



**STATE OF TENNESSEE  
DEPARTMENT OF HUMAN SERVICES**

**REQUEST FOR PROPOSALS  
FOR  
NEW HIRE REPORTING  
AND  
EMPLOYER MAINTENANCE**

**RFP # 34513-35725**

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## 1. INTRODUCTION

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The State of Tennessee, Department of Human Services, hereinafter referred to as “the State,” issues this Request for Proposals (RFP) to define minimum contract requirements; solicit responses; detail response requirements; and outline the State’s process for evaluating responses and selecting a contractor to provide the needed goods or services.

Through this RFP, the State seeks to procure necessary goods or services at the most favorable, competitive prices and to give ALL qualified respondents, including those that are owned by minorities, women, service-disabled veterans, persons with disabilities and small business enterprises, an opportunity to do business with the state as contractors, subcontractors or suppliers.

### 1.1. Statement of Procurement Purpose

The state intends to award a contract for New Hire Reporting and Employer Maintenance to a Contractor that has experience working with at least 350,000 unique employers. In performing services under the contract, the Contractor will utilize the existing Tennessee Child Support Enforcement System (TCSES), as well as a database to be developed by the Contractor.

The routine reporting of information to the National New Hire Registry on newly hired, rehired, or recalled employees is required pursuant to the Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA) of 1996. Many newly hired employees that are reported are associated with one or more child support cases in TCSES, and the employer may or may not reside in the TCSES employer database. Before associating the employer with an individual associated with a case in the TCSES system, employer maintenance activities will be performed to reduce inaccurate or duplicated information.

### 1.2. Scope of Service, Contract Period, & Required Terms and Conditions

The RFP Attachment 6.6., *Pro Forma* Contract details the State’s requirements:

- Scope of Services and Deliverables (Section A);
- Contract Period (Section B);
- Payment Terms (Section C);
- Standard Terms and Conditions (Section D); and,
- Special Terms and Conditions (Section E).

The *pro forma* contract substantially represents the contract document that the successful Respondent must sign.

### 1.3. Nondiscrimination

No person shall be excluded from participation in, be denied benefits of, or be otherwise subjected to discrimination in the performance of a Contract pursuant to this RFP 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, Tennessee state constitutional, or statutory law. The Contractor pursuant to this RFP shall, upon request, show proof of such nondiscrimination and shall post in conspicuous places, available to all employees and applicants, notices of nondiscrimination.

### 1.4. RFP Communications

1.4.1. The State has assigned the following RFP identification number that must be referenced in all communications regarding this RFP:

**RFP # 34513-35725**

**1.4.2. Unauthorized contact about this RFP with employees or officials of the State of Tennessee except as detailed below may result in disqualification from consideration under this procurement process.**

- 1.4.2.1. Prospective Respondents must direct communications concerning this RFP to the following person designated as the Solicitation Coordinator:

Van Bryant  
 Department of General Services, Central Procurement Office  
 312 Rosa L. Parks Ave. Nashville, TN 37243  
 3<sup>rd</sup> Floor, WRS Tennessee Tower  
 (615) 253-3678  
[Van.Bryant@tn.gov](mailto:Van.Bryant@tn.gov)

- 1.4.2.2. Notwithstanding the foregoing, Prospective Respondents may alternatively contact:

- a. staff of the Governor's Office of Diversity Business Enterprise for assistance available to minority-owned, woman-owned, service-disabled veteran-owned, businesses owned by persons with disabilities, and small businesses as well as general, public information relating to this RFP (visit <https://www.tn.gov/generalservices/procurement/central-procurement-office--cpo-/governor-s-office-of-diversity-business-enterprise--godbe--/godbe-general-contacts.html> for contact information); and
- b. the following individual designated by the State to coordinate compliance with the nondiscrimination requirements of the State of Tennessee, Title VI of the Civil Rights Act of 1964, the Americans with Disabilities Act of 1990, and associated federal regulations:

Jeffrey Blackshear  
 Tennessee Department of Human Services  
 17<sup>th</sup> Floor, James K. Polk Building  
 505 Deaderick Street  
 Nashville, TN 37243-1403  
 Telephone: (615) 313-5711  
[Jeffrey.Blackshear@tn.gov](mailto:Jeffrey.Blackshear@tn.gov)

- 1.4.3. Only the State's official, written responses and communications with Respondents are binding with regard to this RFP. Oral communications between a State official and one or more Respondents are unofficial and non-binding.
- 1.4.4. Potential Respondents must ensure that the State receives all written questions and comments, including questions and requests for clarification, no later than the Written Questions & Comments Deadline detailed in the RFP Section 2, Schedule of Events.
- 1.4.5. Respondents must assume the risk of the method of dispatching any communication or response to the State. The State assumes no responsibility for delays or delivery failures resulting from the Respondent's method of dispatch. Actual or digital "postmarking" of a communication or response to the State by a specified deadline is not a substitute for the State's actual receipt of a communication or response. It is encouraged for Respondents to submit bids digitally.
- 1.4.6. The State will convey all official responses and communications related to this RFP to the prospective Respondents from whom the State has received a Notice of Intent to Respond (refer to RFP Section 1.7).

- 1.4.7. The State reserves the right to determine, at its sole discretion, the method of conveying official, written responses and communications related to this RFP. Such written communications may be transmitted by mail, hand-delivery, facsimile, electronic mail, Internet posting, or any other means deemed reasonable by the State. For internet posting, please refer to the following website: <https://www.tn.gov/generalservices/procurement/central-procurement-office--cpo-/supplier-information/request-for-proposals--rfp--opportunities1.html>.
- 1.4.8. The State reserves the right to determine, at its sole discretion, the appropriateness and adequacy of responses to written comments, questions, and requests related to this RFP. The State's official, written responses will constitute an amendment of this RFP.
- 1.4.9. Any data or factual information provided by the State (in this RFP, an RFP amendment or any other communication relating to this RFP) is for informational purposes only. The State will make reasonable efforts to ensure the accuracy of such data or information, however it is the Respondent's obligation to independently verify any data or information provided by the State. The State expressly disclaims the accuracy or adequacy of any information or data that it provides to prospective Respondents.

#### 1.5. **Assistance to Respondents With a Handicap or Disability**

Prospective Respondents with a handicap or disability may receive accommodation relating to the communication of this RFP and participating in the RFP process. Prospective Respondents may contact the Solicitation Coordinator to request such reasonable accommodation no later than the Disability Accommodation Request Deadline detailed in the RFP Section 2, Schedule of Events.

#### 1.6. **Respondent Required Review & Waiver of Objections**

- 1.6.1. Each prospective Respondent must carefully review this RFP, including but not limited to, attachments, the RFP Attachment 6.6., *Pro Forma* Contract, and any amendments, for questions, comments, defects, objections, or any other matter requiring clarification or correction (collectively called "questions and comments").
- 1.6.2. Any prospective Respondent having questions and comments concerning this RFP must provide them in writing to the State no later than the Written Questions & Comments Deadline detailed in the RFP Section 2, Schedule of Events.
- 1.6.3. Protests based on any objection to the RFP shall be considered waived and invalid if the objection has not been brought to the attention of the State, in writing, by the Written Questions & Comments Deadline.

#### 1.7. **Notice of Intent to Respond**

Before the Notice of Intent to Respond Deadline detailed in the RFP Section 2, Schedule of Events, prospective Respondents should submit to the Solicitation Coordinator a Notice of Intent to Respond (in the form of a simple e-mail or other written communication). Such notice should include the following information:

- the business or individual's name (as appropriate);
- a contact person's name and title; and
- the contact person's mailing address, telephone number, facsimile number, and e-mail address.

**A Notice of Intent to Respond creates no obligation and is not a prerequisite for submitting a response, however, it is necessary to ensure receipt of any RFP amendments or other notices and communications relating to this RFP.**

**1.8. Response Deadline**

A Respondent must ensure that the State receives a response no later than the Response Deadline time and date detailed in the RFP Section 2, Schedule of Events. The State will not accept late responses, and a Respondent's failure to submit a response before the deadline will result in disqualification of the response. It is the responsibility of the Respondent to ascertain any additional security requirements with respect to packaging and delivery to the State of Tennessee. Respondents should be mindful of any potential delays due to security screening procedures, weather, or other filing delays whether foreseeable or unforeseeable.

## 2. RFP SCHEDULE OF EVENTS

2.1. The following RFP Schedule of Events represents the State's best estimate for this RFP.

EVENT	TIME (central time zone)	DATE
1. RFP Issued		April 1, 2024
2. Disability Accommodation Request Deadline	2:00 p.m.	April 4, 2024
3. Notice of Intent to Respond Deadline	2:00 p.m.	April 12, 2024
4. Written "Questions & Comments" Deadline	2:00 p.m.	April 24, 2024
5. State Response to Written "Questions & Comments"		May 8, 2024
6. Response Deadline	2:00 p.m.	May 17, 2024
7. State Schedules Respondent Oral Presentation		May 20, 2024
8. Respondent Oral Presentation		May 23, 2024 – May 24, 2024
9. State Completion of Technical Response Evaluations		June 4, 2024
10. State Opening & Scoring of Cost Proposals	2:00 p.m.	June 5, 2024
11. Negotiations		June 6, 2024 – June 7, 2024
12. State Notice of Intent to Award Released <u>and</u> RFP Files Opened for Public Inspection	2:00 p.m.	June 10, 2024
13. End of Open File Period		June 17, 2024
14. State sends contract to Contractor for signature		June 21, 2024
15. Contractor Signature Deadline	2:00 p.m.	June 28, 2024

2.2. **The State reserves the right, at its sole discretion, to adjust the RFP Schedule of Events as it deems necessary.** Any adjustment of the Schedule of Events shall constitute an RFP amendment, and the State will communicate such to prospective Respondents from whom the State has received a Notice of Intent to Respond (refer to section 1.7).

### 3. RESPONSE REQUIREMENTS

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#### 3.1. Response Form

A response to this RFP must consist of two parts, a Technical Response and a Cost Proposal.

- 3.1.1. **Technical Response.** RFP Attachment 6.2., Technical Response & Evaluation Guide provides the specific requirements for submitting a response. This guide includes mandatory requirement items, general qualifications and experience items, and technical qualifications, experience, and approach items all of which must be addressed with a written response and, in some instances, additional documentation.

**NOTICE: A technical response must not include any pricing or cost information. If any pricing or cost information amounts of any type (even pricing relating to other projects) is included in any part of the technical response, the state may deem the response to be non-responsive and reject it.**

- 3.1.1.1. A Respondent should duplicate and use the RFP Attachment 6.2., Technical Response & Evaluation Guide to organize, reference, and draft the Technical Response by duplicating the attachment, adding appropriate page numbers as required, and using the guide as a table of contents covering the Technical Response.
- 3.1.1.2. A Technical Response should be economically prepared, with emphasis on completeness and clarity, and should NOT exceed 200 pages in length (maps, graphs, charts, as noted and included as an appendix will not count against this page limit). A response, as well as any reference material presented, must be written in English and must be written on standard 8 ½" x 11" pages (although oversize exhibits are permissible) and all text must be at least a 12 point font. All response pages must be numbered.
- 3.1.1.3. All information and documentation included in a Technical Response should correspond to or address a specific requirement detailed in the RFP Attachment 6.2., Technical Response & Evaluation Guide. All information must be incorporated into a response to a specific requirement and clearly referenced. Any information not meeting these criteria will be deemed extraneous and will not contribute to evaluations.
- 3.1.1.4. The State may determine a response to be non-responsive and reject it if:
- a. the Respondent fails to organize and properly reference the Technical Response as required by this RFP and the RFP Attachment 6.2., Technical Response & Evaluation Guide; or
  - b. the Technical Response document does not appropriately respond to, address, or meet all of the requirements and response items detailed in the RFP Attachment 6.2., Technical Response & Evaluation Guide.
- 3.1.2. **Cost Proposal.** A Cost Proposal must be recorded on an exact duplicate of the RFP Attachment 6.3., Cost Proposal & Scoring Guide.

**NOTICE: If a Respondent fails to submit a cost proposal exactly as required, the State may deem the response to be non-responsive and reject it.**

- 3.1.2.1. A Respondent must only record the proposed cost exactly as required by the RFP Attachment 6.3., Cost Proposal & Scoring Guide and must NOT record any other rates, amounts, or information.
- 3.1.2.2. The proposed cost shall incorporate ALL costs for services under the contract for the total contract period, including any renewals or extensions.
- 3.1.2.3. A Respondent must sign and date the Cost Proposal.
- 3.1.2.4. A Respondent must submit the Cost Proposal to the State in a sealed package separate from the Technical Response (as detailed in RFP Sections 3.2.3., *et seq.*).

## 3.2. Response Delivery

- 3.2.1. A Respondent must ensure that both the original Technical Response and Cost Proposal documents meet all form and content requirements, including all required signatures, as detailed within this RFP, as may be amended.
- 3.2.2. A Respondent must submit their response as specified in one of the two formats below.

### 3.2.2.1. Digital Media Submission

#### 3.2.2.1.1 Technical Response

The Technical Response document should be in the form of one (1) digital document in "PDF" format properly recorded on its own otherwise blank, standard CD-R recordable disc or USB flash drive and should be clearly identified as the:

**"RFP # 34513-35725 TECHNICAL RESPONSE ORIGINAL"**

and ten (10) digital copies of the Technical Response each in the form of one (1) digital document in "PDF" format properly recorded on its own otherwise blank, USB flash drive labeled:

**"RFP # 34513-35725 TECHNICAL RESPONSE COPY"**

The customer references should be delivered by each reference in accordance with RFP Attachment 6.4. Reference Questionnaire.

#### 3.2.2.1.2 Cost Proposal

The Cost Proposal should be in the form of one (1) digital document in "PDF" or "XLS" format properly recorded on a separate, otherwise blank, standard CD-R recordable disc or USB flash drive clearly labeled:

**"RFP # 34513-35725 COST PROPOSAL"**

An electronic or facsimile signature, as applicable, on the Cost Proposal is acceptable.

### 3.2.2.2. E-mail Submission

#### 3.2.2.2.1. Technical Response

The Technical Response document should be in the form of one (1) digital document in "PDF" format or other easily accessible digital format attached to an e-mail to the

Solicitation Coordinator. Both the subject and the file name should be clearly identified as follows:

**“RFP #34513-35725 TECHNICAL RESPONSE”**

The customer references should be delivered by each reference in accordance with RFP Attachment 6.4. Reference Questionnaire.

3.2.2.2.2. Cost Proposal

The Cost Proposal should be in the form of one (1) digital document in “PDF” or “XLS” format or other easily accessible digital format attached to an e-mail to the Solicitation Coordinator. Both the subject and the file name should clearly identified as follows:

**“RFP #34513-35725 COST PROPOSAL”**

An electronic or facsimile signature, as applicable, on the Cost Proposal is acceptable.

3.2.3. For e-mail submissions, the Technical Response and Cost Proposal documents must be dispatched to the Solicitation Coordinator in separate e-mail messages. For digital media submissions, a Respondent must separate, seal, package, and label the documents and copies for delivery as follows:

3.2.3.1. The Technical Response and copies must be placed in a sealed package that is clearly labeled:

**“DO NOT OPEN... RFP # 34513-35725 TECHNICAL RESPONSE FROM [RESPONDENT LEGAL ENTITY NAME]”**

3.2.3.2. The Cost Proposal must be placed in a separate, sealed package that is clearly labeled:

**“DO NOT OPEN... RFP # 34513-35725 COST PROPOSAL FROM [RESPONDENT LEGAL ENTITY NAME]”**

3.2.3.3. The separately, sealed Technical Response and Cost Proposal components may be enclosed in a larger package for mailing or delivery, provided that the outermost package is clearly labeled:

**“RFP # 34513-35725 SEALED TECHNICAL RESPONSE & SEALED COST PROPOSAL FROM [RESPONDENT LEGAL ENTITY NAME]”**

3.2.3.4. Any Respondent wishing to submit a Response in a format other than digital may do so by contacting the Solicitation Coordinator.

3.2.4. A Respondent must ensure that the State receives a response no later than the Response Deadline time and date detailed in the RFP Section 2, Schedule of Events at the following address:

Van Bryant  
The Department of General Services, Central Procurement Office  
312 Rosa L. Parks Ave Nashville, TN 37243  
3<sup>rd</sup> Floor, Central Procurement Office  
615-253-3678  
[Van.Bryant@tn.gov](mailto:Van.Bryant@tn.gov)

### 3.3. Response & Respondent Prohibitions

- 3.3.1. A response must not include alternate contract terms and conditions. If a response contains such terms and conditions, the State, at its sole discretion, may determine the response to be a non-responsive counteroffer and reject it.
- 3.3.2. A response must not restrict the rights of the State or otherwise qualify either the offer to deliver goods or provide services as required by this RFP or the Cost Proposal. If a response restricts the rights of the State or otherwise qualifies either the offer to deliver goods or provide services as required by this RFP or the Cost Proposal, the State, at its sole discretion, may determine the response to be a non-responsive counteroffer and reject it.
- 3.3.3. A response must not propose alternative goods or services (*i.e.*, offer services different from those requested and required by this RFP) unless expressly requested in this RFP. The State may consider a response of alternative goods or services to be non-responsive and reject it.
- 3.3.4. A Cost Proposal must be prepared and arrived at independently and must not involve any collusion between Respondents. The State will reject any Cost Proposal that involves collusion, consultation, communication, or agreement between Respondents. Regardless of the time of detection, the State will consider any such actions to be grounds for response rejection or contract termination.
- 3.3.5. A Respondent must not provide, for consideration in this RFP process or subsequent contract negotiations, any information that the Respondent knew or should have known was materially incorrect. If the State determines that a Respondent has provided such incorrect information, the State will deem the Response non-responsive and reject it.
- 3.3.6. A Respondent must not submit more than one Technical Response and one Cost Proposal in response to this RFP, except as expressly requested by the State in this RFP. If a Respondent submits more than one Technical Response or more than one Cost Proposal, the State will deem all of the responses non-responsive and reject them.
- 3.3.7. A Respondent must not submit a response as a prime contractor while also permitting one or more other Respondents to offer the Respondent as a subcontractor in their own responses. Such may result in the disqualification of all Respondents knowingly involved. This restriction does not, however, prohibit different Respondents from offering the same subcontractor as a part of their responses (provided that the subcontractor does not also submit a response as a prime contractor).
- 3.3.8. The State shall not consider a response from an individual who is, or within the past six (6) months has been, a State employee. For purposes of this RFP:
- 3.3.8.1. An individual shall be deemed a State employee until such time as all compensation for salary, termination pay, and annual leave has been paid;
- 3.3.8.2. A contract with or a response from a company, corporation, or any other contracting entity in which a controlling interest is held by any State employee shall be considered to be a contract with or proposal from the employee; and
- 3.3.8.3. A contract with or a response from a company, corporation, or any other contracting entity that employs an individual who is, or within the past six (6) months has been, a State employee shall not be considered a contract with or a proposal from the employee and shall not constitute a prohibited conflict of interest.
- 3.3.9. This RFP is also subject to Tenn. Code Ann. § 12-4-101—105.

#### 3.4. **Response Errors & Revisions**

A Respondent is responsible for any and all response errors or omissions. A Respondent will not be allowed to alter or revise response documents after the Response Deadline time and date detailed in the RFP Section 2, Schedule of Events unless such is formally requested, in writing, by the State.

#### 3.5. **Response Withdrawal**

A Respondent may withdraw a submitted response at any time before the Response Deadline time and date detailed in the RFP Section 2, Schedule of Events by submitting a written request signed by an authorized Respondent representative. After withdrawing a response, a Respondent may submit another response at any time before the Response Deadline. After the Response Deadline, a Respondent may only withdraw all or a portion of a response where the enforcement of the response would impose an unconscionable hardship on the Respondent.

#### 3.6. **Additional Services**

If a response offers goods or services in addition to those required by and described in this RFP, the State, at its sole discretion, may add such services to the contract awarded as a result of this RFP. Notwithstanding the foregoing, a Respondent must not propose any additional cost amounts or rates for additional goods or services. Regardless of any additional services offered in a response, the Respondent's Cost Proposal must only record the proposed cost as required in this RFP and must not record any other rates, amounts, or information.

**NOTICE: If a Respondent fails to submit a Cost Proposal exactly as required, the State may deem the response non-responsive and reject it.**

#### 3.7. **Response Preparation Costs**

The State will not pay any costs associated with the preparation, submittal, or presentation of any response.

## 4. GENERAL CONTRACTING INFORMATION & REQUIREMENTS

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### 4.1. RFP Amendment

The State at its sole discretion may amend this RFP, in writing, at any time prior to contract award. However, prior to any such amendment, the State will consider whether it would negatively impact the ability of potential Respondents to meet the response deadline and revise the RFP Schedule of Events if deemed appropriate. If an RFP amendment is issued, the State will convey it to potential Respondents who submitted a Notice of Intent to Respond (refer to RFP Section 1.7). A response must address the final RFP (including its attachments) as amended.

### 4.2. RFP Cancellation

The State reserves the right, at its sole discretion, to cancel the RFP or to cancel and reissue this RFP in accordance with applicable laws and regulations.

### 4.3. State Right of Rejection

4.3.1. Subject to applicable laws and regulations, the State reserves the right to reject, at its sole discretion, any and all responses.

4.3.2. The State may deem as non-responsive and reject any response that does not comply with all terms, conditions, and performance requirements of this RFP. Notwithstanding the foregoing, the State reserves the right to waive, at its sole discretion, minor variances from full compliance with this RFP. If the State waives variances in a response, such waiver shall not modify the RFP requirements or excuse the Respondent from full compliance, and the State may hold any resulting Contractor to strict compliance with this RFP.

### 4.4. Assignment & Subcontracting

4.4.1. The Contractor may not subcontract, transfer, or assign any portion of the Contract awarded as a result of this RFP without prior approval of the State. The State reserves the right to refuse approval, at its sole discretion, of any subcontract, transfer, or assignment.

4.4.2. If a Respondent intends to use subcontractors, the response to this RFP must specifically identify the scope and portions of the work each subcontractor will perform (refer to RFP Attachment 6.2., Section B, General Qualifications & Experience Item B.14.).

4.4.3. Subcontractors identified within a response to this RFP will be deemed as approved by the State unless the State expressly disapproves one or more of the proposed subcontractors prior to signing the Contract.

4.4.4. After contract award, a Contractor may only substitute an approved subcontractor at the discretion of the State and with the State's prior, written approval.

4.4.5. Notwithstanding any State approval relating to subcontracts, the Respondent who is awarded a contract pursuant to this RFP will be the prime contractor and will be responsible for all work under the Contract.

### 4.5. Right to Refuse Personnel or Subcontractors

The State reserves the right to refuse, at its sole discretion and notwithstanding any prior approval, any personnel of the prime contractor or a subcontractor providing goods or services in the performance of a contract resulting from this RFP. The State will document in writing the reason(s) for any rejection of personnel.

#### 4.6. **Insurance**

The State will require the awarded Contractor to provide a Certificate of Insurance issued by an insurance company licensed or authorized to provide insurance in the State of Tennessee. Each Certificate of Insurance shall indicate current insurance coverages meeting minimum requirements as may be specified by this RFP. A failure to provide a current, Certificate of Insurance will be considered a material breach and grounds for contract termination.

#### 4.7. **Professional Licensure and Department of Revenue Registration**

- 4.7.1. All persons, agencies, firms, or other entities that provide legal or financial opinions, which a Respondent provides for consideration and evaluation by the State as a part of a response to this RFP, shall be properly licensed to render such opinions.
- 4.7.2. Before the Contract resulting from this RFP is signed, the apparent successful Respondent (and Respondent employees and subcontractors, as applicable) must hold all necessary or appropriate business or professional licenses to provide the goods or services as required by the contract. The State may require any Respondent to submit evidence of proper licensure.
- 4.7.3. Before the Contract resulting from this RFP is signed, the apparent successful Respondent must be registered with the Tennessee Department of Revenue for the collection of Tennessee sales and use tax. The State shall not award a contract unless the Respondent provides proof of such registration or provides documentation from the Department of Revenue that the Contractor is exempt from this registration requirement. The foregoing is a mandatory requirement of an award of a contract pursuant to this solicitation. To register, please visit the Department of Revenue's Tennessee Taxpayer Access Point (TNTAP) website for Online Registration and the Vendor Contract Questionnaire. These resources are available at the following:  
<https://tntap.tn.gov/eservices/#1>

#### 4.8. **Disclosure of Response Contents**

- 4.8.1. All materials submitted to the State in response to this RFP shall become the property of the State of Tennessee. Respondents are cautioned not to provide any materials in response to this RFP that are trade secrets, as defined under Tenn. Code Ann. § 47-25-1702 and any other applicable law. By submitting a response to this RFP, the respondent acknowledges and agrees that the State shall have no liability whatsoever for disclosure of a trade secret under the Uniform Trade Secrets Act, as provided at Tenn. Code Ann. § 47-25-1701-1709, or under any other applicable law. Selection or rejection of a response does not affect this right. By submitting a response, a Respondent acknowledges and accepts that the full response contents and associated documents will become open to public inspection in accordance with the laws of the State of Tennessee.
- 4.8.2. The State will hold all response information, including both technical and cost information, in confidence during the evaluation process.
- 4.8.3. Upon completion of response evaluations, indicated by public release of a Notice of Intent to Award, the responses and associated materials will be open for review by the public in accordance with Tenn. Code Ann. § 10-7-504(a)(7).

#### 4.9. **Contract Approval and Contract Payments**

- 4.9.1. After contract award, the Contractor who is awarded the contract must submit appropriate documentation with the Department of Finance and Administration, Division of Accounts.
- 4.9.2. This RFP and its contractor selection processes do not obligate the State and do not create rights, interests, or claims of entitlement in either the Respondent with the apparent best-

evaluated response or any other Respondent. State obligations pursuant to a contract award shall commence only after the Contract is signed by the State agency head and the Contractor and after the Contract is approved by all other state officials as required by applicable laws and regulations.

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 Effective Date or after the Contract Term.

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. 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, 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.

4.13. **Next Ranked Respondent**

The State reserves the right to initiate negotiations with the next ranked Respondent should the State cease doing business with any Respondent selected via this RFP process.

## 5. EVALUATION & CONTRACT AWARD

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### 5.1. Evaluation Categories & Maximum Points

The State will consider qualifications, experience, technical approach, and cost in the evaluation of responses and award points in each of the categories detailed below (up to the maximum evaluation points indicated) to each response deemed by the State to be responsive.

EVALUATION CATEGORY	MAXIMUM POINTS POSSIBLE
<b>General Qualifications &amp; Experience</b> (refer to RFP Attachment 6.2., Section B)	<b>15</b>
<b>Technical Qualifications, Experience &amp; Approach</b> (refer to RFP Attachment 6.2., Section C)	<b>55</b>
<b>Cost Proposal</b> (refer to RFP Attachment 6.3.)	<b>30</b>

### 5.2. Evaluation Process

The evaluation process is designed to award the contract resulting from this RFP not necessarily to the Respondent offering the lowest cost, but rather to the Respondent deemed by the State to be responsive and responsible who offers the best combination of attributes based upon the evaluation criteria. (“Responsive Respondent” is defined as a Respondent that has submitted a response that conforms in all material respects to the RFP. “Responsible Respondent” is defined as a Respondent that has the capacity in all respects to perform fully the contract requirements, and the integrity and reliability which will assure good faith performance.)

5.2.1. **Technical Response Evaluation.** The Solicitation Coordinator and the Proposal Evaluation Team (consisting of three (3) or more State employees) will use the RFP Attachment 6.2., Technical Response & Evaluation Guide to manage the Technical Response Evaluation and maintain evaluation records.

- 5.2.1.1. The State reserves the right, at its sole discretion, to request Respondent clarification of a Technical Response or to conduct clarification discussions with any or all Respondents. Any such clarification or discussion will be limited to specific sections of the response identified by the State. The subject Respondent must put any resulting clarification in writing as may be required and in accordance with any deadline imposed by the State.
- 5.2.1.2. The Solicitation Coordinator will review each Technical Response to determine compliance with RFP Attachment 6.2., Technical Response & Evaluation Guide, Section A— Mandatory Requirements. If the Solicitation Coordinator determines that a response failed to meet one or more of the mandatory requirements, the Solicitation Coordinator will review the response and determine whether:
- a. the response adequately meets RFP requirements for further evaluation;
  - b. the State will request clarifications or corrections for consideration prior to further evaluation; or,
  - c. the State will determine the response to be non-responsive to the RFP and reject it.
- 5.2.1.3. Proposal Evaluation Team members will independently evaluate each Technical Response (that is responsive to the RFP) against the evaluation criteria in this RFP,

and will score each in accordance with the RFP Attachment 6.2., Technical Response & Evaluation Guide.

- 5.2.1.4. For each response evaluated, the Solicitation Coordinator will calculate the average of the Proposal Evaluation Team member scores for RFP Attachment 6.2., Technical Response & Evaluation Guide, and record each average as the response score for the respective Technical Response section.
- 5.2.1.5. The Solicitation Coordinator will invite each Respondent, who is apparently responsive and responsible, to make an Oral Presentation.
  - 5.2.1.5.1. The Oral Presentations are mandatory. The Solicitation Coordinator will schedule Respondent Presentation during the period indicated by the RFP Section 2, Schedule of Events. The Solicitation Coordinator will make every effort to accommodate each Respondent's schedules. When the Respondent Presentations schedule has been determined, the Solicitation Coordinator will contact Respondents with the relevant information as indicated by RFP Section 2, Schedule of Events.
  - 5.2.1.5.2. Respondent Presentations are only open to the invited Respondent, Proposal Evaluation Team members, the Solicitation Coordinator, and any technical consultants who are selected by the State to provide assistance to the Proposal Evaluation Team.
  - 5.2.1.5.3. Oral Presentations provide an opportunity for Respondents to explain and clarify their responses and for the State to test to better understand the practical application of the good or service as applicable. Respondents must not materially alter their responses and Presentations will be limited to addressing the items detailed in RFP Attachment 6.2., Technical Response & Evaluation Guide. Respondent pricing shall not be discussed during Oral Presentations. Evaluators may adjust Respondents' Technical Response scores based on Oral Presentations.
  - 5.2.1.5.4. The State will maintain an accurate record of each Respondent's Oral Presentations session. The record of the Respondent's Oral Presentations shall be available for review when the State opens the procurement files for public inspection.
- 5.2.2. **Cost Proposal Evaluation.** The Solicitation Coordinator will open for evaluation the Cost Proposal of each Respondent deemed by the State to be responsive and responsible and calculate and record each Cost Proposal score in accordance with the RFP Attachment 6.3., Cost Proposal & Scoring Guide.
- 5.2.3 **Clarifications and Negotiations:** The State reserves the right to award a contract on the basis of initial responses received, therefore, each response shall contain the Respondent's best terms and conditions from a technical and cost standpoint. The State reserves the right to conduct clarifications or negotiations with one or more Respondents. All communications, clarifications, and negotiations shall be conducted in a manner that supports fairness in response improvement.
  - 5.2.3.1 **Clarifications:** The State may identify areas of a response that may require further clarification or areas in which it is apparent that there may have been miscommunications or misunderstandings as to the State's specifications or requirements. The State may seek to clarify those issues identified during one or multiple clarification rounds. Each clarification sought by the State may be unique to an individual Respondent, provided that the process is conducted in a manner that supports fairness in response improvement.

- 5.2.3.2 **Negotiations:** The State may elect to negotiate with one or more Respondents by requesting revised responses, negotiating costs, or finalizing contract terms and conditions. The State reserves the right to conduct multiple negotiation rounds or no negotiations at all.
- 5.2.3.3 **Cost Negotiations:** All Respondents, selected for negotiation by the State, will be given equivalent information with respect to cost negotiations. All cost negotiations will be documented for the procurement file. Additionally, the State may conduct target pricing and other goods or services level negotiations. Target pricing may be based on considerations such as current pricing, market considerations, benchmarks, budget availability, or other methods that do not reveal individual Respondent pricing. During target price negotiations, Respondents are not obligated to reduce their pricing to target prices, but no Respondent is allowed to increase prices.
- 5.2.3.4 If the State determines that it is unable to successfully negotiate terms and conditions of a contract with the apparent best evaluated Respondent, the State reserves the right to bypass the apparent best evaluated Respondent and enter into terms and conditions contract negotiations with the next apparent best evaluated Respondent.
- 5.2.4. **Total Response Score.** The Solicitation Coordinator will calculate the sum of the Technical Response section scores and the Cost Proposal score and record the resulting number as the total score for the subject Response (refer to RFP Attachment 6.5., Score Summary Matrix).

### 5.3. **Contract Award Process**

- 5.3.1 The Solicitation Coordinator will review the Proposal Evaluation Team determinations and scores for consideration along with any other relevant information that might be available and pertinent to contract award.
- 5.3.2. The Solicitation Coordinator will determine the apparent best-evaluated Response using the scoring provided by the Proposal Evaluation Team. To effect a contract award to a Respondent other than the one receiving the highest evaluation process score, the Solicitation Coordinator must provide written justification and obtain the written approval of the Chief Procurement Officer and the Comptroller of the Treasury.
- 5.3.3. The State will issue a Notice of Intent to Award identifying the apparent best-evaluated response and make the RFP files available for public inspection at the time and date specified in the RFP Section 2, Schedule of Events.

**NOTICE: The Notice of Intent to Award shall not create rights, interests, or claims of entitlement in either the apparent best-evaluated Respondent or any other Respondent.**

- 5.3.4. The Respondent identified as offering the apparent best-evaluated response must sign a contract drawn by the State pursuant to this RFP. The Contract shall be substantially the same as the RFP Attachment 6.6., *Pro Forma* Contract. The Respondent must sign the contract by the Contractor Signature Deadline detailed in the RFP Section 2, Schedule of Events. If the Respondent fails to provide the signed Contract by this deadline, the State may determine that the Respondent is non-responsive to this RFP and reject the response.
- 5.3.5. Notwithstanding the foregoing, the State may, at its sole discretion, entertain limited terms and conditions or pricing negotiations prior to Contract signing and, as a result, revise the *pro forma* contract terms and conditions or performance requirements in the State's best interests, PROVIDED THAT such revision of terms and conditions or performance requirements shall NOT materially affect the basis of response evaluations or negatively impact the competitive nature of the RFP and contractor selection process.

- 5.3.6. If the State determines that a response is non-responsive and rejects it after opening Cost Proposals, the Solicitation Coordinator will re-calculate scores for each remaining responsive Cost Proposal to determine (or re-determine) the apparent best-evaluated response.

**RFP ATTACHMENT 6.1.****RFP # 34513-35725 STATEMENT OF CERTIFICATIONS AND ASSURANCES**

The Respondent must sign and complete the Statement of Certifications and Assurances below as required, and it must be included in the Technical Response (as required by RFP Attachment 6.2., Technical Response & Evaluation Guide, Section A, Item A.1.).

**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 RFP.
2. The Respondent will provide all services as defined in the Scope of the RFP Attachment 6.6., *Pro Forma* Contract for the total Contract Term.
3. The Respondent, except as otherwise provided in this RFP, accepts and agrees to all terms and conditions set out in the RFP Attachment 6.6., *Pro Forma* Contract.
4. The Respondent acknowledges and agrees that a contract resulting from the RFP shall incorporate, by reference, all proposal responses as a part of the Contract.
5. The Respondent will comply 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.
6. To the knowledge of the undersigned, the information detailed within the response submitted to this RFP is accurate.
7. The response submitted to this RFP was independently prepared, without collusion, under penalty of perjury.
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 this RFP or any resulting contract.
9. Both the Technical Response and the Cost Proposal submitted in response to this RFP 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 RFP.
10. The Respondent affirms the following statement, as required by the Iran Divestment Act Tenn. Code Ann. § 12-12-111: "By submission of this bid, each bidder and each person signing on behalf of any bidder certifies, and in the case of a joint bid each party thereto certifies as to its own organization, under penalty of perjury, that to the best of its knowledge and belief that each bidder is not on the list created pursuant to §12-12-106." For reference purposes, the list is currently available online at: <https://www.tn.gov/generalservices/procurement/central-procurement-office--cpo-/library-/public-information-library.html>.

**By signing this Statement of Certifications and Assurances, below, the signatory also certifies legal authority to bind the proposing entity to the provisions of this RFP and any contract awarded pursuant to it. If the signatory is not the Respondent (if an individual) or the Respondent's company *President* or *Chief Executive Officer*, this document must attach evidence showing the individual's authority to bind the Respondent.**

**DO NOT SIGN THIS DOCUMENT IF YOU ARE NOT LEGALLY AUTHORIZED TO BIND THE RESPONDENT**

**SIGNATURE:**

\_\_\_\_\_

**PRINTED NAME & TITLE:**

\_\_\_\_\_

**DATE:**

\_\_\_\_\_

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**RESPONDENT LEGAL ENTITY  
NAME:**

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## RFP ATTACHMENT 6.2. — Section A

## TECHNICAL RESPONSE &amp; EVALUATION GUIDE

**SECTION A: MANDATORY REQUIREMENTS.** The Respondent must address all items detailed below and provide, in sequence, the information and documentation as required (referenced with the associated item references). The Respondent must also detail the response page number for each item in the appropriate space below.

The Solicitation Coordinator will review the response to determine if the Mandatory Requirement Items are addressed as required and mark each with pass or fail. For each item that is not addressed as required, the Solicitation Coordinator must review the response and attach a written determination. In addition to the Mandatory Requirement Items, the Solicitation Coordinator will review each response for compliance with all RFP requirements.

RESPONDENT LEGAL ENTITY NAME:			
Response Page # (Respondent completes)	Item Ref.	Section A— Mandatory Requirement Items	Pass/Fail
		The Response must be delivered to the State no later than the Response Deadline specified in the RFP Section 2, Schedule of Events.	
		The Technical Response and the Cost Proposal documentation must be packaged separately as required (refer to RFP Section 3.2., <i>et. seq.</i> ).	
		The Technical Response must NOT contain cost or pricing information of any type.	
		The Technical Response must NOT contain any restrictions of the rights of the State or other qualification of the response.	
		A Respondent must NOT submit alternate responses (refer to RFP Section 3.3.).	
		A Respondent must NOT submit multiple responses in different forms (as a prime and a subcontractor) (refer to RFP Section 3.3.).	
	<b>A.1.</b>	Provide the Statement of Certifications and Assurances (RFP Attachment 6.1.) completed and signed by an individual empowered to bind the Respondent to the provisions of this RFP and any resulting contract. The document must be signed without exception or qualification.	
	<b>A.2.</b>	Provide a statement, based upon reasonable inquiry, of whether the Respondent or any individual who shall cause to deliver goods or perform services under the contract has a possible conflict of interest ( <i>e.g.</i> , employment by the State of Tennessee) and, if so, the nature of that conflict.  NOTE: Any questions of conflict of interest shall be solely within the discretion of the State, and the State reserves the right to cancel any award.	
	<b>A.3.</b>	Provide a current bank reference indicating that the Respondent's business relationship with the financial institution is in positive standing. Such reference must be written in the form of a standard business letter, signed, and dated within the past three (3) months	
	<b>A.4.</b>	Provide a current credit rating from Moody's, Standard & Poor's, A.M. Best or Fitch Ratings, verified, and dated within the last three (3) months and indicating a positive credit rating for the Respondent. <b>OR</b> , in lieu of the	

RESPONDENT LEGAL ENTITY NAME:			
Response Page # (Respondent completes)	Item Ref.	Section A— Mandatory Requirement Items	Pass/Fail
		aforementioned credit rating, provide an official document or letter from an accredited credit bureau, dated within the last three (3) months and indicating a satisfactory credit score for the Respondent (NOTE: A credit bureau report number without the full report is insufficient and will <u>not</u> be considered responsive.)	
	<b>A.5.</b>	Provide a statement of whether the Respondent is actively registered with a public profile access in the System for Award Management (i.e., SAM.gov). The public profile access shall be required to contract with the State of Tennessee. If registered, provide the SAM.Gov Unique Entity Identification Number. (SAM UEI). If not yet registered, please provide a statement confirming that the Respondent will complete registration prior to Contract execution.	
	<b>A.6.</b>	Provide a statement attesting that, within the past five (5) calendar years, the Respondent has a minimum of three (3) years of experience in the successful operation of New Hire Reporting and Employer Maintenance services pursuant to 42 U.S.C. § 653a with a minimum of 350,000 unique employers.	
	<b>A.7.</b>	Provide a statement attesting that, within the last five (5) calendar years, the Respondent has a minimum of three (3) years of experience providing all goods and services as outlined in this RFP and Pro Forma contract..	
	<b>A.8.</b>	Provide a statement verifying the Respondent's software has compatible features for reporting activities for each process step with the successful transfer of New Hire files and employer maintenance activities as outlined in the Pro Forma Contract.	
	<b>A.9.</b>	Provide a statement confirming that if awarded the Contract, the Respondent will provide a Certificate of Insurance in the amounts detailed in the Pro Forma Contract Section D.32.	
<i>State Use – Solicitation Coordinator Signature, Printed Name &amp; Date:</i>			

**RFP ATTACHMENT 6.2. — SECTION B****TECHNICAL RESPONSE & EVALUATION GUIDE**

**SECTION B: GENERAL QUALIFICATIONS & EXPERIENCE.** The Respondent must address all items detailed below and provide, in sequence, the information and documentation as required (referenced with the associated item references). The Respondent must also detail the response page number for each item in the appropriate space below. Proposal Evaluation Team members will independently evaluate and assign one score for all responses to Section B— General Qualifications & Experience Items.

<b>RESPONDENT LEGAL ENTITY NAME:</b>		
<b>Response Page #</b> (Respondent completes)	<b>Item Ref.</b>	<b>Section B— General Qualifications &amp; Experience Items</b>
	<b>B.1.</b>	Detail the name, e-mail address, mailing address, telephone number, and facsimile number, if applicable, of the person the State should contact regarding the response.
	<b>B.2.</b>	Describe the Respondent's form of business ( <i>i.e.</i> , individual, sole proprietor, corporation, non-profit corporation, partnership, limited liability company) and business location (physical location or domicile).
	<b>B.3.</b>	Detail the number of years the Respondent has been in business.
	<b>B.4.</b>	Briefly describe how long the Respondent has been providing the goods or services required by this RFP.
	<b>B.5.</b>	Describe the Respondent's number of employees, client base, and location of offices.
	<b>B.6.</b>	Provide a statement of whether there have been any mergers, acquisitions, or change of control of the Respondent within the last ten (10) years. If so, include an explanation providing relevant details.
	<b>B.7.</b>	Provide a statement of whether the Respondent or, to the Respondent's knowledge, any of the Respondent's employees, agents, independent contractors, or subcontractors, involved in the delivery of goods or performance of services on a contract pursuant to this RFP, have been convicted of, pled guilty to, or pled <i>nolo contendere</i> to any felony. If so, include an explanation providing relevant details.
	<b>B.8.</b>	Provide a statement of whether, in the last ten (10) years, the Respondent has filed (or had filed against it) any bankruptcy or insolvency proceeding, whether voluntary or involuntary, or undergone the appointment of a receiver, trustee, or assignee for the benefit of creditors. If so, include an explanation providing relevant details.
	<b>B.9.</b>	Provide a statement of whether there is any material, pending litigation against the Respondent that the Respondent should reasonably believe could adversely affect its ability to meet contract requirements pursuant to this RFP or is likely to have a material adverse effect on the Respondent's financial condition. If such exists, list each separately, explain the relevant details, and attach the opinion of counsel addressing whether and to what extent it would impair the Respondent's performance in a contract pursuant to this RFP.  NOTE: All persons, agencies, firms, or other entities that provide legal opinions regarding the Respondent must be properly licensed to render such opinions. The State may require the Respondent to submit proof of license for each person or entity that renders such opinions.
	<b>B.10.</b>	Provide a statement of whether there are any pending or in progress Securities Exchange Commission investigations involving the Respondent. If such exists, list each separately, explain

## RFP ATTACHMENT 6.2. — SECTION B (continued)

RESPONDENT LEGAL ENTITY NAME:		
Response Page # (Respondent completes)	Item Ref.	Section B— General Qualifications & Experience Items
		<p>the relevant details, and attach the opinion of counsel addressing whether and to what extent it will impair the Respondent's performance in a contract pursuant to this RFP.</p> <p>NOTE: All persons, agencies, firms, or other entities that provide legal opinions regarding the Respondent must be properly licensed to render such opinions. The State may require the Respondent to submit proof of license for each person or entity that renders such opinions.</p>
	B.11.	Provide a brief, descriptive statement detailing evidence of the Respondent's ability to deliver the goods or services sought under this RFP (e.g., prior experience, training, certifications, resources, program and quality management systems, etc.).
	B.12.	Provide a narrative description of the proposed project team duty positions along with an organizational chart illustrating the lines of authority between duty positions.
	B.13.	Provide a personnel roster and resume listing the names of key people, if known, who the Respondent will assign to meet the Respondent's requirements under this RFP along with the estimated number of hours that each individual will devote to that performance. Follow the personnel roster with a resume for each of the people listed. The resumes must detail the individual's title, education, current position with the Respondent, and employment history. The Respondent need not designate every individual on the proposed contract team as a key person.
	B.14.	<p>Provide a statement of whether the Respondent intends to use subcontractors to meet the Respondent's requirements of any contract awarded pursuant to this RFP, and if so, detail:</p> <p>(a) the names of the subcontractors along with the contact person, mailing address, telephone number, and e-mail address for each;</p> <p>(b) a description of the scope and portions of the goods each subcontractor involved in the delivery of goods or performance of the services each subcontractor will perform; <u>and</u></p> <p>(c) a statement specifying that each proposed subcontractor has expressly assented to being proposed as a subcontractor in the Respondent's response to this RFP.</p>
	B.15.	<p>Provide documentation of the Respondent's commitment to diversity as represented by the following:</p> <p>(a) <u>Business Strategy</u>. Provide a description of the Respondent's existing programs and procedures designed to encourage and foster commerce with business enterprises owned by minorities, women, service-disabled veterans, persons with disabilities, and small business enterprises. Please also include a list of the Respondent's certifications as a diversity business, if applicable.</p> <p>(b) <u>Business Relationships</u>. Provide a listing of the Respondent's current contracts with business enterprises owned by minorities, women, service-disabled veterans, persons with disabilities, and small business enterprises. Please include the following information:</p> <p>(i) contract description;</p> <p>(ii) contractor name and ownership characteristics (i.e., ethnicity, gender, service-disabled veteran-owned or persons with disabilities);</p> <p>(iii) contractor contact name and telephone number.</p> <p>(c) <u>Estimated Participation</u>. Provide an estimated level of participation by business enterprises owned by minorities, women, service-disabled veterans, persons with disabilities and small business enterprises if a contract is awarded to the Respondent pursuant to this RFP. Please include the following information:</p> <p>(i) a percentage (%) indicating the participation estimate. (Express the estimated participation number as a percentage of the total estimated contract value that will be</p>

## RFP ATTACHMENT 6.2. — SECTION B (continued)

RESPONDENT LEGAL ENTITY NAME:		
Response Page # (Respondent completes)	Item Ref.	Section B— General Qualifications & Experience Items
		<p>dedicated to business with subcontractors and supply contractors having such ownership characteristics only and <b>DO NOT INCLUDE DOLLAR AMOUNTS</b>;</p> <p>(ii) anticipated goods or services contract descriptions;</p> <p>(iii) names and ownership characteristics (i.e., ethnicity, gender, service-disabled veterans, or disability) of anticipated subcontractors and supply contractors.</p> <p>NOTE: In order to claim status as a Diversity Business Enterprise under this contract, businesses must be certified by the Governor's Office of Diversity Business Enterprise (Go-DBE). Please visit the Go-DBE website at <a href="https://tn.diversitysoftware.com/FrontEnd/StartCertification.asp?TN=tn&amp;XID=9810">https://tn.diversitysoftware.com/FrontEnd/StartCertification.asp?TN=tn&amp;XID=9810</a> for more information.</p> <p>(d) <u>Workforce</u>. Provide the percentage of the Respondent's total current employees by ethnicity and gender.</p> <p>NOTE: Respondents that demonstrate a commitment to diversity will advance State efforts to expand opportunity to do business with the State as contractors and subcontractors. Response evaluations will recognize the positive qualifications and experience of a Respondent that does business with enterprises owned by minorities, women, service-disabled veterans, persons with disabilities, and small business enterprises and who offer a diverse workforce.</p>
	<b>B.16.</b>	<p>Provide a statement of whether or not the Respondent has any current contracts with the State of Tennessee or has completed any contracts with the State of Tennessee within the previous five (5) year period. If so, provide the following information for all of the current and completed contracts:</p> <p>(a) the name, title, telephone number and e-mail address of the State contact knowledgeable about the contract;</p> <p>(b) the procuring State agency name;</p> <p>(c) a brief description of the contract's scope of services;</p> <p>(d) the contract period; and</p> <p>(e) the contract number.</p>
	<b>B.17.</b>	<p>Provide a statement and any relevant details addressing whether the Respondent is any of the following:</p> <p>(a) is presently debarred, suspended, proposed for debarment, or voluntarily excluded from covered transactions by any federal or state department or agency;</p> <p>(b) has within the past three (3) years, been convicted of, or had a civil judgment rendered against the contracting party from commission of fraud, or a criminal offence in connection with obtaining, attempting to obtain, or performing a public (federal, state, or local) transaction or grant under a public transaction; violation of federal or state antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;</p> <p>(c) is presently indicted or otherwise criminally or civilly charged by a government entity (federal, state, or local) with commission of any of the offenses detailed above; and</p> <p>(d) has within a three (3) year period preceding the contract had one or more public transactions (federal, state, or local) terminated for cause or default.</p>

**RFP ATTACHMENT 6.2. — SECTION B (continued)**

<b>RESPONDENT LEGAL ENTITY NAME:</b>		
<b>Response Page #</b> (Respondent completes)	<b>Item Ref.</b>	<b>Section B— General Qualifications &amp; Experience Items</b>
<p align="center"><b>SCORE (for <u>all</u> Section B—Qualifications &amp; Experience Items above):</b> (maximum possible score = 15)</p>		
<p><i>State Use – Evaluator Identification:</i></p>		

**RFP ATTACHMENT 6.2. — SECTION C****TECHNICAL RESPONSE & EVALUATION GUIDE**

**SECTION C: TECHNICAL QUALIFICATIONS, EXPERIENCE & APPROACH.** The Respondent must address all items (below) and provide, in sequence, the information and documentation as required (referenced with the associated item references). The Respondent must also detail the response page number for each item in the appropriate space below.

A Proposal Evaluation Team, made up of three or more State employees, will independently evaluate and score the response to each item. Each evaluator will use the following whole number, raw point scale for scoring each item:

**0 = little value      1 = poor      2 = fair      3 = satisfactory      4 = good      5 = excellent**

The Solicitation Coordinator will multiply the Item Score by the associated Evaluation Factor (indicating the relative emphasis of the item in the overall evaluation). The resulting product will be the item's Raw Weighted Score for purposes of calculating the section score as indicated.

<b>RESPONDENT LEGAL ENTITY NAME:</b>					
<b>Response Page # (Respondent completes)</b>	<b>Item Ref.</b>	<b>Section C— Technical Qualifications, Experience &amp; Approach Items</b>	<b>Item Score</b>	<b>Evaluation Factor</b>	<b>Raw Weighted Score</b>
	<b>C.1.</b>	Provide a narrative that illustrates the Respondent's understanding of the State's requirements and project schedule.		10	
	<b>C.2.</b>	Provide a narrative that illustrates how the Respondent will complete the scope of services, accomplish required objectives, and meet the State's project schedule.		20	
	<b>C.3.</b>	Provide a draft Implementation Plan based on the Project Management Body of Knowledge ("PMBOK") Guide and Standards published by the Project Management Institute.  The Plan must include:  1) The services required for implementation; 2) The schedule for implementation; 3) Roles and responsibilities for implementation; 4) Potential risks and mitigation strategies; and 5) A description of the mechanisms for reporting status to the State and coordinating and resolving issues related to the implementation.		5	
	<b>C.4.</b>	Provide a narrative describing the Respondent's staffing plan for the provision of services under this procurement. This narrative must include the number of positions as well as detailed descriptions of those positions. The narrative must also include the Respondent's definition of the term "key people", as it relates to Items B.12.and B.13.of RFP Attachment 6.2.		15	
	<b>C.5.</b>	Provide the Respondent's documented Disaster Recovery / Business Continuity Plan.		10	
	<b>C.6.</b>	Provide the Respondent's Employer Outreach Plan. The plan shall demonstrate an ongoing informational and outreach program that informs employers, contractors, or contracted payroll companies conducting business within the State of Tennessee.		30	

**RFP ATTACHMENT 6.2. — SECTION C (continued)**

RESPONDENT LEGAL ENTITY NAME:					
Response Page # (Respondent completes)	Item Ref.	Section C— Technical Qualifications, Experience & Approach Items	Item Score	Evaluation Factor	Raw Weighted Score
	<b>C.7.</b>	Provide a brief narrative describing the Respondent’s plan for the training of its staff assigned to the project. The narrative should detail the Respondent’s plan for training during the initial stages of the project as well as the strategy for ongoing training over the Term of the Contract.		20	
	<b>C.8.</b>	Provide the Respondent’s Tracking Plan for Employer Maintenance activities. The Plan must describe how the Respondent will track all maintenance performed to consolidate duplicate employer identification numbers to unique identification numbers.		35	
	<b>C.9.</b>	Provide a narrative response explaining the Respondent’s approach for both the new hire reporting and employer maintenance service components. Explain how the Respondent will incorporate its approach into regular operations.		35	
	<b>C.10.</b>	Describe the procedures the Respondent will use to ensure that the Respondent is able to successfully and accurately transmit, per day, a minimum of three hundred thousand (300,000) records of individuals who have recently been hired.		30	
	<b>C.11.</b>	The Respondent’s database must be capable of converting employer information presently residing in a database developed by Tennessee’s current New Hire Reporting/Employer Maintenance vendor. Describe the Respondent’s approach to ensure that the Respondent’s database will be capable of receiving information currently residing in existing new hire contractor database.		25	
<i>The Solicitation Coordinator will use this sum and the formula below to calculate the section score. All calculations will use and result in numbers rounded to two (2) places to the right of the decimal point.</i>					<b>Total Raw Weighted Score:</b> <i>(sum of Raw Weighted Scores above)</i>
$\frac{\text{Total Raw Weighted Score}}{\text{Maximum Possible Raw Weighted Score (i.e., 5 x the sum of item weights above)}} \times 55 = \text{SCORE:}$					
<i>State Use – Evaluator Identification:</i>					
<i>State Use – Solicitation Coordinator Signature, Printed Name &amp; Date:</i>					

**RFP ATTACHMENT 6.3.**

**COST PROPOSAL & SCORING GUIDE**

**NOTICE: THIS COST PROPOSAL MUST BE COMPLETED EXACTLY AS REQUIRED**

**COST PROPOSAL SCHEDULE**— The Cost Proposal, detailed below, shall indicate the proposed price for goods or services defined in the Scope of Services of the RFP Attachment 6.6., *Pro Forma* Contract and for the entire contract period. The Cost Proposal shall remain valid for at least one hundred twenty (120) days subsequent to the date of the Cost Proposal opening and thereafter in accordance with any contract resulting from this RFP. All monetary amounts shall be in U.S. currency and limited to two (2) places to the right of the decimal point.

**NOTICE:** The Evaluation Factor associated with each cost item is for evaluation purposes only. The evaluation factors do NOT and should NOT be construed as any type of volume guarantee or minimum purchase quantity. The evaluation factors shall NOT create rights, interests, or claims of entitlement in the Respondent.

Notwithstanding the cost items herein, pursuant to the second paragraph of the *Pro Forma* Contract section C.1. (refer to RFP Attachment 6.6.), the State is under no obligation to request work from the Contractor in any specific dollar amounts or to request any work at all from the Contractor during any period of this Contract.

This Cost Proposal must be signed, in the space below, by an individual empowered to bind the Respondent to the provisions of this RFP and any contract awarded pursuant to it. If said individual is not the *President* or *Chief Executive Officer*, this document must attach evidence showing the individual's authority to legally bind the Respondent.

<b>RESPONDENT SIGNATURE:</b>			
<b>PRINTED NAME &amp; TITLE:</b>			
<b>DATE:</b>			
<b>RESPONDENT LEGAL ENTITY NAME:</b>			
Cost Item Description	Proposed Cost Per Month	State Use Only	
		Evaluation Factor	Evaluation Cost (cost x factor)
New Hire Reporting and Employer Maintenance January 1, 2025 – December 31, 2025	\$	12	
New Hire Reporting and Employer Maintenance January 1, 2026 – December 31, 2026	\$	12	
New Hire Reporting and Employer Maintenance January 1, 2027 – December 31, 2027	\$	12	

**RFP ATTACHMENT 6.3. (continued)**

<b>RESPONDENT LEGAL ENTITY NAME:</b>			
Cost Item Description	Proposed Cost Per Month	State Use Only	
		Evaluation Factor	Evaluation Cost (cost x factor)
New Hire Reporting and Employer Maintenance January 1, 2028 – December 31, 2028	\$	12	
New Hire Reporting and Employer Maintenance January 1, 2029 – December 31, 2029	\$	12	
<b>EVALUATION COST AMOUNT</b> (sum of evaluation costs above): The Solicitation 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.			
$\frac{\text{lowest evaluation cost amount from all proposals}}{\text{evaluation cost amount being evaluated}}$		$\times 30$ (maximum section score)	$=$ <b>SCORE:</b>
<i>State Use – Solicitation Coordinator Signature, Printed Name &amp; Date:</i>			

## REFERENCE QUESTIONNAIRE

**The standard reference questionnaire provided on the following pages of this attachment should be completed by all individuals offering a reference for the Respondent.**

The Respondent will be solely responsible for obtaining completed reference questionnaires as detailed below.. Provide references from individuals who are not current State employees of the procuring State Agency for projects similar to the goods or services sought under this RFP and which represent:

- two (2) contracts Respondent currently services that are similar in size and scope to the services required by this RFP; and
- three (3) completed contracts that are similar in size and scope to the services required by this RFP.

References from at least three (3) different individuals are required to satisfy the requirements above, e.g., an individual may provide a reference about a completed project and another reference about a currently serviced account. The individual contact reference provided for each contract or project shall not be a current State employee of the procuring State agency. Procuring State agencies that accept references from another State agency shall document, in writing, a plan to ensure that no contact is made between the procuring State agency and a referring State agency. The standard reference questionnaire, should be used and completed, and is provided on the next page of this RFP Attachment 6.4.

In order to obtain and submit the completed reference questionnaires following one of the two processes below.

Written:

- (a) Add the Respondent's name to the standard reference questionnaire at RFP Attachment 6.4. and make a copy for each reference.
- (b) Send a reference questionnaire and new, standard #10 envelope to each reference.
- (c) Instruct the reference to:
  - (i) complete the reference questionnaire;
  - (ii) sign and date the completed reference questionnaire;
  - (iii) seal the completed, signed, and dated reference questionnaire within the envelope provided;
  - (iv) sign his or her name in ink across the sealed portion of the envelope; and
  - (v) return the sealed envelope directly to the Respondent (the Respondent may wish to give each reference a deadline, such that the Respondent will be able to collect all required references in time to include them within the sealed Technical Response).
- (d) Do NOT open the sealed references upon receipt.
- (e) Enclose all sealed reference envelopes within a larger, labeled envelope for inclusion in the Technical Response as required.

Email:

- (a) Add the Respondent's name to the standard reference questionnaire at RFP Attachment 6.4. and make a copy for each reference.
- (b) E-mail a reference questionnaire to each reference.
- (c) Instruct the reference to:
  - (i) complete the reference questionnaire;
  - (ii) sign and date the completed reference questionnaire;
  - (iii) E-mail the reference directly to the Solicitation Coordinator by the RFP Technical Response Deadline with the Subject line of the e-mail as "[Respondent's Name] Reference for RFP # 34513-35725".

NOTES:

- The State will not accept late references or references submitted by any means other than the two which are described above, and each reference questionnaire submitted must be completed as required.

- The State will not review more than the number of required references indicated above.
- While the State will base its reference check on the contents of the reference e-mails or sealed reference envelopes included in the Technical Response package, the State reserves the right to confirm and clarify information detailed in the completed reference questionnaires, and may consider clarification responses in the evaluation of references.
- The State is under no obligation to clarify any reference information.

**RFP # 34513-35725 REFERENCE QUESTIONNAIRE**

**REFERENCE SUBJECT:** RESPONDENT NAME (completed by Respondent before reference is requested)

The “reference subject” specified above, intends to submit a response to the State of Tennessee in response to the Request for Proposals (RFP) indicated. As a part of such response, the reference subject 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 and follow either process outlined below;

**Physical:**

- 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 reference subject.

**E-Mail:**

- e-mail the completed questionnaire to: : Van Bryant – [Van.Bryant@tn.gov](mailto:Van.Bryant@tn.gov)

**(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.**

<b>NAME:</b>	
<b>TITLE:</b>	
<b>TELEPHONE #</b>	
<b>E-MAIL ADDRESS:</b>	

**(3) What goods or services does/did the reference subject provide to your company or organization?**



**RFP ATTACHMENT 6.5.**

**SCORE SUMMARY MATRIX**

	<i>RESPONDENT NAME</i>		<i>RESPONDENT NAME</i>		<i>RESPONDENT NAME</i>	
<b>GENERAL QUALIFICATIONS &amp; EXPERIENCE</b> (maximum: 15)						
<i>EVALUATOR NAME</i>						
<i>EVALUATOR NAME</i>						
<i>REPEAT AS NECESSARY</i>						
	<b>AVERAGE:</b>		<b>AVERAGE:</b>		<b>AVERAGE:</b>	
<b>TECHNICAL QUALIFICATIONS, EXPERIENCE &amp; APPROACH</b> (maximum: 55)						
<i>EVALUATOR NAME</i>						
<i>EVALUATOR NAME</i>						
<i>REPEAT AS NECESSARY</i>						
	<b>AVERAGE:</b>		<b>AVERAGE:</b>		<b>AVERAGE:</b>	
<b>COST PROPOSAL</b> (maximum: 30)	<b>SCORE:</b>		<b>SCORE:</b>		<b>SCORE:</b>	
<b>TOTAL RESPONSE EVALUATION SCORE:</b> (maximum: 100)						
<i>Solicitation Coordinator Signature, Printed Name &amp; Date:</i>						

**RFP # 34513-35725 PRO FORMA CONTRACT**

The *Pro Forma* Contract detailed in following pages of this exhibit contains some “blanks” (signified by descriptions in capital letters) that will be completed with appropriate information in the final contract resulting from the RFP.

**CONTRACT  
BETWEEN THE STATE OF TENNESSEE,  
DEPARTMENT OF HUMAN SERVICES, CHILD SUPPORT DIVISION  
AND  
CONTRACTOR NAME**

This Contract, by and between the State of Tennessee, Department of Human Services ("State" or "DHS") and **Contractor Legal Entity Name** ("Contractor"), is for the provision of New Hire Reporting and Employer

Maintenance services, as further defined in the "SCOPE." State and Contractor may be referred to individually as a "Party" or collectively as the "Parties" to this Contract.

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

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

Contractor Edison Registration ID # **Number**

**A. SCOPE:**

- A.1. The Contractor shall provide all goods or services and deliverables as required, described, and detailed below and shall meet all service and delivery timelines as specified by this Contract.
- A.2. Definitions. For purposes of this Contract, definitions shall be as follows and as set forth in the Contract:
- a. "Call Center" means a location established and staffed by the Contractor by which the Contractor provides a toll-free telephone number during the operational hours specified in Section A.21 to receive and process incoming calls.
  - b. "Federal EPP Report" means the Employer Participation Project Report which OCSS provides to the State on a quarterly basis. The EPP Report lists employers which potentially failed to comply with new hire reporting requirements (defined below)
  - c. "E-IWO" means electronic income withholding.
  - d. "FCR" means Federal Case Registry.
  - d. "FEIN" means federal employer identification number.
  - e. "FOB" means free on board.
  - f. "IRS" means the Internal Revenue Service.
  - g. "Key Personnel" means individuals assigned to the roles described in Section A.33.
  - h. "MINCA" means maintenance income assignment.
  - i. "Multistate Employers" means employers that conduct business in multiple states but who choose to consolidate their new hire reporting in Tennessee.
  - j. "NHRP" means the Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA) of 1996, 42 U.S.C. § 653A and Tennessee Code Annotated §§ 36-5-1102-1105.
  - k. "NMSN" means the National Medical Support Notice form, which operates as legal notification that the employee identified therein is obligated to provide health coverage for children included under a child support order.
  - l. "OCSS" means the Federal Office of Child Support Services.

- m. "Payroll Processing Address" means the address of the location from which an employer distributes payroll checks which may include but not limited to payments through the mail, electronic funds transfers or automated Clearinghouse methods.
  - n. "PDF" means Portable Document Format.
  - o. "State Project Director" shall mean the State's key personnel to manage the New Hire Reporting Program.
  - p. "TCSES" means the Tennessee Child Support Enforcement System, operated by the Department of Human Services, containing data and functions for the recording of child and spousal support data, and for collection, distribution, and disbursement of child and spousal support payments.
  - q. "TCSES Employer Identifier" means the unique identification number assigned to each employer in TCSES.
  - r. "TIFF" means Tagged Image File Format.
  - s. "Unusable" means a TCSES employer ID that has been confirmed as a duplicate or created in error or has not otherwise been confirmed as usable.
  - t. "Usable" means a unique TCSES employer ID that has been verified and is therefore appropriate to add in TCSES.
- A.3. Solution Used by Contractor. The Contractor shall provide the services required by this Contract by utilizing TCSES and, upon the State's written instruction and at no additional cost to the State, any other software or solution used by the State.
- A.4. Comprehensive Services. The Contractor shall provide a comprehensive suite of services relating to new hire reporting, as required by 42 U.S.C. § 653a and Tenn. Code Ann. §§ 36-5-1101 through 36-5-1108. The Contractor shall maintain and update where appropriate the following data elements within TCSES.
- a. Employer's name;
  - b. Employer's address;
  - c. Employer's FEIN;
  - d. The complete Payroll Processing Address;
  - e. Employer's contact phone number and/or e-mail address; and
  - f. TCSES Employer Identifier.
- A.5. Employer Maintenance Portal. The Contractor shall develop and maintain an employer maintenance portal to be used by authorized State users to conduct employer location searches and update employer records as needed. The portal shall have the ability to control user access with view only and user update ability.
- A.6. Daily Records Transfer. The Contractor shall establish a compatible database of new hire records and shall transmit an electronic file of new hire records daily to be uploaded into TCSES. The State shall own the data in the Contractor's database, and the Contractor shall provide the State a copy of the data upon request by the State during the Term. The Contractor shall maintain the ability to transmit, per day, a minimum of three hundred and fifty thousand (350,000) records of individuals who have recently been hired.
- A.7. Employer Maintenance Email Activities. The Contractor shall perform the employer maintenance email activities as specified below:
- a. If income withholding documents have been sent to the incorrect employer or incorrect employer location, contact the employer and advise the employer to forward the corrected

income withholding documents. In such instances, the Contractor shall correct the data in TCSES to reflect the correct employer information as required by Section A.4. of this Contract;

- b. Respond to inquiries associated with Section A.8. of this Contract within twenty-four (24) hours;
  - c. Respond to emails from local child support offices within twenty-four (24) hours of receipt, providing all information requested; and
  - d. Process completed employment W9 and termination information from employers within two (2) business days of receipt.
- A.8. Adherence to State's Interpretation. The Contractor shall adhere to the State's interpretation of any statutory or regulatory requirements for new hire reporting.
- A.9. Information Receipt Processes. The Contractor shall accept and process incoming information in accordance with the requirements of this Section.
- a. The Contractor shall receive and accept employer information about new hires from Tennessee and Multistate Employers. The Contractor shall receive this information on an IRS Form W-4, or at the employer's option, an alternate form containing the same data as the IRS Form W-4. If an employer fails to submit the W-4 form to the Contractor within the timeframes required by Tenn. Code Ann. § 36-5-1104, the Contractor shall report the failure to the State, notifying the State of the delinquency and all supporting details in order to facilitate the State's collection of the statutory civil penalties available at Tenn. Code Ann. § 36-5-1107.
  - b. The Contractor shall receive employee information about new hires from employers through facsimile transmission, first-class mail, telephone, or secured electronic file transfer. The Contractor shall load all such information received into the Contractor's database.
- A.10. Data Entry Processes. The Contractor shall enter into the new hire database the following information, when reserved from IRS Form W-4 and other records, both where such information is received from Tennessee employers and likewise where such information is received from Multistate Employers:
- a. Employee's name;
  - b. Employee's residential address;
  - c. Employee's social security number and/or tax identification number;
  - d. Employer's name;
  - e. Employer's address;
  - f. Employer's FEIN;
  - g. Employee's date of hire;
  - h. Payroll processing complete address;
  - i. If employee has terminated employment;
  - j. Employee's date of birth;
  - k. Employee's gender code;
  - l. Employee's work state;
  - m. Whether the employee received an earned income tax credit; and
  - n. Employer's contact phone number and/or e-mail address.
- A.11. Follow-up Tasks. No later than two (2) business days after receiving employee new hire information, the Contractor shall contact employers when new hire records are incorrect, incomplete, illegible and/or rejected by the OCSS and request the missing or corrected data prior to transmission of the data to the State. Contractor shall identify additional steps it will take to ensure the receipt of complete and accurate new hire records.

- A.12. Timeliness Standard for New Hire Records. The Contractor shall enter new hire employee records into the Contractor's own database within two (2) business days after receipt of the completed record from the employer.
- A.13. Additional Timeliness Standards. The Contractor shall date and time stamp any letters of inquiry or other correspondence received from employers and shall review and respond to such inquiries for matters under their purview. For correspondence received that requires a State response, the Contractor shall submit the inquiry electronically to the State contact identified in Section D.2 within forty-eight (48) hours of receipt along with any additional information needed for the State to respond.
- A.14. Use of State Information Technology Resources.
- a. The Contractor shall use TCSES as the exclusive computer system for all child support operations. The Contractor agrees to: input necessary data; use such system as directed by the State; and designate specific staff as needed to maintain adequate TCSES support. Further, the Contractor agrees to use secure connection technologies to access TCSES as determined by the State.
  - b. The Contractor must comply with the State's Enterprise Information Security Policies. This document is found at the following URL: <https://www.tn.gov/finance/strategic-technology-solutions/strategic-technology-solutions/sts-security-policies.html>.
  - c. Contractor represents, warrants, and certifies that Contractor shall require all of Contractor's employees and subcontractors to read and sign the State's Acceptable Use Policy, attached hereto and incorporated as Attachment D, prior to giving any such individuals access to State IT resources as defined in Attachment D.
- A.15. TCSES Tasks. The Contractor shall examine and edit TCSES employer information directly via online access to TCSES to ensure that all employers maintain a unique assigned employer number. Without limiting the Contractor's obligations established elsewhere in this Contract, the Contractor shall:
- a. Research and update TCSES employer information and match newly hired, recalled or re-hired employees to employers directly via online access to TCSES.
  - b. Contact employers directly, by phone or as otherwise appropriate, to obtain correct employment information, including but not limited to: legal address, physical address, worker's compensation address, employment address, FEIN, and payroll address. The Contractor shall enter this information into TCSES to ensure employer records remain accurate;
  - c. Update and/or correct all clients' employer details on TCSES screens to close invalid employer numbers and connect clients' documents and profile to the accurate and appropriate valid employer number;
  - d. The Contractor shall confirm payment source codes in TCSES to prevent incorrectly updating an employer's records for payments received through an involuntary source such as IRS or an active additional employer for the noncustodial parent.
  - e. Update employer records in TCSES and add the correct FEIN for each employer, in order to accurately reflect the data contained in the bi-monthly E-IWO report that the State receives from the FCR database of the Social Security Administration.
  - f. Add maintenance information to each employer in TCSES, including the following information:
    - i. Employer name with local and/or corporate addresses;
    - ii. Employer phone numbers;
    - iii. Employer payroll point of contact information;

- iv. Name if doing business under another name);
- v. All actions taken to correct employer information; and
- vi. Unique TCSES member identification number for each non-custodial parent corrected as a result of the maintenance.

A.16. The Contractor shall perform all employer maintenance activities on TCSES to ensure that employer IDs in TCSES are coded as verified and able to be updated to Usable in TCSES by the fifteenth (15th) day of each month during the Term. The Contractor shall meet the following timeliness requirements:

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

A.17. Tracking of New Hire Reporting Requirements. Without limiting the Contractor's obligations established elsewhere in this Contract, the Contractor shall develop a method to verify and track employer compliance with federal and State new hire reporting requirements as set forth below.

- a. No later than forty-five (45) days after the Effective Date (defined in Section B below), the Contractor shall provide the State a proposal explaining the method the Contractor intends to use. Upon written approval from DHS, the Contractor shall implement the tracking method.
- b. Under any tracking method proposed by the Contractor, the Contractor shall consider an employer to be noncompliant with new hire reporting requirements if the employer fails to report in accordance with Tenn. Code Ann. § 36-5-1104.
- c. The Contractor shall report to the State all employers that the Contractor identifies as noncompliant with federal and State new hire reporting requirements as part of the Administrative Report described in Section A.29 of this Contract. The Contractor shall include copies of all correspondence and records of contact with the employer.

A.18. At no additional cost to the State, the Contractor shall meet all state and federal performance standards and requirements pertaining to new hire reporting, including without limitation those requirements established by 42 U.S.C. § 653a; Section 3401d of the IRS Code of 1986, [26 United States Code § 3401]; 45 C.F.R. §§ 303.32, 303.100, 303.108, and 308.2; and Tenn. Code Ann. Sections 36-5-1101 *et seq.*, as those authorities may be amended from time to time during the Term.

A.19. Notification and Outreach.

- a. No later than fourteen (14) days after the Effective Date, the Contractor shall notify Tennessee employers to direct their new hire reporting to the Contractor. No later than thirty (30) days after the Effective Date, the Contractor shall develop and submit for the State's approval an employer outreach program. Upon the State's written approval, the Contractor shall implement an ongoing outreach program. The Contractor shall not modify the outreach program or activities except upon the State's written approval. The State may issue written directives to the Contractor requiring the Contractor to modify its outreach program. No later than thirty (30) days after the State's issuance of such written directives and at no additional cost to the State, the Contractor shall comply with the same. The State may provide assistance regarding employer contact information. Any such assistance provided by the State in no way relieves the Contractor of the Contractor's responsibility to identify employers and notify them of new hire reporting requirements as interpreted by the State.

- b. The Contractor shall ensure that its employer outreach program meets all the following criteria;

- i. Informs employers, contractors, or their contracted payroll company conducting business within the State of Tennessee of new hire reporting requirements;
- ii. Provides contact information for the Contractor's Call Center; and
- iii. Notifies employers that the law provides for civil penalties in the event an employer fails to comply with new hire reporting requirements.
- iv. The Contractor shall conduct ongoing outreach activities using in-person meetings, email, virtual conferences, telephonic methods, brochures, or pamphlet documentation.

A.20. Public-Facing Materials. The Contractor shall ensure that brochures, pamphlets, notices and press releases state that DHS is funding this child support office and that any complaints, suggestions, or recommendations be reported to DHS, at 1-833-772-8347. The Contractor shall further ensure that the DHS' logo is included on brochures and pamphlets and that the branding requirements provided by the State for such materials are followed. The Contractor shall submit all brochures, pamphlets, notices, social media platforms, email campaign materials, and press releases to the State and obtain the State's written approval prior to the Contractor distributing any such materials. The Contractor shall comply with any State directive regarding updating or revising any such materials.

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

a. Technical Performance Standards.

- i. Daily Maximum Speed of Answer. Each day, the Call Center shall answer one hundred percent (100%) of incoming calls within three (3) minutes, or one hundred eighty (180) seconds. Calls answered in less than one hundred eighty (180) seconds but placed on hold within the first sixty (60) seconds of answer shall not be used to contribute to this performance standard.
- ii. Daily Abandonment Rate. The Call Center shall maintain an average daily abandonment (incoming calls not answered) rate of five percent (5%) or less, excluding calls abandoned within thirty (30) seconds.
- iii. Daily Average Speed of Answer. The Call Center shall maintain a Daily Average Speed of Answer of sixty (60) seconds or less. Calls answered in less than sixty (60) seconds but placed on hold within the first sixty (60) seconds of answer shall not be used to contribute to this performance standard.

b. Service Standards. The Call Center shall offer telephonic assistance in accordance with inbound call procedures as provided by the State and as the State may revise from time to time. The Call Center shall fully assist callers in a single call as completely and consistently as possible and without transferring the caller whenever possible. The Contractor shall provide technical assistance to answer employers' ongoing questions regarding new hire reporting and employer maintenance.

c. Language. The Call Center shall support inbound calls in English, Arabic, and Spanish. The Contractor shall establish and operate a third-party translation service that supports additional languages.

- i. For the hours of operation specified in Section A.25, the Contractor shall staff the Call Center with a sufficient number of bilingual staff with tested oral and written fluency in English, Arabic, and Spanish to provide support to Arabic and Spanish speaking callers.
  - ii. At no cost to the caller and for the hours of operation specified in Section A.25, the Contractor shall equip the Call Center with real time, third-party telephonic interpreter service for callers who are individuals with limited English proficiency – i.e., individuals who do not speak English as their primary language and who have a limited ability to read, write, speak, or understand English – but whose native language is a language other than Spanish or Arabic.
  - d. Accessibility for Individuals with Hearing and/or Speech Disabilities. At no cost to the caller and for the hours of operation specified in Section A.25, the Contractor shall provide the Call Center with a telecommunications relay service (“TRS”) in order to serve individuals with hearing and/or speech disabilities. Unless otherwise directed in writing by the State, the Contractor shall use the Tennessee Relay Service offered by the Tennessee Regulatory Authority as its TRS provider. The Contractor shall ensure that these services are provided at no additional cost to the State.
- A.22. Complaints. The Contractor shall plan and implement employer and employee complaint processing and resolution procedures and provide these procedures to the State. The Contractor shall review these procedures annually and provide the State with any updated versions. The Contractor shall notify the State within twenty-four (24) hours of any complaints against the Contractor and advise the State of the resolution of the complaint.
- A.23. The Contractor shall cooperate fully with any data collection, document issuance (such as the NMSN), evaluation activities, or audits carried out by the State or the federal government in connection with the services performed under this Contract.
- A.24. The Contractor shall not grant media interviews or issue press releases that discuss or reference any of the activities carried out under the terms of this Contract without the written permission of DHS, Child Support Division.
- A.25. Hours of Operation. The Contractor shall ensure that offices providing services under the terms of this Contract remain open and staffed on all days that the State is open and staffed. The Contractor shall provide a point of contact during the State business day (Monday through Friday from 8:00 a.m. to 4:30 p.m. CT), excluding holidays officially recognized by the State or weather emergencies declared by the Governor.
- A.26. The Contractor shall comply with State telecommunications protocols, existing file standards utilized in file transfer interfaces using a Secure File Transfer Process, and in the access to State systems as directed by the State.
- A.27. EPP Tasks.
- a. No later than five (5) business days after receiving the quarterly Federal EPP Report, the Contractor shall submit to the State a Non-Compliant Employers Report listing noncompliant employers as matched against the Federal EPP Report. The Non-Compliant Employers Report shall include in the following order: each noncompliant employer’s FEIN; corporate or other name; address; and dates on which any notices of noncompliance were sent to the noncompliant employer.
  - b. No later than five (5) business days after receiving the quarterly Federal EPP report, the Contractor shall submit to the State an Employer Report that details employers who are not in compliance with new hire reporting requirements for employees. These would be the employees reported as hired but not linked or reported to New Hire by their employer. The employees not reported by the Employer Report shall include in the following order:

- a. relevant employer's FEIN; the employer's name;
- b. the employer's address;
- c. dates on which any notices of non-reporting were sent to the employer;
- d. and the relevant employee(s)'s full name and social security number.

Once an employee can be identified to an employer, the employee employer shall be updated. The employees listed are linked to the employer.

- c. No later than ten (20) business days after receiving the quarterly Federal EPP report, the Contractor shall send a warning notice to potentially non-compliant employers via first-class mail, as mandated by State and Federal regulations (42 U.S.C. § 653A and Tennessee Code Annotated §§ 36-5-1102 – 1105). This notice shall inform employers of their legal obligations to provide the new hires information to New Hire Reporting and the penalty under State law for failure to report on a timely basis.
- d. On a monthly basis, the Contractor shall identify employers who have an incident of noncompliance after having received a warning notice and provide a list of such employers to the State by the fifteenth (15th) of each month following the month during which the incident of noncompliance occurred. The list shall include the name and address of the employer, the date the warning notice was sent to the employer, and the details of the ensuing incident of non-compliance (including the name of employee, method used to determine noncompliance, hire date if known, and date reported if any).
- e. The Contractor shall perform ongoing outreach to employers to resolve any discrepancies or otherwise non-matching social security number information.

A.28. Contract Services Transition. Upon expiration or termination of this Contract, the Contractor shall assist the State to ensure an orderly transfer of responsibility and continuity of those services required under the terms of the Contract to an organization designated by the State.

- a. The Contractor shall deliver, FOB destination, all records, documentation, reports, data, hard copy and electronic files, roster of current staff, recommendations, or any other information required to be produced to the State or the State's designee under the terms of the Contract promptly and with due diligence following receipt of a written request from the State for the same. Electronic files shall be delivered in a TIFF, PDF, or other format as may be prescribed by the State, based on instructions supplied to the Contractor at least sixty (60) days prior to the required delivery date.
- b. The Contractor shall discontinue providing any services, or accepting new assignments under the terms of this Contract, on the date specified by the State, in order to ensure the completion of such services prior to the termination of the Contract.
- c. The Contractor shall, upon request of the State, help to provide an understanding of the Tennessee New Hire Reporting Program for any potential future Contractor.
- d. At the conclusion of the Term or as directed by the State, the Contractor shall destroy all confidential data acquired in the performance of this Contract (including any copies such as backups) in accordance with the current version of NIST Special Publication 800-88. The Contractor shall exclude hard copy case files, as described in Section A.35, from destruction. The Contractor also shall sanitize all Contractor-supplied processing equipment used in the performance of this Contract, including multifunction print devices in accordance with Section E.3.g.(4) and the current version of NIST Publication 800-88. The Contractor shall provide an itemized inventory list of the intended items to be destroyed, which must be approved by the State before destruction, as well as written confirmation within ten (10) business days after destruction.

A.29. Administrative Reporting. The Contractor shall report to the State on the Contractor's performance as required by this Section.

- a. No later than thirty (30) days after the Effective Date, the Contractor shall develop and propose a method for quality assurance of data and tracking timeliness and accuracy of deliverables under this Contract. The State will review the proposed method and will approve the same or reject it and provide the Contractor an explanation of necessary changes. Throughout the Term, the Contractor shall comply with any written instructions the State may issue regarding modification to the administrative report format and data elements to be captured.
  - b. No later than sixty (60) days after the Effective Date, the Contractor shall submit the first administrative report in accordance with the method approved by the State. Thereafter, the Contractor shall submit the administrative report on a monthly basis using the same method. The Contractor shall submit the administrative report no later than the fifth (5th) day of the month following the reported month. The Contractor shall submit the administrative report to the State by email to [Childsupport.Empdmaint.DHS@tn.gov](mailto:Childsupport.Empdmaint.DHS@tn.gov).
  - c. Administrative Reporting shall contain, at a minimum, the following information:
    - i. Total number of new hire records submitted;
    - ii. Total number of registrations approved;
    - iii. Total number of employers reported;
    - iv. Total number of employer profiles updated;
    - v. Total number of customer service calls received through the Call Center;
    - vi. Total number of faxes received; and
    - vii. Total number of compliance correspondence sent;
- A.30. The Contractor shall provide any special project support needed to analyze, plan, implement, operate, or manage special services that may be needed to meet the diverse needs of the State. Support would include but is not limited to: technical support with reporting, call or email campaigns, and participation surveys.
- A.31. Mandatory Meeting Attendance. The Contractor and its staff and any subcontractors shall attend meetings scheduled by the State, make presentations, and participate in teleconferences or virtual conferences as requested.
- A.32. Workforce Requirements. The Contractor shall provide an organization of dedicated staff that shall be responsible for each of the functions detailed in the Contract. The Contractor shall provide and allocate sufficient numbers of trained personnel, including but not limited to clerical, program, technical, and management staff, to ensure efficient completion of all responsibilities set forth in this Contract. Contractor shall, at a minimum, meet the following staffing requirements:
- a. The Contractor shall prepare, as part of its initial Staffing Plan, and thereafter maintain a current organizational chart that depicts all administrative, functional, and programmatic reporting relationships of staff that perform services under the Contract, including any subcontractors of the Contract, and submit the chart to the State for review and approval whenever a change to such organizational chart is proposed.
  - b. The Contractor shall prepare, as part of its initial Staffing Plan, and thereafter maintain current, detailed job descriptions for each staff and subcontractor position that will be providing services under the Contract, and submit said descriptions in advance to the State for review and approval whenever changes to such job descriptions are proposed.
  - c. The Contractor shall ensure that all persons, including independent contractors, subcontractors and consultants assigned by it to perform services under the Contract, at all times, have the necessary credentials and are fully qualified and trained, as required and specified in this Contract, to perform the services required herein.
  - d. The Contractor shall determine the appropriate staffing, technical and telephonic solutions

for the Call Center, but if the Contractor fails to meet performance standards under this Contract, it shall comply with requests from the State to adjust staffing levels and technical and telephonic solutions as needed to comply with contractual standards. The Contractor shall utilize the most efficient operations and work assignments to maximize the use of its staff during low inbound call volume periods.

- e. The Contractor shall staff the Call Center with individuals who have the appropriate skills to meet or exceed contractual standards and provide callers with immediate and accurate information. In addition, the Contractor shall fully train all Call Center staff in Call Center operations, processes, and procedures as well as the State's policies, procedures, and processes relating to this service area.
  - f. The Contractor shall use proactive recruitment and retention practices to maintain the capability of responding quickly to staff turnover and attrition, absenteeism, poorly performing personnel, and increases in workload volume.
- A.33. Key Personnel. The Contractor shall submit to the State for prior review and approval the names, titles, and resumes of any candidates proposed by the Contractor for initial appointment to Key Personnel positions and whenever a change in Key Personnel is proposed. If, during the Term of this Contract, any Key Personnel should leave the Contractor's employment or the State requests that a specific Key Personnel no longer provide services under this Contract, the Contractor shall, within thirty (30) days of the Key Personnel's departure or within thirty (30) days of the State's request for replacement, fill the vacant Key Personnel position with a replacement that is approved beforehand by the State. During any interval of time during which a proposed replacement has not yet been approved by the State or is otherwise unavailable to perform the services required by this Section, the Contractor shall temporarily fill such Key Personnel position with a qualified Contractor corporate staff member within three (3) business days of the vacancy, who shall perform the Key Personnel duties at the Contractor's location in Tennessee if the State so requests. Failure to timely provide or replace Key Personnel pursuant to this Section may result in Liquidated Damages as set forth in Attachment B. Each of the following Key Personnel positions shall be filled with full-time personnel who are dedicated one hundred percent (100%) to the services required under this Contract:
- a. Project Manager –the individual responsible for all Contractor functions and operations under this Contract. The Contractor's Project Manager shall work directly with the DHS project lead or such other individual designated in writing by DHS. The Contractor's Project Manager shall also be responsible for managing changes to Call Center systems and processes in response to written directives issued by the State. Additionally, this position shall be responsible for managing employer outreach and notification functions, maintenance, and updating employer and employee data, and other requirements set forth in this Contract.
  - b. Information Technology ("IT") Lead – the individual responsible for assisting the State and the Contractor with technical matters relating to the performance of this Contract and troubleshooting technical issues. Additionally, the Contractor's IT Lead shall serve as the liaison between the State and the Contractor for all technical maintenance, data governance, data quality, data analytics, and such other similar functions as may be necessary during the Term.
- A.34. The State will provide to the Contractor both access to the TCSES application and a State-supplied e-mail account, to be utilized for all day-to-day operations and correspondence. The Contractor shall utilize State-standard software, policies, and procedures.
- A.35. The State will provide mandatory TCSES Employer Maintenance training to all Contractor's staff that will be working under the Terms of this Contract, and shall provide TCSES user guides to support new hire reporting. The Contractor shall ensure that its staff complete any such training required by the State.
- A.36. Nondisclosure. The Contractor shall, as directed by the State and at no additional cost to the State, coordinate with, facilitate the prompt exchange of information between, and work

collaboratively with any and all third-party contractors engaged by the State and state agencies. If required in order for the Contractor to proceed with any part of the Scope of Services which involves sharing or obtaining information of a confidential, proprietary, or otherwise valuable nature with or from a third-party contractor engaged by the State, the Contractor shall sign mutually agreeable documents, which should include but is not limited to nondisclosure agreements and any attendant documents that the parties deem to be subject to nondisclosure and incorporated therein, which are reasonably necessary to maintain cooperation and collaboration among and with any and all third-party contractors engaged by the State and state agencies in the performance of the Contract. Any information the Contractor receives, or which otherwise becomes known to the Contractor during the performance of this Contract, from any third-party contractor engaged by the State, which the third-party contractor considers to be proprietary or confidential in nature pursuant to a nondisclosure agreement entered into between the Contractor and the third-party contractor, shall be governed by any such nondisclosure agreement.

A.37. Federal Tax Information (FTI) – Minimum Protection Standards (MPS).

The Contractor shall maintain strict security standards in accordance with State policy and all applicable requirements of the most current version of IRS Publication 1075. The objective of these standards is to prevent unauthorized access to FTI. MPS establishes a uniform method of physically protecting data and systems as well as non-electronic forms of FTI. This method contains minimum standards that will be applied on a case-by-case basis. Because local factors may require additional security measures, management must analyze local circumstances to determine location, container, and other physical security needs at individual facilities. MPS have been designed to provide management with a basic framework of minimum-security requirements. Federally Mandated Requirements For Technology Services Contracts With Access To Federal Tax Return Information, which appears as Attachment C, is incorporated in this Contract.

The Contractor shall comply with the MPS or “two barrier” rule to protect FTI as further detailed in Section 2.B.2 *et seq.* of IRS Publication 1075, as may be amended. The objective of these standards is to prevent unauthorized access to FTI. MPS thus requires two barriers. Example barriers under the concept of MPS are outlined below. Each topic represents one barrier and should be used as a starting point to identify two barriers of MPS to protect FTI. The Contractor shall ensure that the MPS requirements are met in accordance with the following standards.

- a. Secured Perimeter. The perimeter is enclosed by slab-to-slab walls constructed of durable materials and supplemented by periodic inspection. Any lesser-type partition must be supplemented by electronic intrusion detection and fire detection systems. All doors entering the space must be locked in accordance with Locking Systems for Secured Areas. In the case of a fence/gate, the fence must have intrusion detection devices or be continually guarded, and the gate must be either guarded or locked with intrusion alarms.
- b. Security Room. A security room is a room that has been constructed to resist forced entry. The entire room must be enclosed by slab-to-slab walls constructed of approved materials (e.g., masonry brick, concrete) and supplemented by periodic inspection, and entrance must be limited to specifically authorized personnel. Door hinge pins must be non-removable or installed on the inside of the room.
- c. Badged Employee. During business hours, if authorized personnel serve as the second barrier between FTI and unauthorized individuals, the authorized personnel must wear picture identification badges or credentials. The badge must be clearly displayed and worn above the waist.
- d. Security Container. A security container is a storage device (e.g., turtle case, safe/vault) with a resistance to forced penetration, with a security lock with controlled access to keys or combinations.

The MPS or “two barrier” rule applies to FTI, beginning at the FTI itself and extending outward to individuals without a need-to-know. MPS provides the capability to deter, delay, or detect surreptitious entry. Protected information must be containerized in areas where other than authorized employees may have access after-hours.

- A.38. Background Investigation Requirements. The Contractor shall conduct a background investigation on all prospective contract employees, as well as those with whom the Contractor sub-contracts, whose duties will or may include access to FTI.

The Contractor shall ensure that all prospective Contract employees and contractors, whose duties will or may include access to FTI, consent to the following background investigation prior to accessing FTI:

- a. FBI fingerprint background check;
- b. Local law enforcement background check (including but not limited to the State of Tennessee and locations where the applicant has lived, worked or attended school within the last five (5) years); and
- c. Citizenship and residency checks to verify new applicant’s eligibility to legally work in the United States (e.g., a United States citizen or foreign citizen with the necessary authorization) through E-Verify.

All prospective Contract employees’ background checks will be evaluated in accordance with DHS’s Employee Fingerprint and Criminal Background Investigations policy for suitability determination. Specific requirements and procedures for these checks are detailed in the DHS Employee Fingerprint and Criminal Background Investigations policy, DHS Administrative Policies and Procedures: Policy 2.06. At the State’s discretion, the background check may not be necessary if DHS has a valid background investigation on file within the past five (5) years regarding the Contract or subcontract employee.

- A.39. Control Memorandum Process.

- a. The Control Memorandum (“CM”) process shall be utilized by the State to clarify Contract requirements, issue instruction to the Contractor, document action required of the Contractor, or request information from the Contractor. In addition, the CM process shall be used by the State to impose assessments of damages, either actual or liquidated. This process will be used to address issues or matters that do not require a Contract amendment. Each CM must be in writing and indicate the date on which it was issued. CMs may provide relevant history, background, and other pertinent information regarding the issue(s) being addressed in the CM. Each CM will establish a deadline or timeframe for the Contractor’s reply or other action. All CMs submitted to the Contractor must be signed and approved by the State’s Project Director (or his/her designee). When the CM pertains to damages, either actual or liquidated, the State may issue consecutive CMs, as may be necessary or appropriate.
- b. A CM may include one (1) or more of the five (5) components of the CM process described below:
  1. On Request Report – a request directing the Contractor to provide information by the time and date set out in the CM.
  2. Control Directive (CD) – instructions that require the Contractor to complete, within a designated timeframe, one (1) or more deliverables or to perform any other request from the State that is within the scope of the Contract. The CD may include a Corrective Action Plan. A CD may also provide clarification of certain Contract terms. Once a CM/CD has been issued, it shall be considered to be incorporated into this Contract.
  3. Notice of Potential Damages (Actual or Liquidated) (NPD) – notification to the Contractor that the State has determined that a potential Contract performance or compliance failure

exists and that the State is contemplating assessing damages. The NPD shall identify the Contract provision(s) on which the State determination rests.

4. Notice of Calculation of Potential Damages (Actual or Liquidated) (NCPD) – notification to the Contractor that provides a calculation of the amount of potential damages that the State is contemplating assessing against the Contractor. NPDs and NCPDs may be issued consecutively or simultaneously.
  5. Notice of Intent to Assess Damages (Actual or Liquidated) (NIAD) – notification to the Contractor that the State is assessing damages and specifying whether the damages, due to a performance or compliance failure, are actual damages or Liquidated Damages and setting out the performance or compliance failure underlying each intended damage assessment. The NIAD shall identify the NPD and NCPD upon which it is based. The NIAD shall specify the total amount and type of damages, whether actual or liquidated, that the State intends to assess. Following the issuance of an NIAD, the State may elect to withhold damages from payments due to Contractor. The State may not issue a NIAD without first issuing a NPD and a NCPD. The State may not obtain both Liquidated Damages and Actual Damages for the same occurrence of a Contract performance or compliance failure.
- c. Damages for failure to comply with CM. The Contractor shall fully comply with all CMs. Failure to do so may result in the State pursuing recovery of damages, as defined in Section E.13, including Liquidated Damages as listed in Contract Attachment B, a corrective action plan, and/or termination of the Contract.
  - d. Appeal of Damages by Contractor. Contractor may appeal either the basis for NPD or calculation of NCPD potential damages, either actual or liquidated. To do so, the Contractor shall submit to the State's Project Director (or his/her designee) a written response to the NPD and/or NCPD within ten (10) business days of receipt of a CM which includes a NPD or a NCPD. The State's Project Director (or his/her designee) shall review the appeal and provide notice of his/her determination to the Contractor through a CM. If the Contractor disagrees with the State's Project Director's (or his/her designee) initial appeal determination or the State's Project Director (or his/her designee) is unable to resolve the appeal, the Contractor may submit a written request to the State's Project Director (or his/her designee) that the matter be escalated to senior management of the Agency. Contractor shall submit such a request for escalation within ten (10) business days of its receipt of the initial appeal determination from the State's Project Director (or his/her designee) or of notification by the State's Project Director that he/she is unable to resolve the appeal. The State's senior management shall provide written notice of its final determination to the Contractor within ten (10) days of the receipt of the appeal from the Contractor. Upon appeal or escalation, the State shall not increase the amount of the potential damages.
- A.40. Problem Notification and Corrective Action Plan. The Contractor shall proactively notify the State of any developing situation that may negatively impact its performance under this Contract. At the point at which immediately after the Contractor discovers or reasonably should have known of any problem that is reasonably likely to jeopardize the Contractor's ability to perform any function required in this Contract, the Contractor shall notify the applicable State staff (as well as the State's designated general contact for this Contract in Section D.2) in person, via phone, or by email within one (1) hour if the problem is discovered within the business day and no later than 9:00 a.m. CT the following business day if the problem occurs after close of business. The Contractor shall, at a minimum, take the following step with regard to each such developing problem:

Corrective Action Plan. Unless otherwise directed by the State, the Contractor shall, within three (3) business days of a problem's occurrence, provide to the State a comprehensive written report, including a Corrective Action Plan that describes how the Contractor shall determine the root

cause of the issue, remedy the immediate operational challenges, and prevent this or similar problems from occurring again.

- A.41 Contractor shall limit resources to US-based (onshore) resources only.
- A.42. Warranty. Contractor represents and warrants that the term of the warranty (“Warranty Period”) shall be the greater of the Term of this Contract or any other warranty generally offered by Contractor, its suppliers, or manufacturers to customers of its goods or services. The goods or services provided under this Contract shall conform to the terms and conditions of this Contract throughout the Warranty Period. Any nonconformance of the goods or services to the terms and conditions of this Contract shall constitute a “Defect” and shall be considered “Defective.” If Contractor receives notice of a Defect during the Warranty Period, then Contractor shall correct the Defect, at no additional charge.

Contractor represents and warrants that the 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.43. 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 for the period beginning on January 1, 2025 (“Effective Date”) and ending on December 31, 2029 (“Term”). The State shall have no obligation for goods delivered or services provided by the Contractor prior to the Effective Date.
- B.2. 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:**

- 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:

<b>Goods or Services Description</b>	<b>Amount</b> (per compensable increment)
NHRP Services - January 1, 2025 – December 31, 2025	\$ <b>Number per month</b>
NHRP Services - January 1, 2026 – December 31, 2026	\$ <b>Number per month</b>
NHRP Services - January 1, 2027 – December 31, 2027	\$ <b>Number per month</b>
NHRP Services - January 1, 2028 – December 31, 2028	\$ <b>Number per month</b>
NHRP Services - January 1, 2029 – December 31, 2029	\$ <b>Number per month</b>

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:

[ChildSupport.ContractDHS@tn.gov](mailto:ChildSupport.ContractDHS@tn.gov) with a carbon copy to [Krista.Gray@tn.gov](mailto:Krista.Gray@tn.gov)

- a. Each invoice, on Contractor's letterhead, shall clearly and accurately detail all of the following information (calculations must be extended and totaled correctly):
  - (1) Invoice number (assigned by the Contractor);
  - (2) Invoice date;
  - (3) Contract number (assigned by the State);
  - (4) Customer account name: Department of Human Services, Division of Child Support Services;
  - (5) Customer account number (assigned by the Contractor to the above-referenced Customer);
  - (6) Contractor name;
  - (7) Contractor Tennessee Edison registration ID number;
  - (8) Contractor contact for invoice questions (name, phone, or email);
  - (9) Contractor remittance address;
  - (10) Description of delivered goods or services provided and invoiced, including identifying information as applicable;
  - (11) Number of delivered or completed units, increments, hours, or days as applicable, of each good or service invoiced;
  - (12) Applicable payment methodology (as stipulated in Section C.3.) of each good or service invoiced;
  - (13) Amount due for each compensable unit of good or service; and
  - (14) Total amount due for the invoice period.
- b. Contractor's invoices shall:

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

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

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

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

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

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

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

#### **D. MANDATORY TERMS AND CONDITIONS:**

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

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

## The State:

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

## The Contractor:

**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 by submitting to the State a completed Attestation (accessible through the Edison Supplier Portal) and included at Attachment A, semi-annually during the Term. If the Contractor is a party to more than one contract with the State, the Contractor may submit one attestation that applies to all contracts with the State. All Contractor attestations shall be maintained by the Contractor and made available to State officials upon request.
- b. Prior to the use of any subcontractor in the performance of this Contract, and semi-annually thereafter, during the Term, the Contractor shall obtain and retain a current, written attestation that the subcontractor shall not knowingly utilize the services of an illegal immigrant to perform work under this Contract and shall not knowingly utilize the services of any subcontractor who will utilize the services of an illegal immigrant to perform work under this Contract. Attestations obtained from subcontractors shall be maintained by the Contractor and made available to State officials upon request.
- c. The Contractor shall maintain records for all personnel used in the performance of this Contract. Contractor's records shall be subject to review and random inspection at any reasonable time upon reasonable notice by the State.
- d. The Contractor understands and agrees that failure to comply with this section will be subject to the sanctions of Tenn. Code Ann. § 12-3-309 for acts or omissions occurring after its effective date.

- e. For purposes of this Contract, "illegal immigrant" shall be defined as any person who is not: (i) a United States citizen; (ii) a Lawful Permanent Resident; (iii) a person whose physical presence in the United States is authorized; (iv) allowed by the federal Department of Homeland Security and who, under federal immigration laws or regulations, is authorized to be employed in the U.S.; or (v) is otherwise authorized to provide services under the Contract.
- D.11. Records. The Contractor shall maintain documentation for all charges under this Contract. The books, records, and documents of the Contractor, for work performed or money received under this Contract, shall be maintained for a period of five (5) full years from the date of the final payment and shall be subject to audit at any reasonable time and upon reasonable notice by the State, the Comptroller of the Treasury, or their duly appointed representatives. The financial statements shall be prepared in accordance with generally accepted accounting principles.
- D.12. Monitoring. The Contractor's activities conducted and records maintained pursuant to this Contract shall be subject to monitoring and evaluation by the State, the Comptroller of the Treasury, or their duly appointed representatives.
- D.13. Progress Reports. The Contractor shall submit brief, periodic, progress reports to the State as requested.
- D.14. Strict Performance. Failure by any Party to this Contract to require, in any one or more cases, the strict performance of any of the terms, covenants, conditions, or provisions of this Contract shall not be construed as a waiver or relinquishment of any term, covenant, condition, or provision. No term or condition of this Contract shall be held to be waived, modified, or deleted except by a written amendment signed by the Parties.
- D.15. Independent Contractor. The Parties shall not act as employees, partners, joint venturers, or associates of one another. The Parties are independent contracting entities. Nothing in this Contract shall be construed to create an employer/employee relationship or to allow either Party to exercise control or direction over the manner or method by which the other transacts its business affairs or provides its usual services. The employees or agents of one Party are not employees or agents of the other Party.
- D.16. Patient Protection and Affordable Care Act. The Contractor agrees that it will be responsible for compliance with the Patient Protection and Affordable Care Act ("PPACA") with respect to itself and its employees, including any obligation to report health insurance coverage, provide health insurance coverage, or pay any financial assessment, tax, or penalty for not providing health insurance. The Contractor shall indemnify the State and hold it harmless from any costs to the State arising from Contractor's failure to fulfill its PPACA responsibilities for itself or its employees.
- D.17. Limitation of State's Liability. The State shall have no liability except as specifically provided in this Contract. In no event will the State be liable to the Contractor or any other party for any lost revenues, lost profits, loss of business, decrease in the value of any securities or cash position, time, goodwill, or any indirect, special, incidental, punitive, exemplary or consequential damages of any nature, whether based on warranty, contract, statute, regulation, tort (including but not limited to negligence), or any other legal theory that may arise under this Contract or otherwise. The State's total liability under this Contract (including any exhibits, schedules, amendments or other attachments to the Contract) or otherwise shall under no circumstances exceed the Maximum Liability. This limitation of liability is cumulative and not per incident.
- D.18. Limitation of Contractor's Liability. In accordance with Tenn. Code Ann. § 12-3-701, the Contractor's liability for all claims arising under this Contract shall be limited to an amount equal to two (2) times the Maximum Liability amount detailed in Section C.1. and as may be amended, PROVIDED THAT in no event shall this Section limit the liability of the Contractor for: (i) intellectual property or any Contractor indemnity obligations for infringement for third-party intellectual property rights; (ii) any claims covered by any specific provision in the Contract providing for liquidated damages; or (iii) any claims for intentional torts, criminal acts, fraudulent

conduct, or acts or omissions that result in personal injuries or death. For clarity, except as otherwise expressly set forth in this Section, Contractor's indemnification obligations and other remedies available under this Contract are subject to the limitations on liability set forth in this Section.

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

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

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

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

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

member of TCRS, may be required to repay to TCRS the amount of retirement benefits the Contractor received from TCRS during the Term.

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

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

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

- D.25. State and Federal Compliance. The Contractor shall comply with all State and federal laws and regulations applicable to Contractor in the Contractor's performance of this Contract.
- D.26. Governing Law. This Contract shall be governed by and construed in accordance with the laws of the State of Tennessee, without regard to its conflict or choice of law rules. The Tennessee Claims Commission or the state or federal courts in Tennessee shall be the venue for all claims, disputes, or disagreements arising under this Contract. The Contractor acknowledges and agrees that any rights, claims, or remedies against the State of Tennessee or its employees arising under this Contract shall be subject to and limited to those rights and remedies available under Tenn. Code Ann. §§ 9-8-101 - 408.
- D.27. Entire Agreement. This Contract is complete and contains the entire understanding between the Parties relating to its subject matter, including all the terms and conditions of the Parties' agreement. This Contract supersedes any and all prior understandings, representations, negotiations, and agreements between the Parties, whether written or oral.
- D.28. Severability. If any terms and conditions of this Contract are held to be invalid or unenforceable as a matter of law, the other terms and conditions of this Contract shall not be affected and shall remain in full force and effect. The terms and conditions of this Contract are severable.
- D.29. Headings. Section headings of this Contract are for reference purposes only and shall not be construed as part of this Contract.
- D.30. Incorporation of Additional Documents. Each of the following documents is included as a part of this Contract by reference. In the event of a discrepancy or ambiguity regarding the Contractor's duties, responsibilities, and performance under this Contract, these items shall govern in order of precedence below:
- a. any amendment to this Contract, with the latter in time controlling over any earlier amendments;
  - b. this Contract with any attachments or exhibits (excluding the items listed at subsections c. through f., below), which includes Attachments A, B, C, and D;
  - c. any clarifications of or addenda to the Contractor's proposal seeking this Contract;
  - d. the State solicitation, as may be amended, requesting responses in competition for this Contract;
  - e. any technical specifications provided to proposers during the procurement process to award this Contract; and
  - f. the Contractor's response seeking this Contract.
- D.31. Iran Divestment Act. The requirements of Tenn. Code Ann. § 12-12-101, *et seq.*, addressing contracting with persons as defined at Tenn. Code Ann. §12-12-103(5) that engage in investment activities in Iran, shall be a material provision of this Contract. The Contractor certifies, under penalty of perjury, that to the best of its knowledge and belief that it is not on the list created pursuant to Tenn. Code Ann. § 12-12-106.
- D.32. Insurance. Contractor shall maintain insurance coverage as specified in this Section. The State reserves the right to amend or require additional insurance coverage, coverage amounts, and endorsements required under this Contract. Contractor's failure to maintain or submit evidence of insurance coverage, as required, is a material breach of this Contract. If Contractor loses insurance coverage, fails to renew coverage, or for any reason becomes uninsured during the Term, Contractor shall immediately notify the State. All insurance companies providing coverage must be: (a) acceptable to the State; (b) authorized by the Tennessee Department of Commerce and Insurance ("TDCI"); and (c) rated A- / VII or better by A.M. Best. All coverage must be on a primary basis and noncontributory with any other insurance or self-insurance carried by the State. Contractor agrees to name the State as an additional insured on any insurance policy with the exception of workers' compensation (employer liability) and professional liability (errors and omissions) insurance. All policies must contain an endorsement for a waiver of subrogation in favor of the State. Any deductible or self-insured retention ("SIR") over fifty thousand dollars (\$50,000) must be approved by the State. The deductible or SIR and any premiums are the

Contractor's sole responsibility. The Contractor agrees that the insurance requirements specified in this Section do not reduce any liability the Contractor has assumed under this Contract including any indemnification or hold harmless requirements.

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

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

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

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

a. Commercial General Liability ("CGL") Insurance

- 1) The Contractor shall maintain CGL, which shall be written on an ISO Form CG 00 01 occurrence form (or a substitute form providing equivalent coverage) and shall cover liability arising from property damage, premises and operations

products and completed operations, bodily injury, personal and advertising injury, and liability assumed under an insured contract (including the tort liability of another assumed in a business contract).

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

b. Workers' Compensation and Employer Liability Insurance

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

c. Automobile Liability Insurance

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

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

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

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

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

**e. Crime Insurance**

- 1) The Contractor shall maintain crime insurance, which shall be written on a “loss sustained form” or “loss discovered form” providing coverage for third party fidelity, including cyber theft and extortion. The policy must allow for reporting of circumstances or incidents that may give rise to future claims, include an extended reporting period of no less than two (2) years with respect to events which occurred but were not reported during the term of the policy, and not contain a condition requiring an arrest or conviction.

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

- D.33. Major Procurement Contract Sales and Use Tax. Pursuant to Tenn. Code Ann. § 4-39-102 and to the extent applicable, the Contractor and the Contractor’s subcontractors shall remit sales and use taxes on the sales of goods or services that are made by the Contractor or the Contractor’s subcontractors and that are subject to tax.
- D.34. Reserved.
- D.35. Boycott of Israel. The Contractor certifies that it is not currently engaged in, and covenants that it will not, for the duration of the Contract, engage in a Boycott of Israel, as that term is defined in Tenn. Code Ann. § 12-4-119.
- D.36. Prohibited Contract Terms. The prohibited contract terms and conditions enumerated in Tenn. Code Ann. § 12-3-515, shall be a material provision of this Contract. The Contractor acknowledges, understands, and agrees that the inclusion of a term or condition prohibited by Tenn. Code Ann. § 12-3-515, shall be null and void and the Contract shall be enforceable as if the Contract did not contain such term or condition.

**E. SPECIAL TERMS AND CONDITIONS:**

- E.1. Conflicting Terms and Conditions. Should any of these special terms and conditions conflict with any other terms and conditions of this Contract, the special terms and conditions shall be subordinate to the Contract’s other terms and conditions.
- E.2. Contractor Commitment to Diversity. The Contractor shall comply with and make reasonable business efforts to exceed the commitment to diversity represented by the Contractor’s Response to 34513-35725 (RFP Attachment 6.2, Section B.15.) 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 monthly report of participation in the performance of this Contract by small business enterprises and businesses owned by minorities, women, service-disabled veterans, and persons with disabilities. Such reports shall be provided to the State of Tennessee Governor's Office of Diversity Business Enterprise in the TN Diversity Software available online at:

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

- E.3. Confidentiality of Records. The Contractor agrees that strict standards of confidentiality of records shall be maintained in accordance with State and Federal law and regulations (Reference TCA Sections 71-1-131, 71-3-119, 45-10-101 et seq., 45-10-118, and 50-7-701, 45 Code of Federal Regulations Sections 205.50, 303.21, and 307.13; 26 U.S.C. Section 6103(l); 42 U.S.C. Sections 653, and 1320b-7), and all other applicable State and Federal laws regulations and any and all data-sharing agreements between the Tennessee Department of Human Services and the Federal Government, specifically including, but not limited to, the SDS-BENDEX-SVES for 1137 and/or Child Support Benefit Programs Data Matching Agreement between the Social Security Administration and the Tennessee Department of Human Services.
- a. All material and information provided to the Contractor by the State or acquired by the Contractor on behalf of the State from any non-public source whether verbal, written, electronic data, magnetic tape, cards or otherwise shall be regarded as confidential information in accordance with the provisions of State and Federal law and ethical standards and shall not be disclosed, except as otherwise permitted by law, regulation or court order, and all necessary steps shall be taken by the Contractor to safeguard the confidentiality of such material or information in conformance with Federal and State law and ethical standards.
  - b. The Contractor further agrees that any information provided by the State relative to applicants or recipients of public assistance is to be used only for the administration of this Contract or in any investigation, prosecution, or criminal, administrative, or civil proceeding conducted pursuant to this Contract. The Contractor agrees to provide safeguards to restrict the use or disclosure of any information concerning such applicants or recipients to purposes stated in this Section.
  - c. The safeguards so provided shall also prohibit disclosure to any legislator, legislative or other committee or legislative body, investigator, attorney, or prosecutor of any information which identifies by name or address any such applicant or recipient, except as otherwise permitted by law.
  - d. The Contractor agrees that any Federal or State tax related information will be treated as confidential as set forth in this Section, and will be used solely for purposes of administering the child support program, unless otherwise required by law.
  - e. It shall be the Contractor's responsibility to ensure that any destruction of confidential information, as described in this Section, will be accomplished in a manner consistent with State policy and Federal regulations pertaining to the destruction of private or confidential data. Confidential information shall be destroyed completely by a method that assures complete obliteration, removal, or destruction to preclude recognition or reconstruction of the confidential information.
  - f. The Contractor's obligations under this Section do not apply to information: in the public domain; entering the public domain but not from a breach by the Contractor of this Contract; previously possessed by the Contractor without written obligations to the State to protect it; acquired by the Contractor without written restrictions against disclosure from a third party which, to the Contractor's knowledge, is free to disclose the information; independently developed by the Contractor without the use of the State's information; or, disclosed by the State to others without restrictions against disclosure.

- g. In performance of this Contract, the Contractor agrees to comply with and assume responsibility for compliance by his or her employees and approved subcontractors with the following requirements regarding Federal Tax Information (FTI):
- (1) All work will be done under the supervision of the Contractor or the Contractor's employees and approved subcontractors.
  - (2) Any return or return information made available in any format shall be used only for the purpose of carrying out the provisions of this Contract. Information contained in such material will be treated as confidential and will not be divulged or made known in any manner to any person except as may be necessary in the performance of this Contract. Disclosure to anyone other than an officer, employee or approved subcontractor of the Contractor is prohibited.
  - (3) All returns and return information will be accounted for upon receipt and properly stored before, during, and after processing. In addition, all related output will be given the same level of protection as required for the source material.
  - (4) The Contractor certifies that the data processed during the performance of this Contract will be completely purged from all data storage components of his or her computer facility; no output will be retained by the Contractor at the time the work is completed. If immediate purging of all data storage components is not possible, the Contractor certifies that any IRS data remaining in any storage component will be safeguarded to prevent unauthorized disclosures.
  - (5) Any spoilage or any intermediate hard copy printout that may result during the processing of IRS data will be given to the State or its designee. When this is not possible, the Contractor will be responsible for the destruction of the spoilage or any intermediate hard copy printouts, and will provide the State or its designee with a statement containing the date of destruction, description of material destroyed, and the method used.
  - (6) All computer systems processing, storing, or transmitting Federal tax information must meet the requirements defined in IRS Publication 1075. To meet functional and assurance requirements, the security features of the system must have the following minimum requirements: a security policy, accountability, assurance, and documentation. All security features must be available and activated to protect against unauthorized use of and access to Federal tax information.
  - (7) No work involving Federal tax information furnished under this Contract will be subcontracted without prior written approval from the State.
  - (8) The Contractor will maintain a list of staff having authorized access. Such list will be provided to the State upon request and, upon request, to the IRS reviewing office.
  - (9) The State will have the right to void the Contract if the Contractor fails to provide the safeguards described above.
- h. Criminal/Civil Sanctions: Each officer or employee of any person to whom returns or return information is or may be disclosed will be notified in writing by such person that returns or return information disclosed to such officer or employee can be used only for a purpose and to the extent authorized herein, and that further disclosure of any such returns or return information for a purpose or to an extent unauthorized herein constitutes a felony punishable upon conviction by a fine of as much as five thousand dollars (\$5,000.00) or imprisonment for as long as five (5) years, or both, together with the costs of prosecution. Such person shall also notify each such officer and employee that any such unauthorized further disclosure of returns or return information may also result in an award of civil damages against the officer or employee in an amount not less than one

thousand dollars (\$1,000.00) with respect to each instance of unauthorized disclosure. These penalties are prescribed by I.R.C. Sections 7213 and 7431 and set forth at 26 CFR § 301.6103(n)-1.

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

Additionally, it is incumbent upon the Contractor to inform its officers and employees of the penalties for improper disclosure imposed by the Privacy Act of 1974, 5 U.S.C. § 552a. Specifically, 5 U.S.C. § 552a(l)(1), which is made applicable to Contractors by 5 U.S.C. § 552a(m)(1), provides that any officer or employee of a Contractor, who by virtue of his/her employment or official position, has possession of or access to agency records which contain individually identifiable information, the disclosure of which is prohibited by the Privacy Act or regulations established thereunder, and who knowing that disclosure of the specific material is prohibited, willfully disclosed the material in any manner to any person or agency not entitled to receive it, shall be guilty of a misdemeanor and fined not more than five thousand dollars (\$5,000.00).

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

- E.4. Printing Authorization. The Contractor agrees that no publication coming within the jurisdiction of Tenn. Code Ann. §§ 12-7-101, *et seq.*, shall be printed pursuant to this Contract unless a printing authorization number has been obtained and affixed as required by Tenn. Code Ann. § 12-7-103 (d).
- E.5. Software License Warranty. Contractor grants a license to the State to use all software provided under this Contract in the course of the State's business and purposes.
- E.6. Software Support and Maintenance Warranty. Contractor shall provide to the State all software upgrades, modifications, bug fixes, or other improvements in its software that it makes generally available to its customers.
- E.7. Intellectual Property Indemnity. The Contractor agrees to indemnify and hold harmless the State of Tennessee as well as its officers, agents, and employees from and against any and all claims or suits which may be brought against the State concerning or arising out of any claim of an alleged patent, copyright, trade secret or other intellectual property infringement. In any such claim or action brought against the State, the Contractor shall satisfy and indemnify the State for the amount of any settlement or final judgment, and the Contractor shall be responsible for all legal or other fees or expenses incurred by the State arising from any such claim. The State shall give the Contractor notice of any such claim or suit, however, the failure of the State to give such notice shall only relieve Contractor of its obligations under this Section to the extent Contractor can demonstrate actual prejudice arising from the State's failure to give notice. This Section shall not grant the Contractor, through its attorneys, the right to represent the State of Tennessee in any legal matter, as provided in Tenn. Code Ann. § 8-6-106.
- E.8. 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.

- E.9. Lobbying. The Contractor certifies, to the best of its knowledge and belief, that:
- a. No federally appropriated funds have been paid or will be paid, by or on behalf of the Contractor, to any person for influencing or attempting to influence an officer or employee of an agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.
  - b. If any funds other than federally appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with any contract, grant, loan, or cooperative agreement, the Contractor shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

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

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

- E.10. Extraneous Terms and Conditions. Contractor shall fill all orders submitted by the State under this Contract. No purchase order, invoice, or other documents associated with any sales, orders, or supply of any good or service under this Contract shall contain any terms or conditions other than as set forth in the Contract. Any such extraneous terms and conditions shall be void, invalid and unenforceable against the State. Any refusal by Contractor to supply any goods or services under this Contract conditioned upon the State submitting to any extraneous terms and conditions shall be a material breach of the Contract and constitute an act of bad faith by Contractor.

- E.11. Transfer of Ownership of Custom Software Developed for the State.

a. Definitions.

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

b. Rights and Title to the Software

- (1) All right, title and interest in and to the Contractor-Owned Software shall at all times remain with Contractor, subject to any license or transfer of rights or ownership granted under this Contract. Contractor grants the State a perpetual non-exclusive license to the Contractor-Owned Software to be used solely with the Custom-Developed Application Software and the Work Product.
- (2) Contractor shall provide the source code in the Custom-Developed Application Software, Work Product and the Contractor-Owned Software, with all subsequent modifications, enhancements, bug-fixes or any other changes in the source code of the Work Product and the Contractor-Owned Software and all other code and

documentation necessary for the Custom-Developed Application Software to be installed and function as intended and as set forth in this Contract, to the State.

- (3) Contractor may lease or sell the Custom-Developed Application Software to third parties with the written permission of the State, which permission may be conditioned on the State receiving royalties from such sales or licenses.
  - (4) All right, title and interest in and to the Custom-Developed Application Software, and to modifications thereof made by State, including without limitation all copyrights, patents, trade secrets and other intellectual property and other proprietary rights embodied by and arising out of the Custom-Developed Application Software, shall belong to State. To the extent such rights do not automatically belong to State, Contractor hereby assigns, transfers, and conveys all right, title and interest in and to the Custom-Developed Application Software, including without limitation the copyrights, patents, trade secrets, and other intellectual property rights arising out of or embodied by the Custom-Developed Application Software. Contractor and its employees, agents, contractors or representatives shall execute any other documents that State or its counsel deem necessary or desirable to document this transfer or allow State to register its claims and rights to such intellectual property rights or enforce them against third parties.
  - (5) All right, title and interest in and to the Third-Party Software shall at all times remain with the third party, subject to any license or other rights granted to the State under this Contract or otherwise.
- c. The Contractor may use for its own purposes the general knowledge, skills, experience, ideas, concepts, know-how, and techniques obtained and used during the course of performing under this Contract. The Contractor may develop for itself, or for others, materials which are similar to or competitive with those that are produced under this Contract.

#### E.12. Contractor Hosted Services Confidential Data, Audit, and Other Requirements

- a. "Confidential State Data" is defined as data deemed confidential by State or Federal statute or regulation. The Contractor shall protect Confidential State Data as follows:
  - (1) The Contractor shall ensure that all Confidential State Data is housed in the continental United States, inclusive of backup data.
  - (2) The Contractor shall encrypt Confidential State Data at rest and in transit using the current version of Federal Information Processing Standard ("FIPS") 140-2 or 140-3 (current applicable version) validated encryption technologies. The State shall control all access to encryption keys. The Contractor shall provide installation and maintenance support at no cost to the State.
  - (3) The Contractor and the Contractor's processing environment containing Confidential State Data shall either (1) be in accordance with at least one of the following security standards: (i) International Standards Organization ("ISO") 27001; (ii) Federal Risk and Authorization Management Program ("FedRAMP"); or (2) be subject to an annual engagement by a CPA firm in accordance with the standards of the American Institute of Certified Public Accountants ("AICPA") for a System and Organization Controls for service organizations ("SOC") Type II audit. The State shall approve the SOC audit control objectives. The Contractor shall provide proof of current ISO certification or FedRAMP authorization for the Contractor and Subcontractor(s) or provide the State with the Contractor's and Subcontractor's annual SOC Type II audit report within 30 days from when the CPA firm provides the audit report to the

Contractor or Subcontractor. The Contractor shall submit corrective action plans to the State for any issues included in the audit report within 30 days after the CPA firm provides the audit report to the Contractor or Subcontractor.

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

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

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

b. Minimum Requirements

- (1) The Contractor and all data centers used by the Contractor to host State data, including those of all Subcontractors, must comply with the State's Enterprise Information Security Policies as amended periodically. The State's Enterprise Information Security Policies document is found at the following URL: <https://www.tn.gov/finance/strategic-technology-solutions/strategic-technology-solutions/sts-security-policies.html>.
- (2) The Contractor agrees to maintain the Application so that it will run on a current, manufacturer-supported Operating System. "Operating System" shall mean the software that supports a computer's basic functions, such as scheduling tasks, executing applications, and controlling peripherals.
- (3) If the Application requires middleware or database software, Contractor shall maintain middleware and database software versions that are at all times fully compatible with current versions of the Operating System and Application to ensure that security vulnerabilities are not introduced.

c. Comptroller Audit Requirements

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

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

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

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

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

- d. Business Continuity Requirements. The Contractor shall maintain set(s) of documents, instructions, and procedures which enable the Contractor to respond to accidents, disasters, emergencies, or threats without any stoppage or hindrance in its key operations ("Business Continuity Requirements"). Business Continuity Requirements shall include:
- (1) "Disaster Recovery Capabilities" refer to the actions the Contractor takes to meet the Recovery Point and Recovery Time Objectives defined below. Disaster Recovery Capabilities shall meet the following objectives:
    - i. Recovery Point Objective ("RPO"). The RPO is defined as the maximum targeted period in which data might be lost from an IT service due to a major incident: Twenty-four (24) hours.
    - ii. Recovery Time Objective ("RTO"). The RTO is defined as the targeted duration of time and a service level within which a business process must be restored after a disaster (or disruption) in order to avoid unacceptable consequences associated with a break in business continuity: seventy-two (72) hours.
  - (2) The Contractor shall perform at least one Disaster Recovery Test every three hundred sixty-five (365) days. A "Disaster Recovery Test" shall mean the process of verifying the success of the restoration procedures that are executed after a critical IT failure or disruption occurs. The Disaster Recovery Test shall use actual State Data Sets that mirror production data, and success shall be

defined as the Contractor verifying that the Contractor can meet the State's RPO and RTO requirements. A "Data Set" is defined as a collection of related sets of information that is composed of separate elements but can be manipulated as a unit by a computer. The Contractor shall provide written confirmation to the State after each Disaster Recovery Test that its Disaster Recovery Capabilities meet the RPO and RTO requirements.

- E.13. Liquidated Damages. In the event of a Contract performance or compliance failure by the Contractor, the State may, but is not obligated to address such Contract performance or compliance failure and/or assess damages ("Liquidated Damages") in accordance with Attachment B of the Contract. The State shall notify the Contractor of any amounts to be assessed as Liquidated Damages via the Control Memorandum process specified in Contract Section A.39. The Parties agree that due to the complicated nature of the Contractor's obligations under this Contract it would be difficult to specifically designate a monetary amount for a Contract performance or compliance failure, as these amounts are likely to be uncertain and not easily proven. Contractor has carefully reviewed the Liquidated Damages contained in Contract Attachment B and agrees that these amounts represent a reasonable relationship between the amount and what might reasonably be expected in the event of a Contract performance or compliance failure, are a reasonable estimate of the damages that would occur from a Contract performance or compliance failure, and are not punitive. The Parties agree that although the Liquidated Damages represent the reasonable estimate of the damages and injuries sustained by the State due to the Contract performance or compliance failure, they do not include any injury or damage sustained by a third party. The Contractor agrees that the Liquidated Damages are in addition to any amounts Contractor may owe the State pursuant to the indemnity provision or any other sections of this Contract.

The State is not obligated to assess Liquidated Damages as a result of a Contract performance or compliance failure before availing itself of any other remedy. In the event of multiple Contract performance or compliance failures, the Parties recognize that the cumulative effect of these Contract performance failures may exceed the compensation provided by Liquidated Damages. The State may choose to avail itself of any other remedy available under this Contract or at law or equity. The Parties further recognize that the State may not obtain both Liquidated Damages and Actual Damages for the same occurrence of a Contract performance or compliance failure.

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

- E.14. 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 or ensure that Contractor is in full compliance with its obligations under this Contract in relation to PII. Upon termination or expiration of the Contract or at the 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. The obligations set forth in this Section shall survive the termination of this Contract.

- E.15. Federal Funding Accountability and Transparency Act (FFATA). This Contract requires the Contractor to provide supplies or services that are funded in whole or in part by federal funds that are subject to FFATA. The Contractor is responsible for ensuring that all applicable requirements, including but not limited to those set forth herein, of FFATA are met and that the Contractor provides information to the State as required.

The Contractor shall comply with the following:

- a. Reporting of Total Compensation of the Contractor's Executives.
  - (1) The Contractor shall report the names and total compensation of each of its five most highly compensated executives for the Contractor's preceding completed fiscal year, if in the Contractor's preceding fiscal year it received:
    - i. 80 percent or more of the Contractor's annual gross revenues from federal procurement contracts and federal financial assistance subject to the Transparency Act, as defined at 2 CFR § 170.320 (and subawards); and
    - ii. \$25,000,000 or more in annual gross revenues from federal procurement contracts (and subcontracts), and federal financial assistance subject to the Transparency Act (and subawards); and
    - iii. The public does not have access to information about the compensation of the executives through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(a), 78o(d)) or section 6104 of the Internal Revenue Code of 1986. (To determine if the public has access to the compensation information, see the U.S. Securities and Exchange Commission total compensation filings at <http://www.sec.gov/answers/execomp.htm>).

As defined in 2 C.F.R. § 170.315, "Executive" means officers, managing partners, or any other employees in management positions.
  - (2) Total compensation means the cash and noncash dollar value earned by the executive during the Contractor's preceding fiscal year and includes the following (for more information see 17 C.F.R. § 229.402(c)(2)):
    - i. Salary and bonus.

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

The Contractor will obtain a Unique Entity Identifier (SAM) and maintain its number for the term of this Contract. More information about obtaining a Unique Entity Identifier Number can be found at: <https://sam.gov/content/home>.

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.

- E.16. Americans with Disabilities Act. The Contractor must comply with the Americans with Disabilities Act (ADA) of 1990, as amended, including implementing regulations codified at 28 CFR Part 35 "Nondiscrimination on the Basis of Disability in State and Local Government Services" and at 28 CFR Part 36 "Nondiscrimination on the Basis of Disability in Public Accommodations and Commercial Facilities," and any other laws or regulations governing the provision of services to persons with a disability, as applicable. For more information, please visit the ADA website: <http://www.ada.gov>.

- E.17. License. State hereby grants to Contractor the non-exclusive, non-transferrable license, privilege and authority to use the Property in connection with the project as approved, set out in this Contract at Section A all other rights being reserved to State for the Term of this Contract as provided below.

- a. Property. The "Property" licensed mark:



- i. Exclusivity. None.
  - ii. Territory. Worldwide.
- b. Term. Contractor shall begin to use the Property as set out in Contract Section A and shall cease upon termination of the Contract unless otherwise agreed to herein.

- c. Use Limitations and Collateral Materials. The Property may be used on signs, promotional materials, marketing materials, Contractor’s visitor website, and/or as otherwise set out in Contract Section A.42. The License also includes the right to create and use promotional, advertising and packing material in connection with marketing of the services. In advertising and promoting with use of the Property, Contractor shall seek prior approval as set out in this Section. The Contractor does not have any rights to use the Property on any consumer products or merchandise rights.
- d. Use of Signage and Other Materials. Upon expiration of this License, Contractor shall cease use of the Property on current materials. If this License is terminated earlier than contemplated by this Contract, Contractor and State shall negotiate in good faith the wind up of the License.
- e. Sub-Licensing. Sub-licensing is not allowed.
- f. Approvals. All use of the Property shall require State’s prior written approval. Failure to obtain approvals at all stages shall be cause for termination of Contractor’s use of the Property, only, and not the remainder of the Contract unless failure to use the Property results in a material breach.
- g. Intellectual Property Notices. The Property shall always be displayed with the “®” symbol and the following notice shall appear, where space permits, on all marketing or collateral materials bearing the Property:



is a registered trademark and is used under license to the Contractor.

- h. Exclusive Property of State. The Property is and shall remain the exclusive property of State and all rights arising from the use of the Property, shall inure to State. Contractor acknowledges that it does not now have and, in the future, will not assert any right, title or interest of any kind or nature whatsoever in or to the Property nor will it change or contest any of State’s rights therein.
- i. Royalty Rate. This License shall be royalty free.

**IN WITNESS WHEREOF,**

**CONTRACTOR LEGAL ENTITY NAME:**

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**CONTRACTOR SIGNATURE**

**DATE**

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**PRINTED NAME AND TITLE OF CONTRACTOR SIGNATORY (above)**

**DEPARTMENT OF HUMAN SERVICES:**

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**CLARENCE H. CARTER, COMMISSIONER**

**DATE**

**ATTACHMENT A****ATTESTATION RE PERSONNEL USED IN CONTRACT PERFORMANCE**

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

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

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**CONTRACTOR SIGNATURE**

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

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**PRINTED NAME AND TITLE OF SIGNATORY**


---

**DATE OF ATTESTATION**

## LIQUIDATED DAMAGES

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

DHS may elect to apply the following liquidated damages remedies in the event the Contractor fails to perform its obligations under this Contract in a proper and/or timely manner. Upon determination by DHS that the Contractor has failed to meet any of the requirements of this Contract in a proper and/or timely manner, DHS will notify the Contractor in writing of the performance or compliance failure and of the potential liquidated damages to be assessed. Should the performance or compliance failure remain uncorrected for more than thirty (30) calendar days from the date of the original notification of the performance or compliance failure by DHS, DHS may impose an additional liquidated damage of Five Hundred Dollars (\$500) per day from the date of the original notification to Contractor until said performance or compliance failure is resolved.

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

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

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

## ATTACHMENT B Continued

## LIQUIDATED DAMAGES EVENT AND AMOUNTS

Liquidated Damages Event	Liquidated Damages Amount
<p><b><u>Liquidated Damage Event 1:</u></b></p> <p>Failure to ensure that all personnel of the Contractor and of any subcontractors authorized to handle Federal Tax related information sign an IRS Confidentiality Form annually. (Reference Section E.3.j.)</p>	<p>Five hundred dollars (\$500.00) per person per failure.</p>
<p><b><u>Liquidated Damage Event 2:</u></b></p> <p>Failure to maintain New Hire Reporting as defined in sections A.9., A.10., A.11., A.12, A.17., and A.29.</p>	<p>Three Hundred and thirty-five dollars (\$335.00) per incident.</p>
<p><b><u>Liquidated Damage Event 3:</u></b></p> <p>Failure to ensure that all Employer Maintenance activities on TCSES or its replacement system remain current as defined in Section A.7., A.15., and A.16.</p>	<p>Three Hundred and thirty-five dollars (\$335.00) per incident.</p>
<p><b><u>Liquidated Damage Event 4:</u></b></p> <p>Failure to monitor and report noncompliant employers as required in Section A.17.</p>	<p>Three Hundred and thirty-five dollars (\$335.00) per incident.</p>

**Attachment C****Exhibit 7 Safeguarding Contract Language****I. PERFORMANCE**

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

- (1) All work will be performed under the supervision of the Contractor.
- (2) The Contractor and Contractor's officers or employees to be authorized access to FTI must meet background check requirements defined in IRS Publication 1075. The Contractor will maintain a list of officers or employees authorized access to FTI. Such list will be provided to the agency and, upon request, to the IRS.
- (3) FTI in hardcopy or electronic format shall be used only for the purpose of carrying out the provisions of this Contract. FTI in any format 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 or disclosure of FTI to anyone other than the Contractor or the Contractor's officers or employees authorized is prohibited.
- (4) FTI will be accounted for upon receipt and properly stored before, during, and after processing. In addition, any related output and products require the same level of protection as required for the source material.
- (5) The Contractor will certify that FTI processed during the performance of this Contract will be completely purged from all physical and electronic data storage with no output to be retained by the Contractor at the time the work is completed. If immediate purging of physical and electronic data storage is not possible, the Contractor will certify that any FTI in physical or electronic storage will remain safeguarded to prevent unauthorized disclosures.
- (6) Any spoilage or any intermediate hard copy printout that may result during the processing of FTI will be given to the agency. 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 agency with a statement containing the date of destruction, description of material destroyed, and the destruction method.
- (7) All computer systems receiving, processing, storing, or transmitting FTI must meet the requirements 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 FTI.
- (8) No work involving FTI furnished under this Contract will be subcontracted without the prior written approval of the IRS.
- (9) Contractor will ensure that the terms of FTI safeguards described herein are included, without modification, in any approved subcontract for work involving FTI.
- (10) To the extent the terms, provisions, duties, requirements, and obligations of this Contract apply to performing services with FTI, the Contractor shall assume toward the subcontractor all obligations, duties and responsibilities that the agency under this Contract assumes toward the Contractor, and the subcontractor shall assume toward the Contractor all the same obligations, duties and responsibilities which the Contractor assumes toward the agency under this Contract.

- (11) In addition to the subcontractor's obligations and duties under an approved subcontract, the terms and conditions of this Contract apply to the subcontractor, and the subcontractor is bound and obligated to the Contractor hereunder by the same terms and conditions by which the Contractor is bound and obligated to the agency under this Contract.
- (12) For purposes of this Contract, the term "Contractor" includes any officer or employee of the Contractor with access to or who uses FTI, and the term "subcontractor" includes any officer or employee of the subcontractor with access to or who uses FTI.
- (13) The agency will have the right to void the Contract if the Contractor fails to meet the terms of FTI safeguards described herein.

## II. CRIMINAL/CIVIL SANCTIONS

- (1) Each officer or employee of a Contractor to whom FTI is or may be disclosed shall be notified in writing that FTI 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 FTI for a purpose not authorized herein constitutes a felony punishable upon conviction by a fine of as much as \$5,000 or imprisonment for as long as 5 years, or both, together with the costs of prosecution.
- (2) Each officer or employee of a Contractor to whom FTI is or may be accessible shall be notified in writing that FTI accessible to such officer or employee may be accessed only for a purpose and to the extent authorized herein, and that access/inspection of FTI without an official need-to-know for a purpose not authorized herein constitutes a criminal misdemeanor punishable upon conviction by a fine of as much as \$1,000 or imprisonment for as long as 1 year, or both, together with the costs of prosecution.
- (3) Each officer or employee of a Contractor to whom FTI is or may be disclosed shall be notified in writing that any such unauthorized access, inspection or disclosure of FTI 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 \$1,000 for each unauthorized access, inspection, or disclosure, or the sum of actual damages sustained as a result of such unauthorized access, inspection, or disclosure, plus in the case of a willful unauthorized access, inspection, or disclosure or an unauthorized access/inspection or disclosure which is the result of gross negligence, punitive damages, plus the cost of the action. These penalties are prescribed by IRC sections 7213, 7213A and 7431 and set forth at 26 CFR 301.6103(n)-1.
- (4) 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/her employment or official position, has possession of or access to agency records which contain individually identifiable information, the disclosure of which is prohibited by the Privacy Act or regulations established thereunder, and who knowing that disclosure of the specific material is so 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 \$5,000.
- (5) Granting a contractor access to FTI must be preceded by certifying that each officer or employee understands the agency's security policy and procedures for safeguarding FTI. A contractor and each officer or employee must maintain their authorization to access FTI through annual recertification of their understanding of the agency's security policy and procedures for safeguarding FTI. The initial certification and recertifications must be documented and placed in the agency's files for review. As part of the certification and at least annually afterwards, a contractor and each officer or employee must be advised of the provisions of IRC sections 7213, 7213A, and 7431 (see Exhibit 4, Sanctions for Unauthorized Disclosure, and Exhibit 5, Civil Damages for Unauthorized Disclosure). The training on the agency's security policy and procedures provided before the initial certification and annually thereafter must also cover the

incident response policy and procedure for reporting unauthorized disclosures and data breaches. (See Section 10) For the initial certification and the annual recertifications, the contractor and each officer or employee must sign, either with ink or electronic signature, a confidentiality statement certifying their understanding of the security requirements.

### III. INSPECTION

The IRS and the Agency, with 24-hour notice, shall have the right to send its inspectors into the offices and plants of the Contractor to inspect facilities and operations performing any work with FTI under this Contract for compliance with requirements defined in IRS Publication 1075. The IRS' right of inspection shall include the use of manual and/or automated scanning tools to perform compliance and vulnerability assessments of information technology (IT) assets that access, store, process or transmit FTI. Based on the inspection, corrective actions may be required in cases where the Contractor is found to be noncompliant with FTI safeguard requirements.



## STATE OF TENNESSEE

**Acceptable Use Policy  
State of Tennessee Information Technology Resources****Purpose:**

The purpose of this policy is to outline the acceptable uses of State Information Technology (IT) resources for the State of Tennessee. The policy outlines the standards and constraints for acceptable use of State IT resources, regardless of hosting location, which means all equipment, networks, hardware, software, data, technical knowledge, expertise and other resources including, but not limited to, computing equipment, phones, end-user and application software and telecommunications equipment whether owned, leased or otherwise provided by the State. This policy is in place to protect both the users of State IT resources and the State of Tennessee. Inappropriate use exposes the State to many risks including non-compliance with local, state and federal laws, rules and policies, violation of contracts and licenses, and compromise of State IT resources.

**References:**

*Tennessee Code Annotated, Section 4-3-5501, et seq., effective July 1, 2015.*

*Tennessee Code Annotated, Section 10-7-504(i), effective May 30, 2001.*

*Tennessee Code Annotated, Section 10-7-512, effective May 27, 1999.*

*Information Systems Council Policies*

*State of Tennessee Enterprise Information Security Policies.*

**Objectives:**

- Ensure the confidentiality, integrity and availability of State IT resources that may be processed in any manner by the State or any agent of the State.
- Ensure proper usage of State IT resources.
- Prevent access to State IT resources from unauthorized users or unauthorized access or unauthorized use.
- Inform users there is no expectation of or right to privacy in their use of State IT resources.
- Prevent individuals from using State IT resources to obtain anything of value to which those individuals are not entitled.
- Prevent individuals from wrongfully or improperly using or harming State IT resources.

**Scope:**

This Acceptable Use Policy applies to all users who have been provided access rights to the State of Tennessee IT resources, State provided email, and/or Internet via agency issued network or system User ID's. This Policy applies to all government branches of the State of Tennessee pursuant to *Tennessee Code Annotated, Section 4-3-5501, et seq.* and the Information Systems Council policies. Each branch, department, agency or political subdivision of the State can create its own policy, but it must be at least as restrictive as this policy.

**Use and Prohibitions:****A. Information Technology Resources**

State employees, vendors/business partners/subrecipients, local governments, and other governmental agencies may be authorized to access State IT resources to perform business functions with or on behalf of the State. Any user of State IT resources must act within the scope of his/her employment or contractual relationship with the State and must agree to abide by the terms of this agreement as evidenced by his/her signature. Transactions resulting from any activity using State IT resources are the property of the State and are thus subject to open records laws.

A public record is defined as follows:

*“Public record(s)” or “state record(s)” means all documents, papers, letters, maps, books, photographs, microfilms, electronic data processing files and output, films, sound recordings or other material, regardless of physical form or characteristics made or received pursuant to law or ordinance or in connection with the transaction of official business by any governmental agency. (Tennessee Code Annotated, § 10-7-301(6)).*

State records are open to public inspection unless they are protected by State or Federal law, rule or regulation and include, but are not limited to, draft letters, working drafts of reports, and what are intended to be casual comments. Be aware that anything sent as electronic mail could be requested to be made available to the public.

**Prohibitions**

- Accessing, viewing, copying, sending, sharing and/or selling any information that is confidential by law, rule or regulation, or not otherwise available, without proper authorization.
- Utilizing or installing unauthorized or unlicensed software on State IT resources.
- Leveraging IT resources that have not been authorized by Department of Finance and Administration, Strategic Technology Solutions.
- Using State IT resources to play or download games, music or videos that are not in support of business functions.
- Leaving workstation unattended without engaging password protection for the keyboard or workstation.
- Utilizing unauthorized peer-to-peer networking or peer-to-peer file sharing.
- Using State IT resources in support of unlawful activities.
- Utilizing State IT resources for activities that violate policies.

- Storing non-State data on State IT resources including, but not limited to, pictures and videos.

## **B. Email**

Email and calendar functions are provided to expedite and improve communications among IT resources users.

### **Prohibitions**

- Sending unsolicited junk email or chain letters (e.g. “spam”) to any users of the network.
- Sending any material that contains viruses, Trojan horses, worms, time bombs, cancel bots, or any other harmful or malicious programs.
- Sending copyrighted materials via email that is either not within the fair use guidelines or without prior permission from the author or publisher.
- Sending or receiving communications that violate policies established by the Department of Human Resources or the agency where the user is employed or under contract.
- Sending confidential material to an unauthorized recipient or sending confidential e-mail without the proper security standards (including encryption if necessary) being met.

Email created, sent or received in conjunction with the transaction of official business are public records in accordance with Tennessee Code Annotated, §§ 10-7-301 through 10-7-308, and the rules of the Public Records Commission.

## **C. Internet Access**

Internet access is provided to State IT resources users to assist them in performing the duties and responsibilities associated with their positions.

### **Prohibitions**

- Using the Internet to access non-State provided web email services.
- Using the Internet for non-State approved business purposes.
- Using the Internet for un-approved offsite storage.
- Using the Internet when it violates any federal, state or local law.

## **D. Endpoint**

Endpoint devices are provided to IT resources users to facilitate work efforts and to provide access to additional State IT resources and services.

### **Prohibitions**

- Concealing or masking identity to hide activity.
- Removing or deactivating monitoring or logging software.
- Taking any action to circumvent security controls or administrative support or maintenance.
- Creating accounts that have not been authorized.
- Running unauthorized software or scripts.

- Accessing IT resources for purposes other than those for which the access was granted.
- Taking actions to hide files.

### **Statement of Consequences**

Noncompliance with this policy may constitute a legal risk to the State of Tennessee, an organizational risk to the State of Tennessee in terms of potential harm to employees or citizen security, a security risk to the State of Tennessee's IT resources and the user community, a privacy risk to State of Tennessee assets and/or potential personal liability. The presence of unauthorized data on State IT resources could lead to liability on the part of the State as well as the individuals responsible for obtaining it.

### **Statement of Enforcement**

Noncompliance with this policy may result in the following immediate actions:

- Written notification will be sent to the head of the appropriate agency and to designated points of contact in the human resources office and the IT resources office in the agency where the user is employed to identify the user and the nature of the noncompliance. In the case of a vendor, subrecipient, or contractor, the contract administrator will be notified.
- User access may be terminated immediately, and the user may be subject to subsequent review and action as determined by the agency, department, board, commission leadership, contract administrator or other appropriate authority.

### **Personal Incidental Usage**

Users may make calls, use the Internet, and send and receive emails for incidental and occasional personal use provided that such use does not:

- Violate any laws, rules, regulations or policies.
- Disrupt, distract from, or interfere with State business.
- Constitute private business activities.
- Contravene supervisor direction regarding personal use of State IT resources.

Users may not obtain or use data obtained as a result of or through their position as a user for personal purposes. Users should be aware that all usage may be monitored and that there is no expectation of or right to privacy.

It is not a violation of this policy to obtain and use data pursuant to the Tennessee Public Records Act.

Review of this document takes place within the STS Policy Review Committee sessions and will occur on an annual (within every three hundred and sixty-five (365) days) basis at a minimum.



STATE OF TENNESSEE  
**Acceptable Use Policy**  
**State of Tennessee Information Technology Resources**  
**User Agreement Acknowledgement**

As a user of State of Tennessee IT resources, I agree to abide by the State of Tennessee Acceptable Use Information Technology Resources Policy and the following promises and guidelines as they relate to the policy established:

1. I will protect State IT resources against unauthorized disclosure and/or use.
2. I will maintain all computer access credentials in the strictest of confidence; immediately change them if I suspect their secrecy has been compromised and will report activity that is contrary to the provisions of this agreement to my supervisor and to the office of the Chief Information Security Officer.
3. I will be accountable for all transactions performed using my computer access credentials.
4. I will not disclose any confidential information other than to persons authorized to access such information as identified by state or federal laws, regulations or policies
5. I will not obtain or use data obtained as a result of or through my position as a user for personal purposes.
6. I agree to report to Strategic Technology Solutions Customer Care Center, any suspicious network activity or security breach.

**Privacy Expectations**

The State of Tennessee monitors State IT resources, including, but not limited to, real time monitoring. Users have no expectation of or right to privacy. All transactions and communications are considered to be State property and may be examined by management for any reason including, but not limited to, security and/or employee conduct.

I acknowledge that I must adhere to this policy as a condition for receiving access to State of Tennessee IT resources.

I understand the violation or disregard of this policy may result in my loss of access and disciplinary action, up to and including termination of my employment, termination of my business relationship with the State of Tennessee, and any other appropriate legal action, including possible prosecution under the provisions of the Tennessee Personal and Commercial Computer Act of 2003 as cited at Tennessee Code Annotated, § 39-14-601 et seq., and other applicable laws.

I have read and agree to comply with the policy set forth herein.

EMPLOYEE

\_\_\_\_\_  
Type or Print Name

\_\_\_\_\_  
Edison Employee ID

\_\_\_\_\_  
Signature \*

\_\_\_\_\_  
Date

NON-STATE EMPLOYEE

\_\_\_\_\_  
Type or Print Name

\_\_\_\_\_  
Vendor ID

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

\* By acknowledging this policy via the Edison system, I agree that my acknowledgement is the equivalent to my handwritten signature