing all monetary transactions for reservations obtained by using the system. This includes collecting accommodation charges, reservation fees and any applicable Tennessee state and local sales and usage taxes, as well as processing cancellations, changes, refunds and confirmations.

The reservations fee will be that part of the total customer transaction that is applicable to the services provided by the central reservation system.

System will interface with state contracted merchant services provider for all credit card transactions and must be PCI compliant. Software must handle credit card payments through central reservations, at all in-park sites, and through the reservation website. System must accept Visa, Mastercard, Discover Card, American Express credit cards and bank credit card backed by any of these cards. Customers will also be allowed to make payment by certified or personal check (at park locations only), money order (at park locations only), gift cards and any promotional coupons issued by the State. Only credit card types approved by the State will be used for transactions. All credit card transactions will be securely processed through the system and all will undergo on-line verification prior to reservation confirmation. Customers paying by credit card must be informed that their credit card account is being charged the applicable reservation fee at the time the reservation is made. Reservations made by credit card will be confirmed at the time the reservation is made. No costs associated with credit card sales, nor

liability for any sales by the Contractor through fraudulent credit cards accepted by the Contractor, shall be borne by the State. The Contractor is responsible for notifying customers for any credit card declines and mailing a non-confirmation letter to the customer. Transactions made by credit card must be refunded by credit card transaction when a refund is applicable.

All transaction revenue will be deposited daily to specified State accounts. The Contractor shall tender reconciliation reports and periodic invoicing for payment in accordance with contract section C.5. Individual monetary transactions must be sufficiently traceable from beginning to end to satisfy State audit requirements. The State will require database access for running independent queries by qualified agency personnel.

The reservation fees charged to the customers shall be the same amounts as the payment rates to be paid by the State to the Contractor as enumerated in contract section C.3.b. The Contractor shall not add any additional fees or charges to the amounts paid by the State's customers.

- A.12. 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.13. Training.

- a. End User Training. The implementation of a central reservation system will call for the re-design of current work patterns in parks. Training is crucial to the success of this project. The Contractor will be responsible for technical and end user training to State employees located in the parks, and State management staff located in Nashville, TN. Training may be a combination of onsite and online, amounts agreed by both the State and Contractor. Onsite training will be at four (4) regional locations in Tennessee, with sites provided by the State. In the first year, four (4) full-time training sessions will be held. State end users must be trained in the operation of all system components before the system is in production. Training must be designed, prepared, and presented to address issues and topics relating to:

- (1) "Train the Trainer" continuing education. Annual refresher training will be provided to all trainers.
- (2) Training in the capabilities of different employee roles, including system administrators, Park managers, or clerks.
- (3) Help Desk protocols.

- (4) A general overview of the proposed system, its functions, capabilities, limitations, components, physical layout.
 - (5) Usage, operation and preventative maintenance of system hardware, software and all communications components: system logon/logoff, menus and applications processing, data input/output, storage and backup, system priorities and user overrides.
 - (6) An overview of the design, usage and care of all software applications.
 - (7) Walk-through of common field-oriented processes (e.g. reservations processing and cancellations, walk-in registrations, site changes, early departure, extending stays).
 - (8) Report generation and distribution.
 - (9) Troubleshooting and problem resolution procedures, error messages, help features and inquiry functions.
- b. Administrator Training. The Contractor shall provide initial training for qualified State personnel in those aspects of the system software that relate to query language and database maintenance. Participants must be able to create, modify, store, retrieve and print a simple query as well as standard reservation and accounting subsystem reports.
- c. Operation Manuals. The Contractor shall provide written operation manuals in an electronic format (and periodic supplements as changes are made) to be used by State employees and shall develop and prepare all training courses, material, and aids to a level and format the State deems appropriate to the following groups:
- (1) End user, including park staff, park managers, State central office staff, and management.
 - (2) Hardware and software maintenance and support personnel.
 - (3) Data management and support personnel.
 - (4) Communications network and systems management personnel.
- A.14. Help Desk. The Contractor shall provide State personnel a toll-free telephone number and Help Desk email address for support in answering State employees' software questions and to troubleshoot and solve system problems. The help desk shall function to resolve issues – not just log problem calls – and shall be staffed by knowledgeable personnel able to resolve system related issues, including, but not limited to, application usage, data exchange and communications assistance, data queries, reservation problem resolution and financial/management/audit reporting support. There is no limit to either the number of people or the number of calls that can be made to the Help Desk. The Contractor will keep a log of any and all calls made to the Help Desk and fully document the complaints and what actions were made to correct the problems. No additional or separate costs will be charged for the support of the Help Desk.
- a. Hours and Staffing. The Help Desk must provide a 24 hours per day, 7 days per week. At a minimum, the toll free telephone number Help Desk must be staffed at the Contractor's reservation center between the following daily hours, 7am – 8 pm Central Time. Call forwarding to pagers or auto-paging may be utilized during off-hours.
 - b. Response Time. The Contractor agrees to take actions as outlined in the following "Response Time" that will in all cases result in minimal disruption to State activities and those of our guests. Response times are separated into two categories, Emergency and Non-emergency. The State will notify the Contractor with whom and in what manner

communication is to be handled for each of the following cases, including via telephone, email, or alternative method. The Vendor will also notify the State of who will be their point of contact during these cases.

- (1) Emergency – anything that prevents the reservation or registration of a camper/cabin/villa guest. For emergency situations the Contractor is required to provide a notification of status by a process to be agreed upon by the State and the Vendor, every two hours until the problem has been resolved.
- (2) Non-emergency – anything in the system that does not function properly, but falls outside the definition of an emergency. For non-emergency situations the Contractor is required to provide a notification of status by a process to be agreed upon by the State and the Contractor, every week until the problem has been resolved.

A.15. Reporting. The Contractor shall provide clear, secure, traceable and auditable revenue and reporting systems reports. The central reservation system will provide reports for park staff either by screen, electronic file or printer, with format, appearance, contents and timing approved by the State. The system shall provide a daily reconciliation of all revenue accounts by program, by revenue center and by park. The Contractor must also assemble worksheet electronic files approved by the State which include data on reservations and/or registrations from all locations or sources of the central reservation system, and transmit these files to the State on a periodic basis as prescribed by the State. Any reports generated by the Contractor's system will be in a file format that can be emailed or otherwise distributed to State personnel as needed.

- a. The State may request access to data included in the Contractor's reporting databases from time to time for additional reporting as required by the State. The Contractor will cooperate with these requests and ensure full access is given when requested.
- b. The Contractor's system shall identify revenue by source using at least 20 numeric characters, park location using at least 10 alpha/numeric characters, the funds using at least 5 alpha/numeric characters, and settlement date using MM/DD/YYYY.
- c. The Contractor's system shall provide monthly gross sales reporting and evaluation of all operational aspects, listing all complaints, observations and transaction audits, including voided transactions, shortages, overages, charges collected, refunds, cancellations, receipts and payment distributions to the State.
- d. All financial details must be available to the State through detailed or consolidated reports. The system must retain monthly summary financial and attendance information on-line for a minimum of five (5) years. All financial information will remain the property of the State. It will not be used for any purpose without the written approval of the Commissioner of Tennessee Department of Environment and Conservation.

A.16. Data Conversion. The Contractor shall convert all customer and reservation data for existing campsite, cabin and villa reservations that overlap or extend beyond the system go-live date from a variety of formats both hardcopy and electronic into the new Central Reservation System. The Contractor shall develop a data inventory report and have the State verify it before beginning data conversion. The report shall list the data source, its format, and the proposed conversion method. The Contractor shall provide samples of converted data for State verification. The State will report any data conversion errors found to the Contractor in writing. The Contractor shall correct all data conversion errors reported. The Contractor shall not be responsible for converting any historical data.

A.17. Internet Requirements. Agents handling payments must be bonded.

A.18. Customer Data. All customer and State data and information will be the property of the State. Notwithstanding the foregoing, Contractor may collect certain information from individuals as part of a registration process. State may login to Contractor's data

management system to access this information. Both parties agree to use the collected information in compliance with (i) all applicable laws, rules and regulations, including, without limitation, those governing online privacy and use of credit card data (i.e. using credit card information only for purposes authorized by the cardholder); (ii) applicable Payment Card Industry Data Security Standards; and (iii) Contractor's privacy policy as published on its website. State is solely responsible for the security of its login information, authorization credentials, and similar access information (collectively "Login Information") and for the use or misuse of such Login Information. State agrees to only allow access to and use of the Central Reservation System to its authorized users. State acknowledges and agrees that Contractor may provide access to or use of the Central Reservation System to anyone utilizing State's Login Information or who is otherwise authorized by State to use or access the Central Reservation System on State's behalf. State is responsible for such users' compliance with the terms and conditions of this Contract. Contractor may suspend or terminate any such user's access to the Central Reservation System upon notice to State if Contractor reasonably determines that any such user has violated the terms and conditions of this Contract or is otherwise using the Central Reservation System for suspect purposes. State will immediately either notify Contractor in writing or disable such user's access if any previously authorized State user is no longer authorized to use the Login Information or otherwise use or access the Central Reservation System.

- A.19. Internet Reservations. The Contractor shall provide an Internet reservation site having real-time, self-service access to making, changing and canceling reservation 7 days per week by 24 hours access, and payment by credit card with real time verification, having the following attributes:
- a. The format of the website page is subject to approval by the State.
 - b. No advertising or links to other web pages, unless it is required to provide the required services defined in this contract, and is -authorized by the State.
- A.20. Confidentiality. Protocols shall assure confidentiality of all identity and other personal information of customers. Customer information may not be used, sold, rented, transferred, distributed, or otherwise disclosed or made available for Contractor's own purposes or for the benefit of anyone other than Customer, in each case, excepting as set forth in A.18 above, without Customer's prior written consent. All other data or mailing requests must be approved by the State.
- A.21. Correspondence. The Contractor shall send out all written correspondence notices to customers within 48 hours (excluding weekends and holidays) of the completion of the transaction, in compliance with USPS regulations, including Coding Accuracy Support System (CASS). All customer correspondence must be CASS Certified using USPS CASS.
- A.22. Financial Requirements.
- a. The Contractor's system must identify revenue by source using at least 20 numeric characters, park location using at least 10 alpha/numeric characters, the funds using at least 5 alpha/numeric characters, and settlement date using MM/DD/YYYY.
 - b. Software must integrate credit card transactions with reservation and transaction data. More specifically, if the processor declines a credit card transaction, the system must require the user to choose another credit card number before allowing completion of reservation.
 - c. Credit card number and expiration dates must be encrypted. No more than the last four (4) digits of the credit card number can be displayed on transaction receipts and the expiration date must also be masked.

- | A.23. All financial aspects must meet Generally Accepted Accounting Principles –as determined by the Financial Accounting Standards Board, Governmental Accounting Standards Board, and American Institute of Certified Public Accountants.
- A.24. All software upgrades, intermediate patches or programmed temporary fixes to the central reservation system application, web-based applications and/or local user applications will be continuously performed or made available as such upgrades, fixes or version revisions evolve. All such upgrades will be thoroughly tested before applying to the productions system, central database or field applications. The cost of such upgrades or fixes shall be borne by the Contractor.
- A.25. Performance Standards. Performance of the data management system (central reservations database and communications infrastructure to/from park offices) shall include the following:
- a. The Contractor may not intentionally shut down the system without prior approval of the State. This does not apply to failures or situations beyond the control of the Contractor's preventive maintenance.
 - b. The Contractor will notify the State in writing at least seventy-two (72) hours in advance when it is anticipated that central servers will be taken off-line for maintenance. For convenience, Contractor will provide the State the Contractor's schedule for when maintenance will generally occur, nightly preferred.
 - c. The Contractor will notify the State of potential and actual problems and failures, such as equipment failures, unexpected overloads, significant customer or service complaints greater than thirty minutes' duration. Serious complaints or problems will be reported to the parks involved and State contract manager as soon as possible.
 - d. The Contractor will not purge any State files from the system without written approval of the State.
 - e. The system must allow changes in the number of reservable campsites, cabins, and villas by authorized State personnel. Such changes must be implemented within twenty-four (24) hours of State notification.
 - f. Any database information changes in campsite status as a result of a reservation, a cancellation or a change must be immediately available for inspection by the affected park.
- A.26. Financial reporting of sales and independent annual audit verification will be performed by a Certified Public Accountant. The Contractor shall provide easy to use report generation that follows generally accepted business and financial practices and that satisfies the State, Division of Fiscal Services, Finance and Internal Audit, and the State of Tennessee audit requirements.
- a. The State, at its discretion, will audit all revenue collections or systems impacting revenue flow into the agency. To ensure the integrity of the revenue system the audit will reconcile all voided transactions, overages, refunds processed and revenue collected to the amount of net proceeds deposited into State accounts to the total transaction numbers used.
 - b. The Contractor shall provide to the State an annual Fiscal Year profit and loss statement of all operations pertaining to the Contract.
 - c. The Contractor shall provide to the State an annual audit of all systems impacting revenue flow to the State.
 - d. Regular, annual reports and audits will be prepared by a currently licensed Certified Public Accountant approved by the State.

- A.27. The Contractor is certified (i.e., has previously interfaced) with or shall become certified (i.e., establish an interface) with the Department of Finance and Administration's statewide merchant services contractor, Link2Gov Corp, an affiliate of Fidelity Information Services, LLC. If the Contractor is not certified, certification shall be completed within sixty (60) calendar days from the Contract begin date or as otherwise agreed to in writing by the Contractor and the State. The Department of Finance Administration's contract with Link2Gov Corp. is scheduled to terminate on May 25, 2020. If during the term of this Contract the Department of Finance and Administration's contract with Link2Gov Corp. is terminated, the Contractor shall become certified to process electronic commerce transactions with a subsequent different Department of Finance Administration's merchant services contractor within sixty (60) calendar days after notification by the State of the change in contractors.
- A.28. All interfaces with the Department of Finance and Administration's merchant services contractor(s) including upgrades or new versions must be supported by the Contractor at the Contractor's expense.
- A.29. Deposit Creation. The system shall provide the capability to interface the deposit information for daily transactions with the State's central accounting system, Edison (PeopleSoft). It shall provide the ability to group deposits by park and deposit type (cash, check 21, credit card). The transactions from the golf course, restaurant and gift shop within a single park should all be combined into one deposit for each type of deposit. The accounting for each section (golf course, restaurant, etc.) will still have separate accounting lines, but all transactions would be combined into one deposit at the end of the day. See Attachment 2 for the file layout of the deposit interface to the central accounting system, Edison (PeopleSoft).
- A.30. System Availability/Business Continuity/Disaster Recovery. The Contractor shall adhere to the following service level agreements ("SLAs") for the application:
- a. Availability —The Contractor must ensure that system downtime, which prevents the ability to complete reservations on-line and in the parks and/or any in-park sale transaction, must not total more than two (2) hours per calendar month. Mutually agreed upon time for scheduled maintenance is excluded from this time standard. Exceptions are made for natural disasters or other acts out of the control of the Contractor. Liquidated damages up to \$500 dollars per hour or partial hour that the standard is not met may be assessed monthly. This standard will be measured and paid monthly.
 - b. Recovery Time Objective (RTO) — The Contractor will design the system such that the system can be recovered within 8 hours at the secondary data center located at least 30 miles from the primary site. The Disaster Recovery system located at the secondary site shall have sufficient capacity, and shall be configured, to enable seamless failover and support daily operations at the same performance level as the production system. This equates to an RTO of 8 hours.
 - c. Recovery Point Objective (RPO) — The Contractor will design the system such that the data can be synchronously replicated between both data center facilities resulting in no loss of data due to a failover event. This equates to an RPO of 0.

The Contractor shall maintain a disaster recovery plan that supports the business continuity and disaster recovery SLAs. Said plan and all updates shall be provided to the State, and shall be in substantially the same form as shall be mutually agreed to by the parties. In the event that any material change to the form of the plan is proposed by the Contractor, the Contractor shall so advise the State in writing. The Contractor shall review and update the disaster recovery plan on an annual basis to ensure the plan is current and accurate.

- A.31. Security. Data must reside in the United States. Any tasks can be performed as long as the Contractor does not transmit data outside of the U.S. Any work outside of the U.S. would have to be from work that was developed independently from State data. Processing environment must be ISO 27001, SOC 2 Type 2 or FEDRAMP certified and vendor must provide proof of certification on an annual basis. At the term of the contract vendor must sanitize State data in

accordance with NIST publication 800-88 (State may request to transfer data back to the State or subsequent vendor). Application and hosting environment must comply with the State's Enterprise Information Security Policies located at https://www.tn.gov/assets/entities/finance/oir/attachments/PUBLIC-Enterprise-Information-Security-Policies-v2.0_1.pdf.

A.32. 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:

B.1. This Contract shall be effective on March 15, 2017 ("Effective Date") and extend for a period of sixty (60) 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.

B.2. Renewal Options. This Contract may be renewed upon satisfactory completion of the Term. The State reserves the right to execute up to five (5) 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 one hundred twenty (120) months.

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)
Campsite Reservation Services	\$ / NIGHT OCCUPIED
Cabin/Villa Reservation Services	\$ / NIGHT OCCUPIED

Inn/Lodge Reservation Services	\$ / NIGHT OCCUPIED
Shelter (and Other Day-Use Facility) Reservation Services	\$ / RESERVATION
Group Camp / Group Lodge (and Other Overnight Facility) Reservation Services	\$ / NIGHT OCCUPIED
Golf Course Management Services	\$ / ROUND PLAYED
Marina Management Services	\$ / MONTH / SLIP OCCUPIED
Tour Ticketing and Event Registration Fee (Fee-Based Only)	\$ / REGISTRATION
POS Retail Sales	%
Programming Hours Fee	\$ / HOUR

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:

Department of Environment and Conservation
Fiscal Services – Accounts Payable
10th Floor, TN Tower
312 Rosa L Parks Ave
Nashville, TN 37243

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

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

b. Contractor's invoices shall:

- (1) Only include charges for goods delivered or services provided as described in Section A and in accordance with payment terms and conditions set forth in Section C;

- (2) Only be submitted for goods delivered or services completed and shall not include any charge for future goods to be delivered or services to be performed;
- (3) Not include Contractor's taxes, which includes without limitation Contractor's sales and use tax, excise taxes, franchise taxes, real or personal property taxes, or income taxes; and
- (4) Include shipping or delivery charges only as authorized in this Contract.

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

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

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

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

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

- a. The Contractor shall complete, sign, and present to the State the "Authorization Agreement for Automatic Deposit Form" provided by the State. By doing so, the Contractor acknowledges and agrees that, once this form is received by the State, payments to the Contractor, under this or any other contract the Contractor has with the State of Tennessee, may be made by ACH; and
- b. The Contractor shall complete, sign, and return to the State the State-provided W-9 form. The taxpayer identification number on the W-9 form must be the same as the Contractor's Federal Employer Identification Number or Social Security Number referenced in the Contractor's Edison registration information.

D. MANDATORY TERMS AND CONDITIONS:

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

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

The State:

Jeni Lind Brinkman, Director of Grants and Contracts Administration

Department of Environment and Conservation
312 Rosa L Parks Avenue
10th Floor.
Nashville, TN 37243
JeniLind.Brinkman@tn.gov
Telephone # 615-741-9031
FAX # 615-259-4862

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 1, 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, disqualified, or presently fall under any of the prohibitions of sections a-d.

- D.24. Force Majeure. "Force Majeure Event" means fire, flood, earthquake, elements of nature or acts of God, wars, riots, civil disorders, rebellions or revolutions, acts of terrorism or any other similar cause beyond the reasonable control of the Party except to the extent that the non-performing Party is at fault in failing to prevent or causing the default or delay, and provided that the default or delay cannot reasonably be circumvented by the non-performing Party through the use of alternate sources, workaround plans or other means. A strike, lockout or labor dispute shall not excuse either Party from its obligations under this Contract. Except as set forth in this Section, any failure or delay by a Party in the performance of its obligations under this Contract arising from a Force Majeure Event is not a default under this Contract or grounds for termination. The non-performing Party will be excused from performing those obligations directly affected by the Force Majeure Event, and only for as long as the Force Majeure Event continues, provided that the Party continues to use diligent, good faith efforts to resume performance without delay. The occurrence of a Force Majeure Event affecting Contractor's representatives, suppliers, subcontractors, customers or business apart from this Contract is not a Force Majeure Event under this Contract. Contractor will promptly notify the State of any delay caused by a Force Majeure Event (to be confirmed in a written notice to the State within one (1) day of the inception of the delay) that a Force Majeure Event has occurred, and will describe in reasonable detail the nature of the Force Majeure Event. If any Force Majeure Event results in a delay in Contractor's performance longer than forty-eight (48) hours, the State may, upon notice to Contractor: (a) cease payment of the fees 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 Attachment 1 and 2
 - c. any clarifications of or addenda to the Contractor's proposal seeking this Contract;
 - d. the State solicitation, as may be amended, requesting responses in competition for this Contract;
 - e. any technical specifications provided to proposers during the procurement process to award this Contract; and
 - f. the Contractor's response seeking this Contract.
- D.31. Iran Divestment Act. The requirements of Tenn. Code Ann. § 12-12-101 et.seq., addressing contracting with persons with investment activities in Iran, shall be a material provision of this Contract. The Contractor agrees, under penalty of perjury, that to the best of its knowledge and belief that it is not on the list created pursuant to Tenn. Code Ann. § 12-12-106.

E. SPECIAL TERMS AND CONDITIONS:

- E.1. Conflicting Terms and Conditions. Should any of these special terms and conditions conflict with any other terms and conditions of this Contract, the special terms and conditions shall be subordinate to the Contract's other terms and conditions.
- E.2. Confidentiality of Records. Strict standards of confidentiality of records and information shall be maintained in accordance with applicable state and federal law. All material and information, regardless of form, medium or method of communication, provided to the Contractor by the State or acquired by the Contractor on behalf of the State that is regarded as confidential under state or federal law shall be regarded as "Confidential Information." Nothing in this Section shall permit Contractor to disclose any Confidential Information, regardless of whether it has been disclosed or made available to the Contractor due to intentional or negligent actions or inactions of agents of the State or third parties. Confidential Information shall not be disclosed except as required or permitted under state or federal law. Contractor shall take all necessary steps to safeguard the confidentiality of such material or information in conformance with applicable state and federal law.

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

E.3. 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.

E.4. Software License Warranty. Contractor grants a license to the State to use all software provided under this Contract in the course of the State's business and purposes.

E.5. Software Support and Maintenance Warranty. Contractor shall provide to the State all software upgrades, modifications, bug fixes, or other improvements in its software that it makes generally available to its customers.

E.6. Security and Standards-Compliance Requirements

- a) 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.

- b. Security Audit. The State may conduct audits of Contractor's compliance with the State's Enterprise Information Security Policy ("The Policy") or under this Contract, including those obligations imposed by Federal or State law, regulation or policy. The Policy, as may be periodically revised, can be located at the following link: https://www.tn.gov/assets/entities/finance/oir/attachments/PUBLIC-Enterprise-Information-Security-Policies-v2.0_1.pdf. The State's right to conduct security audits is independent of any other audit or monitoring required by this Contract. The timing and frequency of such audits shall be at the State's discretion and may, but not necessarily shall, be in response to a security incident.

A security audit may include the following: (i) review of access logs, screen shots and other paper or electronic documentation relating to Contractor's compliance with the Policy. This may include review of documentation relevant to subcontractors or suppliers of security equipment and services used with respect to State data; (ii) physical

inspection of controls such as door locks, file storage, communications systems, and employee identification procedures; and (iii) interviews of responsible technical and management personnel regarding security procedures.

Contractor shall provide reports or additional information upon request of the state and access by the State or the State's designated staff to Contractor's facilities and/or any location involved with providing services to the State or involved with processing or storing State data, and Contractor shall cooperate with State staff and audit requests submitted under this Section. Any confidential information of either party accessed or disclosed during the course of the security audit shall be treated as set forth under this Contract or federal or state law or regulations. Each party shall bear its own expenses incurred in the course of conducting this security audit. Contractor shall at its own expense promptly rectify any non-compliance with the Policy or other requirements identified by this security audit and provide proof to the State thereof.

E.7. Payment Card Industry Data Security Standard (PCI DSS)

- a. Payment Card Industry Data Security Standard (PCI DSS) v3 and PCI_PA-DSS v3 compliance is mandatory. Proof must be through an annual audit by a Qualified Security Assessor (a designation received from the Payment Card Industry Security Standards (https://www.pcisecuritystandards.org/security_standards)). See Attachment 3.
- b. The Contractor shall provide the State with the PCI DSS (or its successor) Compliance Letter and annual Report on Compliance (ROC). The Contractor shall also provide the State with copies of quarterly network scans performed by an Approved Scan Vendor (ASV). The Contractor shall provide the State this documentation within thirty (30) calendar days of its receipt from the card associations or vendor.
- c. Payment Processing Security. With regard to all activities related to Payment Processing, the Contractor shall report any suspected or confirmed security/privacy breach of the payment processing applications or related database to the State Portal Manager and State Information Security Officer. The Contractor shall isolate all electronic records and supporting evidence of a suspected or confirmed security/privacy breach of the PPE, transactions or related databases. The Contractor will cooperate with and assist the State in any subsequent investigation.
- d. The Contractor must be able to integrate with the State's provider of Credit Card and Check Processing.

IN WITNESS WHEREOF,

CONTRACTOR LEGAL ENTITY NAME:

CONTRACTOR SIGNATURE

DATE

PRINTED NAME AND TITLE OF CONTRACTOR SIGNATORY (above)

DEPARTMENT OF ENVIRONMENT AND CONSERVATION:

ROBERT J. MARTINEAU, JR., COMMISSIONER

DATE

ATTESTATION RE PERSONNEL USED IN CONTRACT PERFORMANCE

SUBJECT CONTRACT NUMBER:	
CONTRACTOR LEGAL ENTITY NAME:	
EDISON VENDOR IDENTIFICATION NUMBER:	

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

ATTACHMENT 2

Attachment 2 will be the responses provided by the Contractor to Attachment 6.3 Functional and Technical Requirements of the RFP.

PCI Transaction Table

Level 4

This level is for small businesses processing less than 20,000 eCommerce transactions and less than 1 million other transactions each year. Level 4 businesses are required to complete an annual risk assessment using the appropriate PCI Self-Assessment Questionnaire (SAQ). Quarterly PCI scans, administered by an approved scanning vendor, may also be required.

Level 3

The mid-sized companies at this level range between 20,000 and 1 million transactions annually. They must complete an annual risk assessment using the appropriate SAQ. Quarterly PCI scans, administered by an approved scanning vendor, may also be required.

Level 2

Companies at Level 2 conduct anywhere between 1 million and 6 million transactions annually. They must conduct a risk assessment each year, using the appropriate SAQ. Quarterly PCI scans, administered by an approved scanning vendor, may also be required.

Level 1

This is the level of major corporations and "big box" stores. Companies at this level have a minimum of 6 million transactions per year. They must have an annual internal audit conducted by a qualified PCI auditor. Quarterly PCI scans, administered by an approved scanning vendor, may also be required.