

**CONTRACT
BETWEEN THE STATE OF TENNESSEE,
DEPARTMENT OF TREASURY
AND
AON RISK SERVICES, INC. OF WASHINGTON D.C.**

This Contract, by and between the State of Tennessee, Department of Treasury, hereinafter referred to as the "Department" and Aon Risk Services, Inc. of Washington D.C., hereinafter referred to as the "Contractor," is for the provision of insurance broker services in connection with the acquisition of insurance for property, business interruption, fine arts, boiler and machinery, builders' risk, and fidelity and crime, as further defined in the "SCOPE OF SERVICES."

The Contractor is a for-profit corporation.

Contractor Federal Employer Identification, Social Security, or Edison Registration ID # Number 36-4305364

Contractor Place of Incorporation or Organization: District of Columbia

WITNESSETH:

WHEREAS, the Department administers the State of Tennessee's Property/Casualty Insurance Program. This Program provides all-risk, replacement cost coverage, including flood and earthquake, for all buildings and building contents owned by the State of Tennessee. This is accomplished through the procurement of insurance policies from private carriers.

WHEREAS, the Department also procures a Builders' Risk Insurance Policy to provide coverage for construction projects; boiler and machinery coverage to provide inspection services and boiler coverage; fine arts insurance to protect valuable works of art; and fidelity coverage to protect the State of Tennessee from financial loss due to employee dishonesty; and

WHEREAS, due to the ever-changing environment within the insurance industry, the Department has determined that the services provided by an insurance broker allow a competitive procurement process for obtaining the necessary policies. The Department has further determined that an independent review of its current insurance program ensures that the State of Tennessee has access to all acceptable insurance markets and has the most comprehensive cost effective coverage available; and

WHEREAS, to accomplish the above, the Department issued a request for proposal for the provision of insurance broker services, and the Contractor was the successful proposer to perform said services.

NOW, THEREFORE, in consideration of the premises and the mutual promises herein contained, the parties have agreed and do hereby enter into this Contract according to the provisions set out herein:

DEFINITIONS:

"State" means the State of Tennessee and all of its agencies, departments and institutions, including the University of Tennessee as well as other Tennessee public colleges and universities.

"Employee" means any person who is a State official, including members of the Tennessee General Assembly and legislative officials elected by the General Assembly, or any person who is employed in the service of and whose compensation is payable by the State, or any person who is employed by the State whose compensation is paid in whole or in part from federal funds, but does not include any person employed on a contractual or percentage basis.

"Real Property" means all State-owned buildings and other State-owned structures, and all non-State-owned buildings or structures for which the State is contractually obligated to insure.

"Business Personal Property" means all State-owned contents wherever located, contents of others under the State's care, custody, and control as required by contract, and mobile equipment not licensed for highway use while garaged at State locations.

A. SCOPE OF SERVICES:

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

A.2. Assessment of State's Insurance Needs. During the term of this Contract and in accordance with the terms hereof, the Contractor shall assist the Department in ensuring that the State maintains all-risk, replacement cost coverage for all Real Property and Business Personal Property. Lines of coverage include, but are not limited to, fire and extended coverage, earthquake, flood, property in transit, builders' risk, fine arts, electronic data processing equipment and media, valuable papers, Employee honesty and faithful performance, and business interruption. The Contractor shall perform an in-depth analysis of the State's current insurance programs, and make written recommendations to the Department regarding areas of concern, if any, and present alternative solutions to address such concerns. The analysis shall include, but not be limited to, specific limits of liability, per occurrence deductibles, annual aggregate deductibles, stop loss provisions, additional coverages, the elimination of any gaps and/or overlaps in coverage, and other related issues as may be agreed to by the parties. The written recommendations resulting from this analysis shall be provided to the Department on or before May 1, 2011. The Contractor shall, at such times as the Department requests, meet with appropriate Department personnel at the Department's facilities in Nashville to discuss the results of the analysis.

A.3. Development of Conceptual Policy. The Contractor and the Department shall develop a conceptual policy which outlines coverages, specific limits of liability, per occurrence deductibles, annual aggregate deductibles, stop loss provisions, additional coverages necessary to meet the State's insurance needs, and such other provisions as may be appropriate. The conceptual policy shall be completed on or before May 30, 2011. After approval of the conceptual policy, the Contractor shall develop for the Department's approval a conceptual model of the proposed structure of the State's insurance program. The conceptual model shall include, but not be limited to, recommendations regarding insurance carriers qualified to participate, individual layers of coverage and carriers associated with those layers; limits of liability assumed by each carrier; the name of the primary or lead carrier and description of the carrier's role (standardization of forms, claims process, safety engineering, etc.); proposed increases in limits by line of coverage; projected costs for such increased limits; a plan to address potential gaps/overlaps in coverage; deductible and aggregate retention level options; and projected total premium costs anticipated for the July 1, 2011 through June 30, 2012 policy period. Non-admitted carriers may be considered eligible proposers only if quotes cannot be obtained through qualified admitted carriers. The Department reserves the right to accept or reject any proposed carrier. The conceptual model shall be provided to the Department on or before June 2, 2011.

A.4. Placement of Required Insurance Coverages. The Contractor shall take all steps necessary to place insurance coverages in accordance with the conceptual model approved pursuant to Section A.3 above. Such steps shall include, but not be limited to, the development of a submission document and related materials designed to communicate the State's insurance needs to the insurance marketplace, and communication and negotiation with insurance carriers. Required insurance coverages shall be procured and insurance binders delivered to the Department's Division of Risk Management at the address specified in Section E.2 below, on or before June 30, 2011, with policies to follow within thirty (30) calendar days after said policies have been received by the Contractor.

A.5. Declaration of Earned Revenues. The Contractor shall provide the Department with a report that provides a full accounting of all revenues earned from carriers, including fees, retail commissions, wholesale commissions, premium finance compensation, contingency fees, and any other compensation earned in the placement of the State's insurance hereunder. Said report shall be delivered to the Department upon the initial placement of the State's insurance policies, and annually thereafter at the time of policy renewal, during the term of this Contract as defined in Section B below. The Contractor shall use its best efforts to cause each carrier to show the commission rate on all policies issued to the State hereunder.

- A.6. Policy Maintenance Services. The Contractor shall take such steps as are necessary to ensure that insurance policies purchased meet the State's specifications, including the review of applicable insurance binders, policies, certificates, and other documents to ensure accuracy. The Contractor shall also assist the Department, at the Department's request, in resolving claim disputes between the Department and any company providing insurance or bond coverage procured pursuant to this Contract and such other services as are necessary to ensure that coverages procured are maintained.
- A.7. Policy Evaluation Services. During the period of this Contract, the Contractor shall assist the Department in evaluating whether the State's best interest is served by renewal of existing insurance policies or the procurement of new policies and/or insurance carriers. By no later than one hundred twenty (120) calendar days prior to the renewal date of any policy or bond procured pursuant to this Contract, the Contractor shall evaluate the existing insurance market including, but not limited to, the condition of the general insurance market, and report its findings to the Department. Within such one hundred twenty (120) day period, the Contractor shall also ascertain and report to the Department on whether the State's existing insurance carriers propose premium rate increases, coverage modifications and/or anticipate other renewal problems.
- A.8. Policy Renewal; New Policy; Reassessment of Insurance Needs.
- a. Policy Renewal. If during the term of this Contract the Department elects to renew any policy or bond or to replace any insurance carrier procured pursuant hereto, the Contractor shall take such steps as are necessary to renew any such policy or bond or to replace any such insurance carrier, without compromising policy terms, conditions, and/or coverages. Such steps shall be taken in accordance with this Contract and subject to the Department's approval. Once the policy or bond is renewed or the carrier is replaced, the Contractor shall provide the declaration of earned revenues report, and the policy maintenance and policy evaluation services described in Sections A.5 – A.7 above.
 - b. New Policy. If during the term of this Contract the Department elects to procure a new insurance policy or bond, the Contractor shall take such steps as are necessary to place the new insurance coverages in accordance with the conceptual model approved pursuant to Section A.3 above. The steps to be taken in the placement of such coverages shall be in accordance with Section A.4 above and subject to the Department's approval. Notwithstanding the preceding two (2) sentences, the Department may elect, at its sole discretion, to develop a new conceptual policy and/or new conceptual model as described in Section A.3 above. In such event, the Contractor shall perform the services described in Section A.3 and shall place the new insurance coverages in accordance with the new conceptual model approved by the Department. Any new insurance coverage requirements shall be procured by a date mutually agreed to by the parties. Once the new coverages are procured, the Contractor shall provide the declaration of earned revenues report, and the policy maintenance and policy evaluation services described in Sections A.5 – A.7 above.
 - c. Reassessment of Insurance Needs. At the Department's request, the Contractor shall reassess the State's insurance needs pursuant to Section A.2 above in any subsequent year during the term of this Contract. The written recommendations resulting from the reassessment shall be provided to the Department by a date mutually agreeable to the parties. The Contractor shall, at such times as the Department requests, meet with appropriate Department personnel at the Department's facilities in Nashville to discuss the results of the reassessment.
- A.9. Optional Service. The Department may at any time, with written notice to the Contractor, request the Contractor to perform any or all of the following risk management services on behalf of the Department relative to the State of Tennessee's Property/Casualty Insurance Program: risk assessment, alternative risk financing review, risk control, environmental assessment, claims accounting and preparation services (CAPS) assistance in business interruption/extra expense evaluation, EQ/IRAS modeling, provision of flood zones or conversion of GPS coordinates to flood zone data on a continuous basis.

- a. If the Contractor intends to bill the Department for any service requested by the Department under this Section A.9, the Contractor shall provide the Department with a proposal. In no event more than five (5) business days after receipt of a written request from the Department, the Contractor shall respond with a written proposal for completing the service. Said proposal must specify:
- (1) the effect, if any, of implementing the requested service on all other services required under this Contract;
 - (2) any specific effort involved in completing the service;
 - (3) the expected schedule for completing the service;
 - (4) the maximum number of person hours required for the service; and
 - (5) the maximum cost for the service, PROVIDED THAT such maximum cost shall not exceed the product of the person hours required multiplied by the appropriate payment rate proposed for optional service.

The Contractor shall not perform any optional service until the Department has approved the proposal. If approved, the Department will sign the proposal, and it shall constitute a Memorandum of Understanding (MOU) between the Contract Parties pertaining to the specified service and shall be incorporated, hereby, as a part of this Contract.

- b. Performance— Subsequent to Department approval of an MOU, the Contractor shall complete the required service. The Department will be the sole judge of the acceptable completion of work and, upon such determination, shall provide the Contractor written approval of the work.
- c. Remuneration— The Department will remunerate the Contractor only for acceptable work. All acceptable work performed pursuant to an approved MOU, without a formal amendment of this contract, shall be remunerated in accordance with and further limited by contract section C.3.c., PROVIDED THAT, the Department shall be liable to the Contractor only for the cost of the actual person hours worked to complete the work required by the MOU, not to exceed the maximum cost for the service detailed in the MOU. In no instance shall the Department be liable to the Contractor for the cost of any person hours worked in excess of the maximum person hours indicated in or of any amount exceeding the maximum cost specified by the approved MOU authorizing the service. Upon Department approval of the work, the Contractor shall invoice the Department in accordance with the relevant provisions of this Contract.

B. CONTRACT PERIOD:

- B.1. This Contract shall be effective for the period beginning April 15, 2011, and ending on June 30, 2016. The Contractor hereby acknowledges and affirms that neither the Department nor the State of Tennessee shall have any obligation for services rendered by the Contractor which were not performed within this specified contract period.

C. PAYMENT TERMS AND CONDITIONS:

- C.1. Maximum Liability. In no event shall the maximum liability of the Department under this Contract exceed two hundred thirty-seven thousand five hundred dollars and no cents (\$237,500). The payment rates in section C.3 shall constitute the entire compensation due the Contractor for all service and Contractor obligations hereunder regardless of the difficulty, materials or equipment required. The payment rates include, but are not limited to, all applicable taxes, fees, overheads, and all other direct and indirect costs incurred or to be incurred by the Contractor. The Contractor is not entitled to be paid the maximum liability for any period under the Contract or any extensions of the Contract for work not requested by the Department. The maximum liability represents available funds for payment to the Contractor and does not guarantee payment of any such funds

to the Contractor under this Contract unless the Department requests work and the Contractor performs said work. In which case, the Contractor shall be paid in accordance with the payment rates detailed in section C.3. The Department 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.

- C.2. **Compensation Firm.** The payment rates and the maximum liability of the Department and the State of Tennessee under this Contract are firm for the duration of the Contract and are not subject to escalation for any reason unless amended.
- C.3. **Payment Methodology.** The Contractor shall be compensated based on the payment rates herein for units of service authorized by the Department in a total amount not to exceed the Contract Maximum Liability established in section C.1.
- a. The Contractor's compensation shall be contingent upon the satisfactory completion of units, milestones, or increments of service defined in section A.
 - b. The Contractor shall be compensated for said units, milestones, or increments of service based upon the following payment rates:

Service Description	Amount (per compensable increment)
(1) Services Detailed in Sections A.2 – A.8 for the period: April 15, 2011 – June 30, 2011	\$7,500
(2) Services Detailed in Sections A.2 – A.8 for the period: July 1, 2011 – October 31, 2011	\$7,500
(3) Services Detailed in Sections A.2 – A.8 for the period: November 1, 2011 – February 29, 2012	\$7,500
(4) Services Detailed in Sections A.2 – A.8 for the period: March 1, 2012 – June 30, 2012	\$7,500
(5) Services Detailed in Sections A.2 – A.8 for the period: July 1, 2012 – October 31, 2012	\$10,000
(6) Services Detailed in Sections A.2 – A.8 for the period: November 1, 2012 – February 28, 2013	\$10,000
(7) Services Detailed in Sections A.2 – A.8 for the period: March 1, 2013 – June 30, 2013	\$10,000
(8) Services Detailed in Sections A.2 – A.8 for the period: July 1, 2013 – October 31, 2013	\$10,000
(9) Services Detailed in Sections A.2 – A.8 for the period: November 1, 2013 – February 28, 2014	\$10,000
(10) Services Detailed in Sections A.2 – A.8 for the period: March 1, 2014 – June 30, 2014	\$10,000
(11) Services Detailed in Sections A.2 – A.8 for the period: July 1, 2014 – October 31, 2014	\$10,000
(12) Services Detailed in Sections A.2 – A.8 for the period: November 1, 2014 – February 28, 2015	\$10,000
(13) Services Detailed in Sections A.2 – A.8 for the period: March 1, 2015 – June 30, 2015	\$10,000
(14) Services Detailed in Sections A.2 – A.8 for the period: July 1, 2015 – October 31, 2015	\$10,000

(15) Services Detailed in Sections A.2 – A.8 for the period: November 1, 2015 – February 29, 2016	\$10,000
(16) Services Detailed in Sections A.2 – A.8 for the period: March 1, 2016 – June 30, 2016	\$10,000

- c. The Contractor shall be compensated for optional service requested and performed pursuant to Contract Section A.9., without a formal amendment of this contract based upon the payment rates detailed in the schedule below and as agreed pursuant to said Section A.9., PROVIDED THAT compensation to the Contractor for such service shall not exceed TEN PERCENT (10%) of the contract maximum liability. If, at any point during the Contract period, the State determines that the cost of necessary optional service would exceed said maximum amount, the State may amend this Contract to address the need.

Service Description	Amount (per hour subject to the provisions of Contract section A.9. and the associated MOU)				
	April 15, 2011 – June 30, 2012	July 1, 2012 – June 30, 2013	July 1, 2013 – June 30, 2014	July 1, 2014 – June 30, 2015	July 1, 2015 – June 30, 2016
Optional Service Pursuant to Contract Section A.9.	\$175	\$175	\$175	\$175	\$175

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

- C.4. Travel Compensation. The Contractor shall not be compensated or reimbursed for travel, meals, or lodging.
- C.5. Invoice Requirements. The Contractor shall invoice the State only for completed increments of service and for the amount stipulated in section C.3, above, and present said invoices no more often than monthly, with all necessary supporting documentation, to:

Tennessee Treasury Department
Division of Risk Management
9th Floor, Andrew Jackson State Office Building
502 Deaderick Street
Nashville, Tennessee 37243

- a. Each invoice shall clearly and accurately detail all of the following required 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: Tennessee Treasury Department, Division of Risk Management
 - (5) Customer Account Number (assigned by the Contractor to the above-referenced Customer)
 - (6) Contractor Name
 - (7) Contractor Federal Employer Identification, Social Security, or Tennessee Edison Registration ID Number Referenced in Preamble of this Contract

- (8) Contractor Contact for Invoice Questions (name, phone, and/or fax)
- (9) Contractor Remittance Address
- (10) Description of Delivered Service
- (11) Complete Itemization of Charges, which shall detail the following:
 - i. Service or Milestone Description (including name & title as applicable) of each service invoiced
 - ii. Number of Completed Units, Increments, Hours, or Days as applicable, of each service invoiced
 - iii. Applicable Payment Rate (as stipulated in Section C.3.) of each service invoiced
 - iv. Amount Due by Service
 - v. Total Amount Due for the invoice period

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

- (1) include only charges for service described in Contract Section A and in accordance with payment terms and conditions set forth in Contract Section C;
- (2) only be submitted for completed service and shall not include any charge for future work;
- (3) not include sales tax or shipping charges; and
- (4) initiate the timeframe for payment (and any discounts) only when the State is in receipt of the invoice, and the invoice meets the minimum requirements of this section C.5.

C.6. Payment of Invoice. A payment by the Department shall not prejudice the Department's right to object to or question any payment, invoice, or matter in relation thereto. A payment by the Department shall not be construed as acceptance of any part of the work or service 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 theretofore made which are determined by the Department, on the basis of audits conducted in accordance with the terms of this Contract, not to constitute proper remuneration for compensable services.

C.8. Deductions. The Department 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, which 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 Department under this Contract until the Department has received the following documentation properly completed.

- a. The Contractor shall complete, sign, and present to the Department an "Authorization Agreement for Automatic Deposit (ACH Credits) Form" provided by the Department. By doing so, the Contractor acknowledges and agrees that, once said form is received by the Department, all payments to the Contractor, under this or any other contract the Contractor has with the State of Tennessee shall be made by Automated Clearing House (ACH).
- b. The Contractor shall complete, sign, and present to the Department a "Substitute W-9 Form" provided by the Department. The taxpayer identification number detailed by said form must agree with the Contractor's Federal Employer Identification Number or Tennessee Edison Registration ID referenced in this Contract.

D. STANDARD TERMS AND CONDITIONS:

- D.1. Required Approvals. The Department is not bound by this Contract until it is signed by the contract parties and approved by appropriate officials in accordance with applicable Tennessee laws and regulations (depending upon the specifics of this contract, said officials may include, but are not limited to, the Commissioner of Finance and Administration, the Commissioner of Human Resources, and the Comptroller of the Treasury).
- D.2. Modification and Amendment. This Contract may be modified only by a written amendment signed by all parties hereto and approved by both the officials who approved the base contract and, depending upon the specifics of the contract as amended, any additional officials required by Tennessee laws and regulations (said officials may include, but are not limited to, the Commissioner of Finance and Administration, the Commissioner of Human Resources, and the Comptroller of the Treasury).
- D.3. Termination for Convenience. The Department may terminate this Contract without cause for any reason. Said termination shall not be deemed a breach of contract by the Department. The Department shall give the Contractor at least thirty (30) days written notice before the effective termination date. The Contractor shall be entitled to compensation for satisfactory, authorized service completed as of the termination date, but in no event shall the Department be liable to the Contractor for compensation for any service which has not been rendered. Upon such termination, the Contractor shall have no right to any actual, general, special, incidental, consequential, or any other damages whatsoever of any description or amount.
- D.4. 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 violates any terms of this Contract, the Department shall have the right to immediately terminate the Contract and withhold payments in excess of fair compensation for completed services. Notwithstanding the above, the Contractor shall not be relieved of liability to the Department for damages sustained by virtue of any breach of this Contract by the Contractor.
- D.5. Subcontracting. The Contractor shall not assign this Contract or enter into a subcontract for any of the services performed under this Contract without obtaining the prior written approval of the Department. If such subcontracts are approved by the Department, each shall contain, at a minimum, sections of this Contract below pertaining to "Conflicts of Interest," "Nondiscrimination," and "Records" (as identified by the section headings). Notwithstanding any use of approved subcontractors, the Contractor shall be the prime contractor and shall be responsible for all work performed.
- D.6. Conflicts of Interest. The Contractor warrants that no part of the total Contract 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 Contractor in connection with any work contemplated or performed relative to 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 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 months has been, an employee of the State of Tennessee.
- D.7. 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, color, religion, sex, national origin, or any other classification protected by Federal, Tennessee State constitutional, or statutory law. The Contractor shall, upon request, show proof of such nondiscrimination and shall post in conspicuous places, available to all employees and applicants, notices of nondiscrimination.
- D.8. Prohibition of Illegal Immigrants. The requirements of *Tennessee Code Annotated*, Section 12-4-124, *et seq.*, 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 hereby attests, certifies, warrants, and assures that the Contractor shall not knowingly utilize the services of an illegal immigrant in the performance of this Contract and shall not knowingly utilize the services of any subcontractor who will utilize the services of an illegal immigrant in the performance of this Contract. The Contractor shall reaffirm this attestation, in writing, by submitting to the Department a completed and signed copy of the document at Attachment 1, hereto, semi-annually during the period of this Contract. Such 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 period of this Contract, 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 relative to this Contract and shall not knowingly utilize the services of any subcontractor who will utilize the services of an illegal immigrant to perform work relative to this Contract. Attestations obtained from such 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. Said records shall be subject to review and random inspection at any reasonable time upon reasonable notice by the Department.
- d. The Contractor understands and agrees that failure to comply with this section will be subject to the sanctions of *Tennessee Code Annotated*, Section 12-4-124, *et seq.* for acts or omissions occurring after its effective date. This law requires the Commissioner of Finance and Administration to prohibit a contractor from contracting with, or submitting an offer, proposal, or bid to contract with the State of Tennessee to supply goods or services for a period of one year after a contractor is discovered to have knowingly used the services of illegal immigrants during the performance of this Contract.
- e. For purposes of this Contract, "illegal immigrant" shall be defined as any person who is not either a United States citizen, a Lawful Permanent Resident, or a person whose physical presence in the United States is authorized or allowed by the federal Department of Homeland Security and who, under federal immigration laws and/or regulations, is authorized to be employed in the U.S. or is otherwise authorized to provide services under the Contract.

- D.9. **Records**. The Contractor shall maintain documentation for all charges under this Contract. The books, records, and documents of the Contractor, insofar as they relate to work performed or money received under this Contract, shall be maintained for a period of three (3) 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 Department, the Comptroller of the Treasury, or their duly appointed representatives. The financial statements shall be prepared in accordance with generally accepted accounting principles.
- D.10. **Monitoring**. The Contractor's activities conducted and records maintained pursuant to this Contract shall be subject to monitoring and evaluation by the Department, the Comptroller of the Treasury, or their duly appointed representatives.
- D.11. **Progress Reports**. The Contractor shall submit brief, periodic, progress reports to the Department as requested.
- D.12. **Strict Performance**. Failure by any party to this Contract to insist in any one or more cases upon 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 such 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 hereto.

- D.13. Independent Contractor. The parties hereto, in the performance of this Contract, shall not act as employees, partners, joint venturers, or associates of one another. It is expressly acknowledged by the parties hereto that such parties are independent contracting entities and that nothing in this Contract shall be construed to create an employer/employee relationship or to allow either 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 shall not be deemed or construed to be the employees or agents of the other party for any purpose whatsoever. The Contractor, being an independent contractor and not an employee of the Department or the State of Tennessee, agrees to carry adequate public liability and other appropriate forms of insurance, including adequate public liability and other appropriate forms of insurance on the Contractor's employees, and to pay all applicable taxes incident to this Contract.
- D.14. State of Tennessee Liability. The State of Tennessee shall have no liability except as specifically provided in this Contract.
- D.15. Force Majeure. The obligations of the parties to this Contract are subject to prevention by causes beyond the parties' control that could not be avoided by the exercise of due care including, but not limited to, natural disasters, riots, wars, epidemics, or any other similar cause.
- D.16. State and Federal Compliance. The Contractor shall comply with all applicable State and Federal laws and regulations in the performance of this Contract.
- D.17. Governing Law. This Contract shall be governed by and construed in accordance with the laws of the State of Tennessee. The Contractor agrees that it will be subject to the exclusive jurisdiction of the courts of the State of Tennessee in actions that may arise under this Contract. The Contractor acknowledges and agrees that any rights or claims against the State of Tennessee or its employees hereunder, and any remedies arising therefrom, shall be subject to and limited to those rights and remedies, if any, available under Tennessee Code Annotated, Sections 9-8-101 through 9-8-407.
- D.18. Completeness. This Contract is complete and contains the entire understanding between the parties relating to the subject matter contained herein, 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 relating hereto, whether written or oral.
- D.19. 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 hereof shall not be affected thereby and shall remain in full force and effect. To this end, the terms and conditions of this Contract are declared severable.
- D.20. Headings. Section headings of this Contract are for reference purposes only and shall not be construed as part of this Contract.
- E. SPECIAL TERMS AND CONDITIONS:**
- E.1. Conflicting Terms and Conditions. Should any of these special terms and conditions conflict with any other terms and conditions of this Contract, these special terms and conditions shall control.
- E.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. Any such communications, regardless of method of transmission, shall be addressed to the respective party at the appropriate mailing address, facsimile number, or EMAIL

address as set forth below or to that of such other party or address, as may be hereafter specified by written notice.

The Department:

Steve Gregory, Director of Risk Management
State of Tennessee, Department of Treasury
9th Floor, Andrew Jackson State Office Building
502 Deaderick Street
Nashville, Tennessee 37243-0248
steve.gregory@tn.gov
Telephone # (615) 741-1009
FAX # (615) 532-4979

The Contractor:

Carleen Patterson, Vice President, Deputy National Practice Leader
Aon Risk Services, Inc. of Washington D.C.
1120 20th Street NW, Suite 600
Washington, DC 20036
carleen.patterson@aon.com
Telephone # 202-429-8507
FAX # 312-381-6603

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

- E.3. Subject to Funds Availability. The Contract is subject to the appropriation and availability of State and/or Federal funds. In the event that the funds are not appropriated or are otherwise unavailable, the Department reserves the right to terminate the Contract upon written notice to the Contractor. Said termination shall not be deemed a breach of Contract by the Department or the State of Tennessee. Upon receipt of the written notice, the Contractor shall cease all work associated with the Contract. Should such an event occur, the Contractor shall be entitled to compensation for all satisfactory and authorized services completed as of the termination date. Upon such termination, the Contractor shall have no right to recover from the Department or the State of Tennessee any actual, general, special, incidental, consequential, or any other damages whatsoever of any description or amount.
- E.4. Tennessee Consolidated Retirement System. The Contractor acknowledges and understands that, subject to statutory exceptions contained in *Tennessee Code Annotated*, Section 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 pursuant to *Tennessee Code Annotated*, Title 8, Chapter 35, Part 3 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 Department 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 period of this Contract.
- E.5. Insurance. The Contractor shall carry adequate liability and other appropriate forms of insurance.
- a. The Contractor shall maintain, at minimum, the following insurance coverage:
- (1) Comprehensive Commercial General Liability (including personal injury & property damage, premises/operations, independent contractor, contractual liability and completed operations/products) with a bodily injury/property damage combined single

limit not less than one million dollars (\$1,000,000) per occurrence and two million dollars (\$2,000,000) aggregate.

- (2) A blanket fidelity bond or other comparable forms of insurance to provide loss protection in the event of employee theft, dishonesty or fraud which is not less than (\$1,000,000) per occurrence and in the aggregate.
- (3) Errors and omissions coverage on a per occurrence basis in an amount not less than (\$2,000,000) per occurrence and in the aggregate.

- b. At any time Department may require the Contractor to provide a valid Certificate of Insurance detailing Coverage Description; Insurance Company & Policy Number; Exceptions and Exclusions; Policy Effective Date; Policy Expiration Date; Limit(s) of Liability; and Name and Address of Insured. Failure to provide required evidence of insurance coverage shall be a material breach of this Contract.

E.6. Department Ownership of Work Products. The Department shall have ownership, right, title, and interest, including ownership of copyright, in all work products, including computer source code, created, designed, developed, derived, documented, installed, or delivered under this Contract subject to the next subsection and full and final payment for each "Work Product." The Department shall have royalty-free and unlimited rights and license to use, disclose, reproduce, publish, distribute, modify, maintain, or create derivative works from, for any purpose whatsoever, all said Work Products.

- a. To the extent that the Contractor uses any of its pre-existing, proprietary or independently developed tools, materials or information ("Contractor Materials"), the Contractor shall retain all right, title and interest in and to such Contractor Materials, and the Department shall acquire no right, title or interest in or to such Contractor Materials EXCEPT the Contractor grants to the Department an unlimited, non-transferable license to use, copy and distribute internally, solely for the Department's internal purposes, any Contractor Materials reasonably associated with any Work Product provided under the Contract.
- b. The Contractor shall furnish such information and data as the Department may request, including but not limited to computer code, that is applicable, essential, fundamental, or intrinsic to any Work Product and Contractor Materials reasonably associated with any Work Product, in accordance with this Contract and applicable state law.
- c. Nothing in this Contract shall prohibit the Contractor's use for its own purposes of the general knowledge, skills, experience, ideas, concepts, know-how, and techniques obtained and used during the course of providing the services requested under this Contract.
- d. Nothing in the Contract shall prohibit the Contractor from developing for itself, or for others, materials which are similar to and/or competitive with those that are produced under this Contract.

E.7. 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. this Contract document with any attachments or exhibits (excluding the items listed at subsections b. through e., below);
- b. any clarifications of or addenda to the Contractor's proposal seeking this Contract;
- c. the Department solicitation, as may be amended, requesting proposals in competition for this Contract;

- d. any technical specifications provided to proposers during the procurement process to award this Contract,
- e. the Contractor's proposal seeking this Contract.

E.8. 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 proposal responding to RFP-30901-17411 (Attachment 6.2, Section B.15) and resulting in this Contract. The Contractor shall assist the Department in monitoring the Contractor's performance of this commitment by providing, as requested, a quarterly report of participation in the performance of this Contract by small business enterprises and businesses owned by minorities, women, and persons with a disability. Such reports shall be provided to the state of Tennessee Governor's Office of Diversity Business Enterprise in form and substance as required by said office.

E.9. Independence of Services. During the term of this Contract, neither the Contractor nor any of its affiliates shall be permitted to provide insurance coverage to the Department under any of the Department's Risk Management Programs. For purposes of this subsection, "affiliate" means any person, firm or corporation that directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with the Contractor, whether such control is through stock ownership, contract or otherwise.

IN WITNESS WHEREOF,
AON RISK SERVICES, INC. OF WASHINGTON D.C.:

MARCH 31, 2011

CONTRACTOR SIGNATURE DATE

OTIS TOLBERT, RESIDENT MANAGING DIRECTOR

PRINTED NAME AND TITLE OF CONTRACTOR SIGNATORY (above)

DEPARTMENT OF TREASURY:

April 13, 2011

DAVID H. LILLARD, JR., STATE TREASURER DATE

ATTESTATION RE PERSONNEL USED IN CONTRACT PERFORMANCE

SUBJECT CONTRACT NUMBER:	
CONTRACTOR LEGAL ENTITY NAME:	Aon Risk Services, Inc. of Washington D.C.
FEDERAL EMPLOYER IDENTIFICATION NUMBER: (or Social Security Number)	364305364

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



CONTRACTOR SIGNATURE

NOTICE: This attestation MUST be signed by an individual empowered to contractually bind the Contractor. If said individual is not the chief executive or president, this document shall attach evidence showing the individual's authority to contractually bind the Contractor.

OTIS TOLBERT, RESIDENT MANAGING DIRECTOR

PRINTED NAME AND TITLE OF SIGNATORY

MARCH 31, 2011

DATE OF ATTESTATION