



AGENDA
ADVISORY COUNCIL ON STATE PROCUREMENT MEETING #040
WEDNESDAY, OCTOBER 24, 2018, 1:30 P.M.
TN TOWER – 3rd FLOOR, NASHVILLE ROOM

AGENDA ITEM	PAGE #
I. Call to Order	--
II. Approve Minutes from August 28, 2018 Meeting..... (see attached documentation)	3
III. New Business Proposed revisions to the following Central Procurement Office documents (see attached documentation):	
(1) Endowment Grant Contract Cover Sheet.....	11
(2) Delegated Grant Authority ("DGA") Cover Sheet.....	16
(3) Grant ("GR") and Governmental Grant ("GG") Contract Template's – Optional Section E.#., Equal Opportunity Clause.....	20
(4) Rule Exception Request ("RER").....	24
(5) Special Contract Request ("SCR")	28
(6) RFP Template – Alternate Language if Redlines Allowed – CPO USE ONLY - NEW	36
(7) <i>Contract Management Policy and Procedures</i> , Policy Number 2013-004.....	38
(8) <i>Business Conduct and Ethics Policy and Procedures</i> , Policy Number 2013- 009	68
(9) No Cost Contract Template ("NC")	94
(10) Governing Law Contract Term	155
(11) Hold Harmless Contract Term.....	159
(12) State Furnished Property Contract Term.....	163
(13) Fee for Goods or Services Contract Template ("FA") – Section D.32 – Insurance Options - NEW	167
IV. Other Business	--
V. Adjournment	--

**MINUTES OF AUGUST 28, 2018
MEETING**

MINUTES
ADVISORY COUNCIL ON STATE PROCUREMENT MEETING #039
TUESDAY, AUGUST 28, 2018 – 9:30 A.M.
TN TOWER – 3rd FLOOR – NASHVILLE ROOM

Members in Attendance:

Mike Perry, Buddy Lea, Summer Carr, Bryan Chriske (designated by Comptroller Wilson to attend in Jason Mumpower's absence), Ted Hayden, Sean Newman, Michelle Lane, and Brad Eskind

Members Participating by Telephone:

Lynn Farnham

Others in Attendance:

Paul Krivacka, Alex Komisar, Jenny Young, Elle Lipinski, Veronica Peters, Shannon Howell, Randy Dean, Andy Kidd

I. Call to Order: Mr. Mike Perry, Chief Procurement Officer, called the meeting to order and recognized that a quorum of voting members was present.

II. Announcement: Mr. Perry announced that Bryan Chriske was designated by Comptroller Wilson to represent the Comptroller's Office as Jason Mumpower was unable to attend the meeting.

III. Minutes from the June 4, 2018 Meeting: Mr. Perry asked if there were any corrections or additions to the minutes from the June 4, 2018 meeting. Seeing none, a motion was made by Mr. Bryan Chriske, Office of the Comptroller of the Treasury, to accept the minutes as presented. The motion was seconded by Mr. Buddy Lea, Assistant Commissioner, Department of Finance and Administration. All members voted in favor – none opposed.

IV. New Business:

Mr. Perry asked Mr. Paul Krivacka, Lead Attorney/Director of Category Management, Central Procurement Office, to present the following New Business agenda items:

Mr. Krivacka noted that agenda items (1) and (2) were very similar, and so asked that they be combined for discussion. There were no objections.

Mr. Krivacka proceeded to present agenda items (1) and (2):

- (1) Fee for Goods or Services Contract ("FA") Template and No Cost Contract ("NC") for Contractors Model - Section E. #., Contractor Hosted Services Requirements and Confidential Data Options
- (2) Grant ("GR") and Governmental Grant ("GG") Templates – Section E. #., Grantee Hosted Services Requirements and Confidential Data Options - NEW

Mr. Krivacka summarized the following points with regard to the Fee for Goods or Services Contract ("FA") Template and No Cost Contract ("NC") for Contractors Model - Section E. #., Contractor Hosted Services Requirements and Confidential Data Options proposal and Grant ("GR") and Governmental Grant ("GG") Templates – Section E. #., Grantee Hosted Services Requirements and Confidential Data Options – NEW proposal:

- This language was requested by STS and COT and will go into contracts if a contractor or subcontractor will host state services or state data in the cloud. There are different options depending on the type of data (e.g., confidential state data, HIPAA data, etc.). The general instructions will now provide guidance to procurement professionals as to what provisions to include.
- The Department of Health requested that this language also be added to the GR and GG templates for instances where they may have a grantee exchanging confidential data with the State. So this proposal would add the "Grantee Hosted Services Requirements and Confidential State Data Options" to the Grant Templates (GG and GR) with instructions to get a STS endorsement if this language will be used.

Seeing no discussion on agenda items (1) or (2), Mr. Lea made a motion to recommend the Fee for Goods or Services Contract ("FA") Template and No Cost Contract ("NC") for Contractors Model - Section E. #., Contractor Hosted Services Requirements and Confidential Data Options proposal and Grant ("GR") and Governmental Grant ("GG") Templates – Section E. #., Grantee Hosted Services Requirements and Confidential Data Options – NEW proposal as presented to the Procurement Commission for approval. The motion was seconded by Mr. Chriske. All members voted in favor – none opposed.

Mr. Krivacka proceeded to present agenda items (3), (4), and (5):

- (3) Contract Amendment Template Option – Effective Date Once Approved
- (4) Grant ("GR") and Governmental Grant ("GG") Amendment Template Option – Effective Date Once Approved
- (5) Delegated Authority ("DA") Amendment Template Option – Effective Date Once Approved

Mr. Krivacka summarized the following points with regard to the Contract Amendment Template Option – Effective Date Once Approved proposal, Grant ("GR") and Governmental Grant ("GG") Amendment Template Option – Effective Date Once Approved proposal, and Delegated Authority ("DA") Amendment Template Option – Effective Date Once Approved proposal:

- Proposed optional language to add to all of the Amendment Templates (Contract, GR, GG and Delegated Authority).

- This option would be utilized when the procurement professional did not have a particular date for when the proposed changes would go into effect but rather wanted the amendment to become effective once the amendment has been fully approved.
- This would allow some flexibility to procurement professionals who may have difficult timing a start date due to Fiscal Review calendars or other factors.
- Proposed language would also prevent gaps between approval and actual implementation when a request is time-sensitive.
- (Recommended by COT).

Mr. Lea asked if the Comptroller's Office is satisfied with this language. Mr. Chriske confirmed that the Comptroller's Office is satisfied with this language.

Seeing no further discussion, Mr. Lee made a motion to recommend agenda items (3), (4), and (5) Contract Amendment Template Option – Effective Date Once Approved proposal, Grant (“GR”) and Governmental Grant (“GG”) Amendment Template Option – Effective Date Once Approved proposal, and Delegated Authority (“DA”) Amendment Template Option – Effective Date Once Approved proposal as presented to the Procurement Commission for approval. The motion was seconded by Mr. Chriske. All members voted in favor – none opposed.

Mr. Krivacka then proceeded to agenda item (6):

(6) STS Pre-Approval Endorsement Request

Mr. Krivacka summarized the following points with regards to the STS Pre-Approval Endorsement Request proposal:

- Sometimes STS endorses a solicitation or contract on the condition that particular contract language is included. This proposal will add language for STS to check when additional language is attached and that their endorsement is contingent upon inclusion of that additional language.
- Addition of the checkbox, on this form, will signal to oversight examiners that this was the condition and to check that it was indeed included along with the other contract documents.

Seeing no discussion on agenda item (6), Mr. Lea made a motion to recommend STS Pre-Approval Endorsement Request proposal as presented to the Procurement Commission for approval. The motion was seconded by Mr. Chriske. All members voted in favor – none opposed.

Mr. Krivacka then proceeded to present agenda item (7):

(7) Edison Configurator Term - Delivery

Mr. Krivacka presented the following point with regard to the Edison Configurator Term - Delivery proposal:

- This proposal modifies the Delivery contract term to add clarity. The procurement professional drafting the contract will fill-in the number of days after receipt of purchase order that a Contractor is required to provide the goods or services.

Seeing no discussion on agenda item (7), Mr. Lea made a motion to recommend Edison Configurator Term – Delivery proposal as presented to the Procurement Commission for approval. The motion was seconded by Mr. Chriske. All members voted in favor – none opposed.

Mr. Krivacka then proceeded to present agenda item (8):

(8) Edison Configurator Term - Safety of Chemical Products

Mr. Krivacka presented the following points with regard to the Edison Configurator Term - Safety of Chemical Products proposal:

- This proposal removes the reference to MSDSsearch.com as this website is no longer functioning or available.
- Contractors are still required to maintain Safety Data Sheets online but on the manufacturer’s website or relevant trade association’s website instead (as long as the information is freely available to the public).

Mr. Lea asked for confirmation that this is just simply clean up. Mr. Krivacka confirmed and stated this reflects the reality that the website is no longer available. To obtain data safety sheets the State came up with a compromise and alternative. Mr. Chriske wanted to confirm that there is a reference to this in Tennessee Code Annotated (“TCA”) and asked if there was a conflict. Mr. Krivacka stated the problem with the Tennessee Code Annotated (“TCA”) is that this language no longer exists. Mr. Krivacka went on to say that the Tennessee Code Annotated (“TCA”) needs to be cleaned up, there is not a conflict, and you have to employ a reasonable statutory construction on the statute that no longer reflects reality.

Seeing no further discussion on agenda item (8), Mr. Chriske made a motion to recommend Edison Configurator Term – Safety of Chemical Products proposal as presented to the Procurement Commission for approval. The motion was seconded by Mr. Ted Hayden, Executive Director of Compliance, State of Tennessee Real Estate Asset Management. All members voted in favor – none opposed.

Mr. Krivacka then proceeded to present agenda item (9):

(9) Edison Configurator Term - Samples Required – NEW

Mr. Krivacka presented the following points with regard to the Edison Configurator Term - Samples Required – NEW proposal:

- This proposal will add a new term for those instances where a procurement professional knows that they will require samples as part of the response.
- The term includes instructions for the Respondents and informs them that they are required to submit samples by the Response Deadline.

Seeing no discussion on agenda item (9), Mr. Hayden made a motion to recommend Edison Configurator Term – Samples Required – NEW proposal as presented to the Procurement Commission for approval. The motion was seconded by Mr. Chriske. All members voted in favor – none opposed.

Mr. Krivacka then proceeded to present agenda item (10):

(10) Edison Configurator Term - Samples Optional

Mr. Krivacka presented the following points with regard to the Edison Configurator Term - Samples Optional proposal:

- This proposal is a minor revision to the language in the Edison configurator for the Samples term used when the State reserves the right to request samples but the samples are not required at the time of response deadline.
- Provides instructions for how a respondent may request that their samples be returned.

Seeing no discussion on agenda item (10), Mr. Chriske made a motion to recommend Edison Configurator Term – Samples Optional proposal as presented to the Procurement Commission for approval. The motion was seconded by Mr. Lea. All members voted in favor – none opposed.

Mr. Krivacka then proceeded to present agenda item (11):

(11) Grant (“GR”) and Governmental Grant (“GG”) Templates – Renumbering Sections

Mr. Krivacka presented the following points with regard to the Grant (“GR”) and Governmental Grant (“GG”) Templates – Renumbering Sections proposal:

- This proposal is to eliminate all instructional language in the GG and GR templates that ask the drafter to renumber sections that are deleted.
- Instead of renumbering, the numbering and heading will remain the same as the standard template language, but what will be replaced instead is in bold and all caps the word Reserved. That allows people to know that the numbering remains consistent but only the text from the section has been removed.
- This consistency will assist oversight review examiners. This was a recommendation from the Comptroller’s Office.

Mr. Lea states that this seems practical and improves efficiency. Mr. Perry states that the idea is later if an additional term is inserted, it could be on the reserved. Mr. Krivacka confirms there’s that possibility. Mr. Krivacka gives the following example: B1 typically deals with the terms of the agreement in every single document. For some reason we were to take B1 out and instead add an addition to B2. Moving B2 up to B1 would cause confusion. This creates problems when reviewing the document. This proposal allows everything to be in its place and that only the part that was taken out was taken out. The word “Reserved” is a common commercial practice.

Seeing no further discussion on agenda item (11), Mr. Hayden made a motion to recommend

Edison Configurator Term – Samples Optional proposal as presented to the Procurement Commission for approval. The motion was seconded by Summer Carr, Assistant General Counsel, Department of Economic and Community Development. All members voted in favor – none opposed.

Mr. Krivacka then proceeded to present agenda item (12):

(12) Request for Proposal (“RFP”) Amendment Template – Section 2., The State’s Response to Written Questions & Comments Table

Mr. Krivacka presented the following points with regard to the Request for Proposal (“RFP”) Amendment Template – Section 2., The State’s Response to Written Questions & Comments Table proposal:

- This request will add two new columns to Item #2, “The State’s Response to Written Question and Comments:” (1) RFP Section; and (2) Page #.
- This change will assist oversight examiners in reviewing the State’s responses as it will provide a quick reference point to see the context of any questions, as applicable.

Seeing no discussion on agenda item (12), Mr. Lea made a motion to recommend Request for Proposal (“RFP”) Amendment Template – Section 2., The State’s Response to Written Questions & Comments Table proposal as presented to the Procurement Commission for approval. The motion was seconded by Mr. Chriske. All members voted in favor – none opposed.

Mr. Krivacka then proceeded to present agenda item (13):

(13) Request for Proposal (“RFP”) and Request for Qualifications (“RFQ”) Template’s Response Format – Instructions and Font Color

Mr. Krivacka presented the following points with regard to the Request for Proposal (“RFP”) and Request for Qualifications (“RFQ”) Template’s Response Format – Instructions and Font Color proposal:

- The standard RFP and RFQ Template language requires that responses be submitted as a “standard CD-R recordable disc or USB flash drive” but as technology advances and CD drives are not as common this recommendation will add flexibility to the template by providing the Solicitation Coordinator with the option to revise the Response Format instructions as needed.
- Added to the optional instructions and also changed font color to red, which indicates to the procurement professionals to modify as needed.

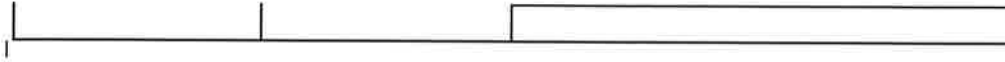
Seeing no discussion on agenda item (13), Mr. Lea made a motion to recommend Request for Proposal (“RFP”) and Request for Qualifications (“RFQ”) Template’s Response Format – Instructions and Font Color proposal as presented to the Procurement Commission for approval. The motion was seconded by Mr. Hayden. All members voted in favor – none opposed.

V. Other Business: Mr. Perry asked if there was any other business to be brought before the Council and saw none.

VI. Adjournment: Seeing no other business, a motion for adjournment was made by Mr. Chriske and seconded by Mr. Lea. All members voted in favor – none opposed; whereupon the August 28, 2018 Advisory Council meeting was adjourned.

**ENDOWMENT GRANT CONTRACT
COVER SHEET**

REDLINE



**ENDOWMENT GRANT CONTRACT
COVER SHEET**

CLEAN



ENDOWMENT GRANT CONTRACT

Begin Date	End Date	Agency Tracking #	Edison ID		
Public Chapter	Bill #	Section	Item		
Grantee Legal Entity Name			Edison Vendor ID		
Service Caption (one line only)					
Funding —					
FY	State	Federal	Interdepartmental	Other	TOTAL Contract Amount
TOTAL:					
Ownership/Control					
<input type="checkbox"/> African American <input type="checkbox"/> Asian <input type="checkbox"/> Hispanic <input type="checkbox"/> Native American <input type="checkbox"/> Female <input type="checkbox"/> Person w/Disability <input type="checkbox"/> Small Business <input type="checkbox"/> Government <input type="checkbox"/> NOT Minority/Disadvantaged <input type="checkbox"/> Other:					
Grantee Selection Process Summary					
<input type="checkbox"/> Competitive selection		Describe the competitive selection process used.			
<input type="checkbox"/> Non-competitive selection		Describe the reasons for a non-competitive grantee selection.			
Budget Officer Confirmation: There is a balance in the appropriation from which obligations hereunder are required to be paid that is not already encumbered to pay other obligations.			CPO USE - EG		
Speed Chart (optional)		Account Code (optional)			

**DELEGATED GRANT AUTHORITY
("DGA") COVER SHEET**

REDLINE



DELEGATED GRANT AUTHORITY

Agency Tracking #	Edison ID	Begin Date	End Date		
Edison ID of prior, similar DG (if any)		Last possible <u>End-Start</u> Date of authorized grant contracts			
Service Caption					
Funding —					
FY	State	Federal	Interdepartmental	Other	TOTAL Maximum Liability
TOTAL:					
Each grant contract will establish the following type of relationship:				<input type="checkbox"/> SUBRECIPIENT <input type="checkbox"/> CONTRACTOR	
Budget Officer Confirmation: There is a balance in the appropriation from which obligations hereunder are required to be paid that is not already encumbered to pay other obligations.				<i>CPO USE – DG</i>	
Speed Chart (optional)		Account Code (optional)			

**DELEGATED GRANT AUTHORITY
("DGA") COVER SHEET**

CLEAN



DELEGATED GRANT AUTHORITY

Agency Tracking #	Edison ID	Begin Date	End Date		
Edison ID of prior, similar DG (if any)		Last possible Start Date of authorized grant contracts			
Service Caption					
Funding —					
FY	State	Federal	Interdepartmental	Other	TOTAL Maximum Liability
TOTAL:					
Each grant contract will establish the following type of relationship:				<input type="checkbox"/> SUBRECIPIENT <input type="checkbox"/> CONTRACTOR	
Budget Officer Confirmation: There is a balance in the appropriation from which obligations hereunder are required to be paid that is not already encumbered to pay other obligations.				<i>CPO USE – DG</i>	
Speed Chart (optional)		Account Code (optional)			

**GRANT (“GR”) AND GOVERNMENTAL
GRANT (“GG”) CONTRACT
TEMPLATE’S – OPTIONAL SECTION
E.#., EQUAL OPPORTUNITY CLAUSE**

REDLINE

Request: Revise the Government Grant (GG) and Grant Contract (GR) Templates at the Instructions, Considerations, and Options for the Equal Opportunity clause as follows:

Equal Opportunity

Add the following Section only if the Grantee is receiving a federal award and as applicable.

E.#. Equal Opportunity. As a condition for receipt of grant funds, the Grantee agrees to comply with 41 C.F. R. § 60-1.4 as that section is amended from time to time during the term.

~~**Equal Opportunity for Federally Assisted Construction Contracts**~~

~~Add the following Section only if the Grantee is receiving a federal award and the contract provides for federally assisted construction.~~

~~E.#. Federal Equal Opportunity Clause for Federally Assisted Construction Contracts. As a condition for receipt of grant funds, the Grantee agrees to comply with 41 C.F. R. § 60-1.4 as that section is amended from time to time during the term.~~

**GRANT (“GR”) AND GOVERNMENTAL
GRANT (“GG”) CONTRACT
TEMPLATE’S – OPTIONAL SECTION
E.#., EQUAL OPPORTUNITY CLAUSE**

CLEAN

Request: Revise the Government Grant (GG) and Grant Contract (GR) Templates at the Instructions, Considerations, and Options for the Equal Opportunity clause as follows:

Equal Opportunity

Add the following Section only if the Grantee is receiving a federal award and as applicable.

E.#. Equal Opportunity. As a condition for receipt of grant funds, the Grantee agrees to comply with 41 C.F. R. § 60-1.4 as that section is amended from time to time during the term.

RULE EXCEPTION REQUEST (“RER”)

REDLINE

Rule Exception Request

Use this document to request changes to Central Procurement Office templates, policies, or other procurement documents or to modify the "necessary contract clauses" identified in Tenn. Comp. R. & Reg. 0690-03-01-.17 ("CPO Rule 17"). Complete this document in conformity with CPO Rule 17, which is available [here](#). Send the completed document in PDF format to: Agsprs.Agsprs@tn.gov All Rule Exception Requests are subject to review and approval by the Chief Procurement Officer. Rule Exception Requests that propose to modify any of CPO Rule 17's necessary contract clauses shall be subject to review and approval by the Comptroller of the Treasury. Note: Any change to the template language regarding the Limitation of Contractor's Liability shall be submitted using the Limitation of Contractor's Liability Request.

<p>APPROVED</p> <hr/> <p>CHIEF PROCUREMENT OFFICER</p>
--

<p>APPROVED</p> <hr/> <p>COMPTROLLER OF THE TREASURY</p>
--

Agency request tracking #	
1. Procuring Agency	
2. Edison contract ID #	
3. Contractor or Grantee	
4. Contract's Effective Date	
5. Contract or grant contract's Term (with ALL options to extend exercised)	months
6. Contract's Maximum Liability (with ALL options to extend exercised)	\$
7. Citation and explanation of the rule(s) for which the exception is requested	
8. Description of requested changes If adding new provisions or modifying existing provisions, insert the new or modified provisions in their entirety. Please provide red-lines or track changes to highlight any deviations from template language.	
9. <u>Scope of Goods or Services Caption:</u> _____	
9-10. _____ Justification	
Signature of Agency head or designee and date	

RULE EXCEPTION REQUEST (“RER”)

CLEAN

Rule Exception Request

Use this document to request changes to Central Procurement Office templates, policies, or other procurement documents or to modify the "necessary contract clauses" identified in Tenn. Comp. R. & Reg. 0690-03-01-.17 ("CPO Rule 17"). Complete this document in conformity with CPO Rule 17, which is available [here](#). Send the completed document in PDF format to: Agsprrs.Agsprsr@tn.gov All Rule Exception Requests are subject to review and approval by the Chief Procurement Officer. Rule Exception Requests that propose to modify any of CPO Rule 17's necessary contract clauses shall be subject to review and approval by the Comptroller of the Treasury. Note: Any change to the template language regarding the Limitation of Contractor's Liability shall be submitted using the Limitation of Contractor's Liability Request.

APPROVED

CHIEF PROCUREMENT OFFICER

APPROVED

COMPTROLLER OF THE TREASURY

Agency request tracking #	
1. Procuring Agency	
2. Edison contract ID #	
3. Contractor or Grantee	
4. Contract's Effective Date	
5. Contract or grant contract's Term (with ALL options to extend exercised)	months
6. Contract's Maximum Liability (with ALL options to extend exercised)	\$
7. Citation and explanation of the rule(s) for which the exception is requested	
8. Description of requested changes If adding new provisions or modifying existing provisions, insert the new or modified provisions in their entirety. Please provide red-lines or track changes to highlight any deviations from template language.	
9. Scope of Goods or Services Caption:	
10. Justification	
Signature of Agency head or designee and date	

SPECIAL CONTRACT REQUEST (“SCR”)

REDLINE

Special Contract Request

This form should be utilized to facilitate contract and procurement requests that require the Chief Procurement Officer's prior approval and that of the Comptroller of the Treasury, as applicable.

NOT required for a contract with a federal, Tennessee, or Tennessee local government entity or a grant.

Route a completed request, as one file in PDF format, via e-mail attachment sent to: agsprs.agsprs@tn.gov.

APPROVED		APPROVED	
CHIEF PROCUREMENT OFFICER	DATE	COMPTROLLER OF THE TREASURY	DATE

Request Tracking #	
1. Contracting Agency	
2. Type of Contract or Procurement Method	<input type="checkbox"/> No Cost <input type="checkbox"/> Revenue <input type="checkbox"/> Sole Source <input type="checkbox"/> Proprietary <input type="checkbox"/> Competitive Negotiation <input type="checkbox"/> Other _____
3. Requestor Contact Information	
4. Brief Goods or Services Caption	
5. Description of the Goods or Services to be Acquired	
6. Proposed Contractor	
7. Name & Address of the Contractor's principal owner(s) – NOT required for a TN state education institution	
8. Proposed Contract Period – with ALL options to extend exercised <i>The proposed contract start date shall follow the approval date of this request.</i>	months
9. Strategic Technology Solutions (“STS”) Pre-Approval Endorsement Request – information technology (N/A to THDA)	<input type="checkbox"/> Not Applicable <input type="checkbox"/> Attached
10. eHealth Pre-Approval Endorsement Request – health-related professional, pharmaceutical, laboratory, or imaging	<input type="checkbox"/> Not Applicable <input type="checkbox"/> Attached
11. Human Resources Pre-Approval Endorsement Request – <u>contracts with an individual, state employee training, or services related to the employment of current or prospective state employees</u>	<input type="checkbox"/> Not Applicable <input type="checkbox"/> Attached

Request Tracking #	
12. Are these goods or services currently available on a statewide contract? If YES, please explain why the current statewide contract is not being used for this procurement.	<input type="checkbox"/> NO <input type="checkbox"/> YES,
13. Maximum Contract Cost – with ALL options to extend exercised	\$
14. Was there an initial government estimate? If so, what amount?	<input type="checkbox"/> NO <input type="checkbox"/> YES, \$
15. Cost Determination Used- How did agency arrive at the estimate of expected costs?	
16. Explanation of Fair and Reasonable Price- Explain how agency determined that price is fair and reasonable	
17. Documentation of Discussions with Contractor- How did agency document discussions with Contractor? Attach documentation to this request as applicable.	
18. Explanation of Need for or requirement placed on the State to acquire the goods or services	
19. Proposed contract impact on current State operations	
20. Justification – Specifically explain why the goods or services should be acquired through the procurement method or contract type selected.	
For No Cost and Revenue Contracts Only	
21. What costs will the State incur as a result of this contract? If any, please explain.	
22. What is the total estimated revenue that the State would receive as a result of this contract?	
23. Could the State also contract with other parties interested in entering substantially the same agreement? Please explain.	<input type="checkbox"/> NO <input type="checkbox"/> YES
24. Summary of State responsibilities under proposed contract	
For Sole Source and Proprietary Procurements Only	
25. Evidence of Contractor's experience & length of experience providing the goods or services to be procured.	
26. Has the contracting agency procured the subject goods or services before? If yes, provide the method used to purchase the goods or services and the name and address of the contractor.	<input type="checkbox"/> NO <input type="checkbox"/> YES, Method: Name/Address:
27. Contractor selection process and efforts to identify reasonable, competitive, procurement alternatives	

Request Tracking #

Signature Required for all Special Contract Requests

Signature of Agency head or authorized designee, title of signatory, and date (the authorized designee may sign his or her own name if indicated on the Signature Certification and Authorization document)

Signature:

Date:

SPECIAL CONTRACT REQUEST (“SCR”)

CLEAN

Special Contract Request

This form should be utilized to facilitate contract and procurement requests that require the Chief Procurement Officer's prior approval and that of the Comptroller of the Treasury, as applicable.

NOT required for a contract with a federal, Tennessee, or Tennessee local government entity or a grant.

Route a completed request, as one file in PDF format, via e-mail attachment sent to: agsprs.agsprs@tn.gov.

APPROVED		APPROVED	
CHIEF PROCUREMENT OFFICER	DATE	COMPTROLLER OF THE TREASURY	DATE

Request Tracking #	
1. Contracting Agency	
2. Type of Contract or Procurement Method	<input type="checkbox"/> No Cost <input type="checkbox"/> Revenue <input type="checkbox"/> Sole Source <input type="checkbox"/> Proprietary <input type="checkbox"/> Competitive Negotiation <input type="checkbox"/> Other _____
3. Requestor Contact Information	
4. Brief Goods or Services Caption	
5. Description of the Goods or Services to be Acquired	
6. Proposed Contractor	
7. Name & Address of the Contractor's principal owner(s) – NOT required for a TN state education institution	
8. Proposed Contract Period – with ALL options to extend exercised <i>The proposed contract start date shall follow the approval date of this request.</i>	_____ months
9. Strategic Technology Solutions ("STS") Pre-Approval Endorsement Request – information technology (N/A to THDA)	<input type="checkbox"/> Not Applicable <input type="checkbox"/> Attached
10. eHealth Pre-Approval Endorsement Request – health-related professional, pharmaceutical, laboratory, or imaging	<input type="checkbox"/> Not Applicable <input type="checkbox"/> Attached
11. Human Resources Pre-Approval Endorsement Request – contracts with an individual, state employee training, or services related to the employment of current or prospective state employees	<input type="checkbox"/> Not Applicable <input type="checkbox"/> Attached

Request Tracking #	
12. Are these goods or services currently available on a statewide contract? If YES, please explain why the current statewide contract is not being used for this procurement.	<input type="checkbox"/> NO <input type="checkbox"/> YES,
13. Maximum Contract Cost – with ALL options to extend exercised	\$
14. Was there an initial government estimate? If so, what amount?	<input type="checkbox"/> NO <input type="checkbox"/> YES, \$
15. Cost Determination Used- How did agency arrive at the estimate of expected costs?	
16. Explanation of Fair and Reasonable Price- Explain how agency determined that price is fair and reasonable	
17. Documentation of Discussions with Contractor- How did agency document discussions with Contractor? Attach documentation to this request as applicable.	
18. Explanation of Need for or requirement placed on the State to acquire the goods or services	
19. Proposed contract impact on current State operations	
20. Justification – Specifically explain why the goods or services should be acquired through the procurement method or contract type selected.	
For No Cost and Revenue Contracts Only	
21. What costs will the State incur as a result of this contract? If any, please explain.	
22. What is the total estimated revenue that the State would receive as a result of this contract?	
23. Could the State also contract with other parties interested in entering substantially the same agreement? Please explain.	<input type="checkbox"/> NO <input type="checkbox"/> YES
24. Summary of State responsibilities under proposed contract	
For Sole Source and Proprietary Procurements Only	
25. Evidence of Contractor's experience & length of experience providing the goods or services to be procured.	
26. Has the contracting agency procured the subject goods or services before? If yes, provide the method used to purchase the goods or services and the name and address of the contractor.	<input type="checkbox"/> NO <input type="checkbox"/> YES, Method: Name/Address:
27. Contractor selection process and efforts to identify reasonable, competitive, procurement alternatives	

Request Tracking #	
Signature Required for all Special Contract Requests	
Signature of Agency head or authorized designee, title of signatory, and date (the authorized designee may sign his or her own name if indicated on the Signature Certification and Authorization document)	
Signature:	Date:

**RFP TEMPLATE – ALTERNATE
LANGUAGE IF REDLINES ALLOWED –
CPO USE ONLY**

NEW

REQUEST: Revise the RFP Template so the instructions related to Redlines are together as the following additional RFP Instructions, Considerations, and Options.

ALTERNATE LANGUAGE IF REDLINES ALLOWED - CPO USE ONLY

This template prescribes the format and content of alternate language to include in a Request for Proposals (RFP) when redlines are permitted. All respondents shall be given fair treatment, therefore comparable information shall be provided in communications and negotiations and a consistent evaluation process and criteria shall be upheld throughout the procurement. For additional information regarding negotiations, please see *Policy Number 2012-001 Central Procurement Office Contracting Communications and Negotiations Policy & Procedures for Procurements and Amendments* on the [CPO Library Webpage](#).

Add all of the following sections to the RFP ONLY if it would benefit the State to consider changes to the *pro forma* contract. Inclusion of these terms requires prior review and approval by CPO Legal. For consistency throughout the RFP, delete and replace all of the standard terms and replace or add with the following if redlines are permitted. Please note that inclusion of these terms may result in the need to issue an amendment to provide approved language options to all potential respondents.

3.3. Response & Respondent Prohibitions

3.3.1 A response must not include alternate contract terms and conditions, except as otherwise permitted by the RFP. 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.

5.3 Contract Award Process

5.3.4 Subject to agreement on the exceptions permitted by RFP Attachment 6.2 – B.#., 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 except as modified by any mutually agreed to exceptions permitted by RFP Attachment 6.2 – B.#. 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.

RFP ATTACHMENT 6.2.- SECTION B.

	<p>B.#. The Respondents are permitted to submit, as part of their Response, a "redline" of RFP Attachment 6.6, <i>Pro Forma</i> Contract, that tracks the Respondents' request for alternative or supplemental contract language. The redline changes that are allowed by this provision shall not include any exceptions or changes that (1) contradict any applicable state or federal law; (2) a mandatory requirement identified in RFP Attachment 6.2. – Section A; or (3) alter any deadlines in the Schedule of Events.</p>	
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***CONTRACT MANAGEMENT POLICY
AND PROCEDURES, POLICY NUMBER
2013-004***

REDLINE

AMENDED 12-14-1711-08-18
Policy Number 2013-004
Central Procurement Office
Contract Management Policy and Procedures

Effective: August 22, 2013

Prepared by: The Central Procurement Office of the State of Tennessee

1. Purpose.

To establish a uniform policy governing the State's contracts for goods and services. This policy shall provide guidance to State procurement professionals in determining which contract to use and to highlight distinguishing factors or considerations for each contract type. This policy also provides guidance and describes the approval process for each contract type (including original contract, amendments, renewals and terminations) and contract management. Finally, this policy delineates the party responsible for contract management. This Contract Management Policy and Procedures will be further augmented by the Central Procurement Office's Contract Procurement Procedures Manual.

2. Scope.

The scope of this policy includes all contracts procured under the jurisdiction of the Central Procurement Office.

3. Definitions.

For purposes of this policy, existing definitions are listed below:

"Agency Term Contract" - means a State Agency contract in which a source or sources of supply are established for a specified period of time at an agreed upon unit price or prices for a single State Agency.

"Award" – in the context of a Grant Contract means any grant of money awarded to the State, or awarded by the State to a person or legal entity, for the furnishing by the State of assistance, whether financial or otherwise, to any person or entity to support a program authorized by law. The term "Award" in the context of a procurement shall mean the award of a contract to a Contracting Party pursuant to a procurement.

"Contract Manager" – means, with respect to a Statewide Contract, the category specialist responsible for the procurement or such other person as appointed by the Chief Procurement Officer to act as the Contract Manager. "Contract Manager" with respect to an Agency Term Contract shall mean the State Agency official appointed by the State Agency to act as the person responsible for contract management.

“Contracting Party” – means a party to a contract with the State to provide goods or services.

“Delegated State Agency” - means a State Agency that, in accordance with Central Procurement Office Policy, has authority to award a grant, make a loan consistent with a grant, or procure goods or services for an individual State Agency within specified limits and guidelines.

“Fair Pricing” – means pricing that is mutually acceptable to the parties after considering:

- the level of competition within the marketplace,
- time sensitivities,
- technical qualifications,
- the scope of work at issue,
- economies of scale benefits,
- learning curve costs,
- the presence of proprietary, intangible, personal or real property rights at issue,
- the scarcity or abundance of manpower and resources, or
- other considerations.

The “Fair Pricing” shall be ascertained after benchmarking for time, labor, pricing, or deliverables when practicable. Benchmarking shall compare the individual or market basket of goods and services, as applicable, for the contract or amendment at issue in the relevant market place for the relevant period of time.

“Grant Contract” – means a written contract to facilitate an Award to a Grantee or Subrecipient. “Grant Contract” does not include an Award with the primary purpose of procuring an end product for a Grantor State Agency, whether in the form of supplies, services, or construction, or any contract resulting from such an award that should otherwise be procured on a competitive basis.

“Interagency Agreement” means an agreement between two State Agencies, neither of which has the legal capacity to sue and be sued or enter into contracts separate and apart from the State that is reduced to writing, contains an adequate description of the duties of each party, a statement of the term of agreement, and a statement of the maximum amount payable as between the State Agencies.

“No Cost Contract” means a written contract that does not result in a pecuniary obligation between the State and a Contracting Party.

“Procurement” - means buying, purchasing, renting, leasing, or otherwise acquiring any goods or services. It also includes all functions that pertain to the obtaining of any goods or service, including the description of requirements, selection and solicitation of sources, preparation and award of a contract, and all phases of contract administration.

“Purchase Order” means a written or electronic document issued by the Central Procurement Office or a State Agency to a Contracting Party authorizing a purchase. Upon delivery to the Contracting Party, a “purchase order” becomes a binding contract on both parties.

“Revenue Contract” means a written contract obligating a State Agency to provide specific deliverable services for monetary compensation.

“Rules” means the Comprehensive Rules and Regulations concerning the procurement of goods and services adopted by the Procurement Commission of the State of Tennessee.

“State Agency” means the departments, agencies, and instrumentalities of the State of Tennessee.

“Statewide Contract” - means a contract for goods or services established by the Chief Procurement Officer that all State Agencies must utilize and that may be used by local governments, higher education and not-for-profit entities.

“Utility Contract” – means a contract for telephone, telegraph, electric light, gas, power, postal, and other services for which a rate for the use thereof has been established by a public authority.

4. Contract Types.

All contracts awarded pursuant to a procurement event shall meet the requirements of the Rules and Central Procurement Office Policy. A contract shall be one of the following contract types:

- *Agency Term Contracts*
- *Statewide Contracts*
- *Purchase Orders*
- *No Cost Contracts*
- *Revenue Contracts*
- *Grant Contracts*
- *Utility Contracts*

4.1. *Agency Term Contracts.*

4.1.1. *Description of Agency Term Contracts.*

An Agency Term Contract is a written contract for goods or services for a specified term for the benefit of a single State Agency. The parties to an Agency Term Contract include, at a minimum, the State, acting by and through one of its agencies or instrumentalities and one or more Contracting Parties with the legal capacity to enter into contracts or to sue and be sued.

4.1.2. *Condition of Use for Agency Term Contracts.*

An Agency Term Contract should be used when goods or services, as defined in the scope of work, will be provided over an established period of time, known as the contract term period. Agency Term Contracts shall be used where performance by the Contracting Party cannot be completed in less than ninety (90) days. The Chief Procurement Officer may establish a Statewide Contract for common goods or services needed by more than one State Agency. The Central Procurement Office or Delegated State Agencies may establish Agency Term Contracts for goods or services needed solely and uniquely by their agency in accordance with the Rules or Central Procurement Office Policy.

4.1.3. *Management of Agency Term Contracts.*

After the award of an Agency Term Contract, the State Agency procuring the Agency Term Contract shall have primary responsibility for managing the contract, which includes decisions concerning extensions and renewals. The State Agency is responsible for actively monitoring the Contracting Party's performance including ensuring that the goods or services received are equal in quality and quantity to those requisitioned or ordered and submitting formal vendor complaints when necessary. When deciding whether or not a renewal or extension should be exercised, State Agencies should consider any changes in the State Agency's needs or the marketplace and the Contracting Party's performance. ~~The Central Procurement Office shall have compliance responsibility over all Statewide Contracts, which includes by way of example only, Contracting Party compliance, acceptability of goods or services, notice of default, curing performance and contract termination.~~ State Agencies shall manage all contracts for which the State Agency is primarily responsible in accordance with the Rules and Central Procurement Office Policy. All contract management plans of State Agencies shall comply with the Rules and Central Procurement Office Policy in terms of form, content, amendments or modifications, and reporting.

4.2. *Statewide Contracts.*

4.2.1. *Description of Statewide Contract.*

A Statewide Contract is a contract for goods or services established by the Central Procurement Office that all State Agencies, unless exempt under the Rules, must utilize. A number of entities are authorized by law to utilize a Statewide Contract. Authorized users include the following: -and that may be used by

- All Tennessee State governmental entities (this includes the legislative branch; judicial branch; and commissions and boards of the State outside of the executive branch of government) (Tenn. Code Ann. § 12-3-102);
- The board of trustees of the University of Tennessee system, the Tennessee board of regents system, and the state university boards (Tenn. Code Ann. § 12-3-102);

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- Tennessee local governmental agencies (Tenn. Code Ann. § 12-3-1201);
- Any private nonprofit institution of higher education chartered in Tennessee (Tenn. Code Ann. § 12-3-102); and,
- Any corporation which is exempted from taxation under 26 U.S.C. Section 501(c) (3), as amended, and which contracts with the Department of Mental Health and Substance Abuse Services or the Department of Intellectual and Developmental Disabilities to provide services to the public (Tenn. Code Ann. § 33-2-1001).

The purpose of a Statewide Contract is to obtain a source of supply for commonly procured goods or services for the State, its Agencies, local governments, higher education and qualified not-for-profit entities.

4.2.2. *Condition of Use for Statewide Contract.*

Only a contract that benefits two or more State Agencies will be considered a Statewide Contract. A contract that otherwise meets the requirements of a Statewide Contract, but is restricted to certain State Agencies is a Restricted Statewide Contract. Only the Central Procurement Office has authority to procure and award a Statewide or Restricted Statewide Contract.

4.2.3. *Management of Statewide Contracts.*

The Central Procurement Office shall have primary responsibility for procuring and managing all Statewide Contracts, which includes by way of example only, decisions concerning extensions, renewals or price increases. The Central Procurement Office should consider such items as changes in the State's needs or the marketplace and the Contracting Party's performance. All State Agencies, unless exempt under the Rules, are required to procure goods and services from Statewide Contracts when practicable. No State Agencies shall procure goods or services that are within the scope of a Statewide Contract without first obtaining the consent of the Chief Procurement Officer. Grounds for the Chief Procurement Officer's approval of a State Agency's request to procure goods or services outside a Statewide Contract may include, by way of example only, Contracting Party's past performance and concerns over future performance, timeliness of performance, the Contracting Party's ability to supply the goods or services, pricing, quality or compatibility concerns. The Central Procurement Office shall also have compliance responsibility over all Statewide Contracts, which includes, by way of example only, Contracting Party compliance, acceptability of goods or services, notice of default, curing performance and contract termination.

4.3. *Purchase Orders.*

4.3.1. *Description of Purchase Order.*

A Purchase Order is a commercial document (issued electronically or on hard copy), generated by the Edison System (except procurements made pursuant to a natural or declared disaster), that indicates types, quantities and agreed upon prices for goods or services. A State Agency issuing a Purchase Order to a supplier constitutes an offer to buy goods or services, and acceptance of a Purchase Order by a supplier forms a contract between the parties.

4.3.2. Condition of Use for Purchase Order.

A Purchase Order is generally used for those procurements of goods or services where performance can be completed in less than ninety (90) days or that represent a single transaction. An Agency Term or Statewide Contract must be used for any procurement of goods or services where Contracting Party performance cannot be completed within ninety (90) days.

4.3.3. Management of Purchase Orders.

After issuance of a purchase order, the State Agency issuing a Purchase Order for goods or services shall have primary responsibility for managing the Purchase Order. State Agencies shall also have compliance responsibility over all Purchase Orders that it issues or that are issued on the State Agency's behalf, which includes by way of example only, Contracting Party compliance, acceptability of goods or services, notice of default, curing performance and contract termination.

4.4. No Cost Contracts.

4.4.1. Description of No Cost Contract.

A No Cost Contract is a written contract entered between the State and a Contracting Party that does not involve a payment or create a pecuniary obligation of the State to the Contracting Party.

4.4.2. Condition of Use for No Cost Contract.

A No Cost Contract may be used when there is no payment or pecuniary obligation of the State to the Contracting Party, and when goods or services, as defined in the scope of work, will be provided over an established period of time, known as the contract term. An approved Special Contract Request is required for any No Cost Contract. A No Cost Contract can be either an Agency Term Contract or a Statewide Contract.

4.4.3. Management of No Cost Contracts.

A Statewide No Cost Contract will be managed by the Central Procurement Office in the same manner as all other Statewide Contracts. An Agency Term Contract that is a No Cost Contract will be managed by the State Agency procuring the No Cost Contract in the same manner that a State Agency manages all other Agency Term Contracts.

4.5. *Revenue Contracts.*

4.5.1. *Description of Revenue Contract.*

A Revenue Contract is a standard written contract entered into between the State and a Contracting Party where the State provides goods or services for payment by a Contracting Party.

4.5.2. *Condition of Use for Revenue Contract.*

A Revenue Contract may be used where the State provides goods or services to a Contracting Party for payment, and when goods or services, as defined in the scope of work, will be provided over an established period of time. An approved Special Contract Request is required for any Revenue Contract.

4.5.3. *Management of Revenue Contracts.*

After contract award, the State Agency entering into a Revenue Contract shall have primary responsibility for managing all aspects of the Revenue Contract, which includes, by way of example, decisions concerning extensions, renewals or revenue increases or decreases. State Agencies shall also have compliance responsibility over all Revenue Contracts, which includes by way of example only, Contracting Party compliance, notice of default, curing performance and contract termination.

4.6. *Grant Contracts.*

4.6.1. *Description of Grant Contracts.*

A Grant Contract is a written contract between the State, a grantor, a natural person or a legal entity to facilitate an Award to a person or legal entity to support a program authorized by law.

4.6.2. *Condition for Use of Grant Contracts.*

A Grant Contract should be used to facilitate an Award, but should not be used where the true object of the contract is to purchase goods or services for the Grantor State Agency. State Agencies that have entered into Grant Contracts with other State Agencies that create subrecipient grant relationships should continue to use a Grant Contract to memorialize the subrecipient grant relationship.

4.6.3. *Management of Grant Contracts.*

The Grantor State Agency shall be primarily responsible for managing a Grant Contract in accordance with the *Grant Management and Subrecipient Monitoring Policy*.

4.7. *Utility Contracts.*

4.7.1. *Description of Utility Contracts.*

A Utility Contract is a contract between the State and a private or public legal entity that is regulated by one or more states or the federal government as a public utility.

4.7.2. *Condition for Use of Utility Contracts.*

A Utility Contract should only be used for the procurement of utilities.

4.7.3. *Management of Utility Contracts.*

The Central Procurement Office shall have primary responsibility for procuring and managing all Utility Contracts, which includes by way of example only, decisions concerning extensions, renewals or price increases. No State Agency shall procure any goods or services that are within the scope of a Utility Contract without first obtaining the consent of the Chief Procurement Officer. The Central Procurement Office shall also have compliance responsibility over all Utility Contracts, which includes by way of example only, Contracting Party compliance, merchantability of goods, acceptability of services, notice of default, curing performance and contract termination.

5. Contract Terms and Conditions.

5.1. *General Requirements of Terms and Conditions.*

All contracts must be in writing and contain such terms and conditions as set forth in contract templates prescribed by the Chief Procurement Officer, the Rules, or Central Procurement Office Policy.

5.2. *Termination and Length of Term.*

All contracts shall contain a provision that allows the State to terminate for convenience upon a period of time prescribed by the State unless otherwise approved by the Chief Procurement Officer. All contracts shall also contain a provision that allows the State to terminate for lack of funding. The length of a contract, including all renewals, shall not exceed sixty (60) months unless a

longer term is approved by the Chief Procurement Officer as being in the State's best interests.

5.3. *Prohibited Terms and Conditions.*

5.3.1. *Indemnification and Hold Harmless.*

Contract provisions requiring the State to indemnify and hold a Contracting Party harmless are prohibited.

5.3.2. *Limitations of Contractor's Liability.*

All limitations of Contractor's liability must comply with Tenn. Code Ann. § 12-3-701 and Central Procurement Office Policy. Limitations of liability that do not comply with Tenn. Code Ann. § 12-3-701 and Central Procurement Office Policy are prohibited. Contractual provisions limiting a Contractor's liability for the following are prohibited:

- Liability for intellectual property or to any other liability, including, without limitation, indemnification obligations for infringement of third-party intellectual property rights;
- Claims covered by any specific provision in a contract with the state providing for liquidated damages; or
- Claims for intentional torts, criminal acts, fraudulent conduct, or acts or omissions that result in personal injuries or deaths.

Contractual provisions that limit a Contractor's liability to an amount less than two (2) times the value of the contract (i.e., maximum liability, estimated liability, or maximum revenue) are subject to approval by the Chief Procurement Officer and are otherwise prohibited without the Chief Procurement Officer's and the Comptroller of the Treasury's approval. The Chief Procurement Officer must make a finding that limiting a Contracting Party's liability to less than two (2) times the value of the contract is in the best interests of the State. The Chief Procurement Officer is also authorized to approve a limitation of liability amount greater than two (2) times the maximum liability, estimated liability, or maximum revenue of a contract if the chief procurement officer determines that an increase in the liability amount is necessary to protect the state's best interests.

5.3.3. *Bonus Payments.*

Bonus payment provisions are prohibited for all contracts subject to these Rules.

6. Approval Process for Statewide and Agency Term Contracts and Amendments.

6.1. *Minimum Approvals.*

All Agency Term Contracts shall be approved by the head of the State Agency and the Chief Procurement Officer or any other state officials as required by statute or rule. All Statewide Contracts shall be approved by the Chief Procurement Officer. Except for Agency Term Contracts procured by a Delegated State Agency, the Central Procurement Office shall initiate a Statewide or Agency Term Contract or amendment approval through the Edison System. The Delegated State Agency shall initiate approval of an Agency Term Contract procured by the Delegated State Agency, or an amendment to such contract, by delivering the contract or amendment, signed by the contract parties, to the Central Procurement Office.

6.2. Additional Approvals.

Additional approvals are required for all contracts or amendments that fall within the following types of contract scope of services:

Contract Subject Matter	Required Approval or Endorsement
<ul style="list-style-type: none"> • Information technology 	STS Endorsement
<ul style="list-style-type: none"> • Medical/mental health-related professional, pharmaceutical, laboratory, or imaging 	F&A eHealth Initiative Endorsement
<ul style="list-style-type: none"> • Contract between State Agencies that includes provisions for cooperative programs; • Provision for State legal consultation services 	Governor
<ul style="list-style-type: none"> • Provision for State legal consultation services 	Attorney General ¹
<ul style="list-style-type: none"> • Contract with an individual; • Contract that involves training State employees (except training pursuant to an information technology system procurement); • Services relating to the employment of current or prospective State employees 	Human Resources Commissioner
<ul style="list-style-type: none"> • Contract that involves engineering or architectural services relating to an improvement (including demolition) to real property in which the State of 	State Architect

¹ See Tenn. Code Ann. § 8-6-106.

Contract Subject Matter	Required Approval or Endorsement
Tennessee has an interest	
<ul style="list-style-type: none"> • Delegation of procurement or contract authority by the CPO; • Procurements for goods and services where authority exists under both the SBC and CPO to procure and contract; • Auditing services; • Cooperative agreements as provided in § 12-3-512; • Fee-For-Service procurements or contracts with a maximum liability > \$5,000,000; • Grant contracts with a maximum liability > \$5,000,000; • Fee-For-Service procurements or contracts for new or replacement information systems and technical infrastructure projects for goods and services > \$500,000; • Procurements or contracts utilizing competitive or non-competitive negotiations with a maximum liability > \$250,000; • Revenue procurements/contracts; • No-Cost procurements/contracts; • Procurements/contracts with a term > 60 months (5 years); • Procurements/contracts that propose to limit liability to < 2 times the maximum liability; • Procurements/contracts that propose to change the Records, Annual Report, Audit, or Monitoring clauses; • Procurements/contracts that allow for the negotiation of a necessary, mandatory, or standard contract clause; • Procurements allowing a cost proposal to be evaluated contemporaneously 	Comptroller of the Treasury ²

² Pursuant to Tenn. Code Ann. § 4-56-108(b), without limitation of the audit authority of the comptroller of the treasury, the comptroller is authorized to examine any documents under the authority of the chief procurement officer.

Contract Subject Matter	Required Approval or Endorsement
<p>with or prior to the technical proposal evaluation;</p> <ul style="list-style-type: none"> • Procurements/contracts containing an automatic price escalator; and • Such other procurements/contracts or other items as may be directed by the Commissioner of Finance and Administration or by the Commission. 	
<ul style="list-style-type: none"> • All requests to procure goods or services by negotiation with a single service provider (a noncompetitive contract) having a term of more than one (1) year or which contain term extension language authorizing a term of greater than one (1) year AND a cumulative value of \$250,000 or more; and • All amendments to a contract, whether competitively or noncompetitively procured, meeting the above term and dollar threshold requirements where the amendment: 1) increases or decreases the maximum liability, 2) extends or shortens the contract term, 3) changes the entity or name of the entity with which the State is contracting, or 4) otherwise changes an original contract or amended contract in a substantive manner. 	Fiscal Review Committee ³

Additionally, all contracts or amendments to such contracts with a duration period of more than twelve (12) months must be approved by the Office of the Comptroller. Amendments and renewals must follow the same approval process as that of the original, or base, contract. The termination of a contract, for any reason, must be approved by the Chief Procurement Officer (or Delegated State Agency official by Chief Procurement Officer) and filed by the affected State Agency with the Office of the Comptroller.

³ Pursuant to Tenn. Code Ann. § 4-56-107(b)(4), the Fiscal Review Committee, pursuant to its jurisdiction under § 3-7-103(a), is authorized to review any other State contract or contract amendment regardless of whether the contract or contract amendment meets these requirements.

7. Fiscal Review – Generally.

Certain contracts or amendments to certain contracts shall be contemporaneously filed with the Central Procurement Office, Office of the Comptroller for approval and with the Fiscal Review Committee of the General Assembly for review. This includes, but is not limited to, the following:

- (1) All proposed noncompetitive contracts with a term of greater than one year or containing a provision authorizing a contract renewal beyond one year, and having a cumulative value of \$250,000 or more;
- (2) Any amendment to a contract described in subdivision (1), whether originally procured competitively or noncompetitively which:
 - a. Increases or decreases funding;
 - b. Extends or shortens the contract term;
 - c. Changes the entity or name of the entity with which the State is contracting; or
 - d. Otherwise changes an original or amended contract in a substantive manner.

8. Interagency Agreements.

8.1. Description of Interagency Agreement.

An Interagency Agreement is a written document that describes a bilateral or multilateral agreement between State agencies. This type of document should memorialize the description of duties for each State Agency, any applicable exchange of funds and the term for the agreement.

8.2. Condition of Use for Interagency Agreement.

An Interagency Agreement should be used to memorialize one or more State Agencies' agreement and should be used when the parties (State Agencies) do not have the legal capacity to contract or sue and be sued by one another. While Interagency Agreements should be tracked in the Edison system, these agreements are exempt from the requirements of the Rules and Central Procurement Office Policy and they do not require the approval of the Chief Procurement Officer. The Central Procurement Office shall prescribe or approve the form of Interagency Agreement that will be used by State Agencies.

8.3. Management of Interagency Agreements.

The State Agency parties to an Interagency Agreement shall have primary responsibility for managing the Interagency Agreement, which includes by way of example only, decisions concerning extensions, renewals or price increases. State Agency parties to an Interagency Agreement shall also have compliance responsibility over all Interagency Agreements, which includes by way of example only, State Agency party compliance,

acceptability of goods or services, notice of default, curing performance and contract termination.

Related Statutes, Rules and Policies

Tenn. Code Ann. §§ 4-56-101, *et seq.*

Tenn. Code Ann. §§ 12-3-101, *et seq.*

Tenn. Code Ann. §§ 12-4-101, *et seq.*

***CONTRACT MANAGEMENT POLICY
AND PROCEDURES, POLICY NUMBER
2013-004***

CLEAN

AMENDED 11-08-18
Policy Number 2013-004
Central Procurement Office
Contract Management Policy and Procedures

Effective: August 22, 2013

Prepared by: The Central Procurement Office of the State of Tennessee

1. Purpose.

To establish a uniform policy governing the State's contracts for goods and services. This policy shall provide guidance to State procurement professionals in determining which contract to use and to highlight distinguishing factors or considerations for each contract type. This policy also provides guidance and describes the approval process for each contract type (including original contract, amendments, renewals and terminations) and contract management. Finally, this policy delineates the party responsible for contract management. This Contract Management Policy and Procedures will be further augmented by the Central Procurement Office's Procurement Procedures Manual.

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“Contract Manager” – means, with respect to a Statewide Contract, the category specialist responsible for the procurement or such other person as appointed by the Chief Procurement Officer to act as the Contract Manager. “Contract Manager” with respect to an Agency Term Contract shall mean the State Agency official appointed by the State Agency to act as the person responsible for contract management.

“Contracting Party” – means a party to a contract with the State to provide goods or services.

“Delegated State Agency” - means a State Agency that, in accordance with Central Procurement Office Policy, has authority to award a grant, make a loan consistent with a grant, or procure goods or services for an individual State Agency within specified limits and guidelines.

“Fair Pricing” – means pricing that is mutually acceptable to the parties after considering:

- the level of competition within the marketplace,
- time sensitivities,
- technical qualifications,
- the scope of work at issue,
- economies of scale benefits,
- learning curve costs,
- the presence of proprietary, intangible, personal or real property rights at issue,
- the scarcity or abundance of manpower and resources, or
- other considerations.

The “Fair Pricing” shall be ascertained after benchmarking for time, labor, pricing, or deliverables when practicable. Benchmarking shall compare the individual or market basket of goods and services, as applicable, for the contract or amendment at issue in the relevant market place for the relevant period of time.

“Grant Contract” – means a written contract to facilitate an Award to a Grantee or Subrecipient. “Grant Contract” does not include an Award with the primary purpose of procuring an end product for a Grantor State Agency, whether in the form of supplies, services, or construction, or any contract resulting from such an award that should otherwise be procured on a competitive basis.

“Interagency Agreement” means an agreement between two State Agencies, neither of which has the legal capacity to sue and be sued or enter into contracts separate and apart from the State that is reduced to writing, contains an adequate description of the duties of each party, a statement of the term of agreement, and a statement of the maximum amount payable as between the State Agencies.

“No Cost Contract” means a written contract that does not result in a pecuniary obligation between the State and a Contracting Party.

“Procurement” - means buying, purchasing, renting, leasing, or otherwise acquiring any goods or services. It also includes all functions that pertain to the obtaining of any goods or service, including the description of requirements, selection and solicitation of sources, preparation and award of a contract, and all phases of contract administration.

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“Revenue Contract” means a written contract obligating a State Agency to provide specific deliverable services for monetary compensation.

“Rules” means the Comprehensive Rules and Regulations concerning the procurement of goods and services adopted by the Procurement Commission of the State of Tennessee.

“State Agency” means the departments, agencies, and instrumentalities of the State of Tennessee.

“Statewide Contract” - means a contract for goods or services established by the Chief Procurement Officer that all State Agencies must utilize and that may be used by local governments, higher education and not-for-profit entities.

“Utility Contact” – means a contract for telephone, telegraph, electric light, gas, power, postal, and other services for which a rate for the use thereof has been established by a public authority.

4. Contract Types.

All contracts awarded pursuant to a procurement event shall meet the requirements of the Rules and Central Procurement Office Policy. A contract shall be one of the following contract types:

- *Agency Term Contracts*
- *Statewide Contracts*
- *Purchase Orders*
- *No Cost Contracts*
- *Revenue Contracts*
- *Grant Contracts*
- *Utility Contracts*

4.1. Agency Term Contracts.

4.1.1. Description of Agency Term Contracts.

An Agency Term Contract is a written contract for goods or services for a specified term for the benefit of a single State Agency. The parties to an Agency Term Contract include, at a minimum, the State, acting by and through one of its agencies or instrumentalities and one or more Contracting Parties with the legal capacity to enter into contracts or to sue and be sued.

4.1.2. Condition of Use for Agency Term Contracts.

An Agency Term Contract should be used when goods or services, as defined in the scope of work, will be provided over an established period of time, known as the contract term period. Agency Term Contracts shall be used where performance by the Contracting Party cannot be completed in less than ninety (90) days. The Chief Procurement Officer may establish a Statewide Contract for common goods or services needed by more than one State Agency. The Central Procurement Office or Delegated State Agencies may establish Agency Term Contracts for goods or services needed solely and uniquely by their agency in accordance with the Rules or Central Procurement Office Policy.

4.1.3. *Management of Agency Term Contracts.*

After the award of an Agency Term Contract, the State Agency procuring the Agency Term Contract shall have primary responsibility for managing the contract, which includes decisions concerning extensions and renewals. The State Agency is responsible for actively monitoring the Contracting Party's performance including ensuring that the goods or services received are equal in quality and quantity to those requisitioned or ordered and submitting formal vendor complaints when necessary. When deciding whether or not a renewal or extension should be exercised, State Agencies should consider any changes in the State Agency's needs or the marketplace and the Contracting Party's performance. State Agencies shall manage all contracts for which the State Agency is primarily responsible in accordance with the Rules and Central Procurement Office Policy. All contract management plans of State Agencies shall comply with the Rules and Central Procurement Office Policy in terms of form, content, amendments or modifications, and reporting.

4.2. *Statewide Contracts.*

4.2.1. *Description of Statewide Contract.*

A Statewide Contract is a contract for goods or services established by the Central Procurement Office that all State Agencies, unless exempt under the Rules, must utilize. A number of entities are authorized by law to utilize a Statewide Contract. Authorized users include the following:

- All Tennessee State governmental entities (this includes the legislative branch; judicial branch; and commissions and boards of the State outside of the executive branch of government) (Tenn. Code Ann. § 12-3-102);
- The board of trustees of the University of Tennessee system, the Tennessee board of regents system, and the state university boards (Tenn. Code Ann. § 12-3-102);
- Tennessee local governmental agencies (Tenn. Code Ann. § 12-3-1201);
- Any private nonprofit institution of higher education chartered in Tennessee (Tenn. Code Ann. § 12-3-102); and,

- Any corporation which is exempted from taxation under 26 U.S.C. Section 501(c) (3), as amended, and which contracts with the Department of Mental Health and Substance Abuse Services or the Department of Intellectual and Developmental Disabilities to provide services to the public (Tenn. Code Ann. § 33-2-1001).

The purpose of a Statewide Contract is to obtain a source of supply for commonly procured goods or services for the State, its Agencies, local governments, higher education and qualified not-for-profit entities.

4.2.2. *Condition of Use for Statewide Contract.*

Only a contract that benefits two or more State Agencies will be considered a Statewide Contract. A contract that otherwise meets the requirements of a Statewide Contract, but is restricted to certain State Agencies is a Restricted Statewide Contract. Only the Central Procurement Office has authority to procure and award a Statewide or Restricted Statewide Contract.

4.2.3. *Management of Statewide Contracts.*

The Central Procurement Office shall have primary responsibility for procuring and managing all Statewide Contracts, which includes by way of example only, decisions concerning extensions, renewals or price increases. The Central Procurement Office should consider such items as changes in the State's needs or the marketplace and the Contracting Party's performance. All State Agencies, unless exempt under the Rules, are required to procure goods and services from Statewide Contracts when practicable. No State Agencies shall procure goods or services that are within the scope of a Statewide Contract without first obtaining the consent of the Chief Procurement Officer. Grounds for the Chief Procurement Officer's approval of a State Agency's request to procure goods or services outside a Statewide Contract may include, by way of example only, Contracting Party's past performance and concerns over future performance, timeliness of performance, the Contracting Party's ability to supply the goods or services, pricing, quality or compatibility concerns. The Central Procurement Office shall also have compliance responsibility over all Statewide Contracts, which includes, by way of example only, Contracting Party compliance, acceptability of goods or services, notice of default, curing performance and contract termination.

4.3. *Purchase Orders.*

4.3.1. *Description of Purchase Order.*

A Purchase Order is a commercial document (issued electronically or on hard copy), generated by the Edison System (except procurements made pursuant to a natural or declared disaster), that indicates types, quantities and agreed upon

prices for goods or services. A State Agency issuing a Purchase Order to a supplier constitutes an offer to buy goods or services, and acceptance of a Purchase Order by a supplier forms a contract between the parties.

4.3.2. *Condition of Use for Purchase Order.*

A Purchase Order is generally used for those procurements of goods or services where performance can be completed in less than ninety (90) days or that represent a single transaction. An Agency Term or Statewide Contract must be used for any procurement of goods or services where Contracting Party performance cannot be completed within ninety (90) days.

4.3.3. *Management of Purchase Orders.*

After issuance of a purchase order, the State Agency issuing a Purchase Order for goods or services shall have primary responsibility for managing the Purchase Order. State Agencies shall also have compliance responsibility over all Purchase Orders that it issues or that are issued on the State Agency's behalf, which includes by way of example only, Contracting Party compliance, acceptability of goods or services, notice of default, curing performance and contract termination.

4.4. *No Cost Contracts.*

4.4.1. *Description of No Cost Contract.*

A No Cost Contract is a written contract entered between the State and a Contracting Party that does not involve a payment or create a pecuniary obligation of the State to the Contracting Party.

4.4.2. *Condition of Use for No Cost Contract.*

A No Cost Contract may be used when there is no payment or pecuniary obligation of the State to the Contracting Party, and when goods or services, as defined in the scope of work, will be provided over an established period of time, known as the contract term. An approved Special Contract Request is required for any No Cost Contract. A No Cost Contract can be either an Agency Term Contract or a Statewide Contract.

4.4.3. *Management of No Cost Contracts.*

A Statewide No Cost Contract will be managed by the Central Procurement Office in the same manner as all other Statewide Contracts. An Agency Term Contract that is a No Cost Contract will be managed by the State Agency procuring the No Cost Contract in the same manner that a State Agency manages all other Agency Term Contracts.

4.5. *Revenue Contracts.*

4.5.1. *Description of Revenue Contract.*

A Revenue Contract is a standard written contract entered into between the State and a Contracting Party where the State provides goods or services for payment by a Contracting Party.

4.5.2. *Condition of Use for Revenue Contract.*

A Revenue Contract may be used where the State provides goods or services to a Contracting Party for payment, and when goods or services, as defined in the scope of work, will be provided over an established period of time. An approved Special Contract Request is required for any Revenue Contract.

4.5.3. *Management of Revenue Contracts.*

After contract award, the State Agency entering into a Revenue Contract shall have primary responsibility for managing all aspects of the Revenue Contract, which includes, by way of example, decisions concerning extensions, renewals or revenue increases or decreases. State Agencies shall also have compliance responsibility over all Revenue Contracts, which includes by way of example only, Contracting Party compliance, notice of default, curing performance and contract termination.

4.6. *Grant Contracts.*

4.6.1. *Description of Grant Contracts.*

A Grant Contract is a written contract between the State, a grantor, a natural person or a legal entity to facilitate an Award to a person or legal entity to support a program authorized by law.

4.6.2. *Condition for Use of Grant Contracts.*

A Grant Contract should be used to facilitate an Award, but should not be used where the true object of the contract is to purchase goods or services for the Grantor State Agency. State Agencies that have entered into Grant Contracts with other State Agencies that create subrecipient grant relationships should continue to use a Grant Contract to memorialize the subrecipient grant relationship.

4.6.3. *Management of Grant Contracts.*

The Grantor State Agency shall be primarily responsible for managing a Grant Contract in accordance with the *Grant Management and Subrecipient Monitoring Policy*.

4.7. *Utility Contracts.*

4.7.1. *Description of Utility Contracts.*

A Utility Contract is a contract between the State and a private or public legal entity that is regulated by one or more states or the federal government as a public utility.

4.7.2. *Condition for Use of Utility Contracts.*

A Utility Contract should only be used for the procurement of utilities.

4.7.3. *Management of Utility Contracts.*

The Central Procurement Office shall have primary responsibility for procuring and managing all Utility Contracts, which includes by way of example only, decisions concerning extensions, renewals or price increases. No State Agency shall procure any goods or services that are within the scope of a Utility Contract without first obtaining the consent of the Chief Procurement Officer. The Central Procurement Office shall also have compliance responsibility over all Utility Contracts, which includes by way of example only, Contracting Party compliance, merchantability of goods, acceptability of services, notice of default, curing performance and contract termination.

5. Contract Terms and Conditions.

5.1. *General Requirements of Terms and Conditions.*

All contracts must be in writing and contain such terms and conditions as set forth in contract templates prescribed by the Chief Procurement Officer, the Rules, or Central Procurement Office Policy.

5.2. *Termination and Length of Term.*

All contracts shall contain a provision that allows the State to terminate for convenience upon a period of time prescribed by the State unless otherwise approved by the Chief Procurement Officer. All contracts shall also contain a provision that allows the State to terminate for lack of funding. The length of a contract, including all renewals, shall not exceed sixty (60) months unless a longer term is approved by the Chief Procurement Officer as being in the State's best interests.

5.3. *Prohibited Terms and Conditions.*

5.3.1. *Indemnification and Hold Harmless.*

Contract provisions requiring the State to indemnify and hold a Contracting Party harmless are prohibited.

5.3.2. *Limitations of Contractor's Liability.*

All limitations of Contractor's liability must comply with Tenn. Code Ann. § 12-3-701 and Central Procurement Office Policy. Limitations of liability that do not comply with Tenn. Code Ann. § 12-3-701 and Central Procurement Office Policy are prohibited. Contractual provisions limiting a Contractor's liability for the following are prohibited:

- Liability for intellectual property or to any other liability, including, without limitation, indemnification obligations for infringement of third-party intellectual property rights;
- Claims covered by any specific provision in a contract with the state providing for liquidated damages; or
- Claims for intentional torts, criminal acts, fraudulent conduct, or acts or omissions that result in personal injuries or deaths.

Contractual provisions that limit a Contractor's liability to an amount less than two (2) times the value of the contract (i.e., maximum liability, estimated liability, or maximum revenue) are subject to approval by the Chief Procurement Officer and are otherwise prohibited without the Chief Procurement Officer's and the Comptroller of the Treasury's approval. The Chief Procurement Officer must make a finding that limiting a Contracting Party's liability to less than two (2) times the value of the contract is in the best interests of the State. The Chief Procurement Officer is also authorized to approve a limitation of liability amount greater than two (2) times the maximum liability, estimated liability, or maximum revenue of a contract if the chief procurement officer determines that an increase in the liability amount is necessary to protect the state's best interests.

5.3.3. *Bonus Payments.*

Bonus payment provisions are prohibited for all contracts subject to these Rules.

6. **Approval Process for Statewide and Agency Term Contracts and Amendments.**

6.1. *Minimum Approvals.*

All Agency Term Contracts shall be approved by the head of the State Agency and the Chief Procurement Officer or any other state officials as required by

statute or rule. All Statewide Contracts shall be approved by the Chief Procurement Officer. Except for Agency Term Contracts procured by a Delegated State Agency, the Central Procurement Office shall initiate a Statewide or Agency Term Contract or amendment approval through the Edison System. The Delegated State Agency shall initiate approval of an Agency Term Contract procured by the Delegated State Agency, or an amendment to such contract, by delivering the contract or amendment, signed by the contract parties, to the Central Procurement Office.

6.2. Additional Approvals.

Additional approvals are required for all contracts or amendments that fall within the following types of contract scope of services:

Contract Subject Matter	Required Approval or Endorsement
<ul style="list-style-type: none"> • Information technology 	STS Endorsement
<ul style="list-style-type: none"> • Medical/mental health-related professional, pharmaceutical, laboratory, or imaging 	F&A eHealth Initiative Endorsement
<ul style="list-style-type: none"> • Contract between State Agencies that includes provisions for cooperative programs; • Provision for State legal consultation services 	Governor
<ul style="list-style-type: none"> • Provision for State legal consultation services 	Attorney General ¹
<ul style="list-style-type: none"> • Contract with an individual; • Contract that involves training State employees (except training pursuant to an information technology system procurement); • Services relating to the employment of current or prospective State employees 	Human Resources Commissioner
<ul style="list-style-type: none"> • Contract that involves engineering or architectural services relating to an improvement (including demolition) to real property in which the State of Tennessee has an interest 	State Architect

¹ See Tenn. Code Ann. § 8-6-106.

Contract Subject Matter	Required Approval or Endorsement
<ul style="list-style-type: none"> • Delegation of procurement or contract authority by the CPO; • Procurements for goods and services where authority exists under both the SBC and CPO to procure and contract; • Auditing services; • Cooperative agreements as provided in § 12-3-512; • Fee-For-Service procurements or contracts with a maximum liability > \$5,000,000; • Grant contracts with a maximum liability > \$5,000,000; • Fee-For-Service procurements or contracts for new or replacement information systems and technical infrastructure projects for goods and services > \$500,000; • Procurements or contracts utilizing competitive or non-competitive negotiations with a maximum liability > \$250,000; • Revenue procurements/contracts; • No-Cost procurements/contracts; • Procurements/contracts with a term > 60 months (5 years); • Procurements/contracts that propose to limit liability to < 2 times the maximum liability; • Procurements/contracts that propose to change the Records, Annual Report, Audit, or Monitoring clauses; • Procurements/contracts that allow for the negotiation of a necessary, mandatory, or standard contract clause; • Procurements allowing a cost proposal to be evaluated contemporaneously with or prior to the technical proposal evaluation; 	<p>Comptroller of the Treasury²</p>

² Pursuant to Tenn. Code Ann. § 4-56-108(b), without limitation of the audit authority of the comptroller of the treasury, the comptroller is authorized to examine any documents under the authority of the chief procurement officer.

Contract Subject Matter	Required Approval or Endorsement
<ul style="list-style-type: none"> • Procurements/contracts containing an automatic price escalator; and • Such other procurements/contracts or other items as may be directed by the Commissioner of Finance and Administration or by the Commission. 	
<ul style="list-style-type: none"> • All requests to procure goods or services by negotiation with a single service provider (a noncompetitive contract) having a term of more than one (1) year or which contain term extension language authorizing a term of greater than one (1) year AND a cumulative value of \$250,000 or more; and • All amendments to a contract, whether competitively or noncompetitively procured, meeting the above term and dollar threshold requirements where the amendment: 1) increases or decreases the maximum liability, 2) extends or shortens the contract term, 3) changes the entity or name of the entity with which the State is contracting, or 4) otherwise changes an original contract or amended contract in a substantive manner. 	Fiscal Review Committee ³

Additionally, all contracts or amendments to such contracts with a duration period of more than twelve (12) months must be approved by the Office of the Comptroller. Amendments and renewals must follow the same approval process as that of the original, or base, contract. The termination of a contract, for any reason, must be approved by the Chief Procurement Officer (or Delegated State Agency official by Chief Procurement Officer) and filed by the affected State Agency with the Office of the Comptroller.

7. Fiscal Review – Generally.

³ Pursuant to Tenn. Code Ann. § 4-56-107(b)(4), the Fiscal Review Committee, pursuant to its jurisdiction under § 3-7-103(a), is authorized to review any other State contract or contract amendment regardless of whether the contract or contract amendment meets these requirements.

Certain contracts or amendments to certain contracts shall be contemporaneously filed with the Central Procurement Office, Office of the Comptroller for approval and with the Fiscal Review Committee of the General Assembly for review. This includes, but is not limited to, the following:

- (1) All proposed noncompetitive contracts with a term of greater than one year or containing a provision authorizing a contract renewal beyond one year, and having a cumulative value of \$250,000 or more;
- (2) Any amendment to a contract described in subdivision (1), whether originally procured competitively or noncompetitively which:
 - a. Increases or decreases funding;
 - b. Extends or shortens the contract term;
 - c. Changes the entity or name of the entity with which the State is contracting; or
 - d. Otherwise changes an original or amended contract in a substantive manner.

8. Interagency Agreements.

8.1. Description of Interagency Agreement.

An Interagency Agreement is a written document that describes a bilateral or multilateral agreement between State agencies. This type of document should memorialize the description of duties for each State Agency, any applicable exchange of funds and the term for the agreement.

8.2. Condition of Use for Interagency Agreement.

An Interagency Agreement should be used to memorialize one or more State Agencies' agreement and should be used when the parties (State Agencies) do not have the legal capacity to contract or sue and be sued by one another. While Interagency Agreements should be tracked in the Edison system, these agreements are exempt from the requirements of the Rules and Central Procurement Office Policy and they do not require the approval of the Chief Procurement Officer. The Central Procurement Office shall prescribe or approve the form of Interagency Agreement that will be used by State Agencies.

8.3. Management of Interagency Agreements.

The State Agency parties to an Interagency Agreement shall have primary responsibility for managing the Interagency Agreement, which includes by way of example only, decisions concerning extensions, renewals or price increases. State Agency parties to an Interagency Agreement shall also have compliance responsibility over all Interagency Agreements, which includes by way of example only, State Agency party compliance, acceptability of goods or services, notice of default, curing performance and contract termination.

Related Statutes, Rules and Policies

Tenn. Code Ann. §§ 4-56-101, *et seq.*

Tenn. Code Ann. §§ 12-3-101, *et seq.*

Tenn. Code Ann. §§ 12-4-101, *et seq.*

***BUSINESS CONDUCT AND ETHICS
POLICY AND PROCEDURES, POLICY
NUMBER 2013- 009***

REDLINE

Policy Number 2013-009
Central Procurement Office
Business Conduct and Ethics Policy and Procedures

Effective: May 28, 2013
Last Amended: ~~August 18~~ November 8, 2018
Prepared by: The Central Procurement Office of the State of Tennessee

1. Purpose.

The purposes of this Policy Number 2013-009 are as follows:

- To establish a code of business and ethical conduct for Central Procurement Office or Covered State Agency Personnel involved in Procurement or Contract Administration on behalf of the State of Tennessee.
- To prescribe an Organizational Conflicts of Interest policy applicable to Central Procurement Office or Covered State Agency Personnel who are involved in Procurement or Contract Administration and to provide guidance in identifying and managing Organizational Conflicts of Interest, all of which serves to:
 - Promote full and open competition, integrity, and transparency in Procurement or Contract Administration;
 - Promote an environment conducive to Contracting Parties providing goods or services to the State in an impartial and objective manner;
 - Provide guidance to enable Contracting Parties to make informed decisions while conducting business with the State; and
 - Protect the validity of the State's Procurement or Contract Administration, protect the State's interests, and protect the State's confidential and sensitive information.

2. Scope.

The Central Procurement Office recognizes that Personnel involved in Procurement or Contract Administration on behalf of the Central Procurement Office and Covered State Agencies represent the State in all facets of their work. All Central Procurement Office and Covered State Agency Personnel involved in Procurement or Contract Administration are expected to conduct themselves such that their personal and professional conduct does not have a negative effect on the work of the Central Procurement Office or the Covered State Agency or reflect poorly on the public image, reputation, or credibility of the State. Accordingly, this policy applies to all Personnel of the Central Procurement Office and Covered State Agencies involved in Procurement or Contract Administration, which includes by way of example, drafting Solicitations, negotiations, evaluations of Responses, contract awards and amendments to contracts, protests or termination hearings with respect to contracts. Moreover, this policy

requires all Central Procurement Office or Covered State Agency Personnel involved in Procurement or Contract Administration to manage Organizational Conflicts of Interest through Avoidance, Mitigation or Waiver, as described below, when they know of the existence of an Organizational Conflict of Interest.

3. Definitions.

For purposes of this policy, the following terms shall have the meanings described below:

“Affiliate” of a Contracting Party means (i) any member, partner or joint venture member of the Contracting Party; (ii) any shareholder of the Contracting Party having an interest of at least ten percent (10%) in any class of stocks; (iii) any Person that directly or indirectly through one or more intermediaries Controls (as hereinafter defined), or is Controlled by, or is under common Control with, the Contracting Party or any of the Contracting Party’s shareholders, members, partners or joint venture members; or (iv) any entity for which ten percent (10%) or more of the equity interest in such entity is held directly or indirectly, beneficially or of record by (a) the Contracting Party, (b) any of the shareholders, members, partners or joint venture members of the Contracting Party, or (c) any affiliate of the Contracting Party.

“Biased Ground Rules” means the requirements for a contract or prerequisites for competition for a contract that have been written by a Person who, as a part of its performance of a State contract, directly or indirectly participates in writing statements of work or specifications for another contract for which the Person who established the requirements or prerequisites, or any of its Affiliates, seeks to compete.

“Contract Administration” means the roles within the Central Procurement Office or a Covered State Agency associated with contract management, which includes evaluating contractor performance, managing contract compliance, and whether or not to renew or extend a contract. Contract Administration does not include ancillary State Agency programmatic roles related to a contract or ministerial roles, such as paying contract invoices or administrative support functions.

“Contracting Party” means any Person, or its Affiliates or subcontractors, retained by the State to perform Procurement or program implementation services for the State, or proposing to perform such services.

“Control” means the possession, directly or indirectly, of the power to cause the direction of the management of an entity, whether through voting securities, by contract, Immediate Family relationship or otherwise.

“Covered State Agency” means a State Agency that is not exempt from the rules and regulations, or policies and procedures of the Central Procurement Office under the provisions of Tenn. Code Ann. § 12-3-102.

“Employee” means natural persons who are employees of the State of Tennessee and State Agencies.

“Immediate Family” means spouse, dependent children or stepchildren, or relatives related by blood or marriage.

“Impaired Objectivity” means when a Person evaluates Responses or contract performance for its own products or services or for the products or services of competitors. Impaired Objectivity can exist where a contract requires the exercise of judgment, and the economic interests of the Person will be harmed through the free and unbiased exercise of that judgment.

“Organizational Conflict of Interest” means, as to Procurements, contracts or proposed contracts with the State, a circumstance arising out of a Contracting Party’s existing or past activities, business or financial interests, Immediate Familial relationships, contractual relationships, or organizational structure (e.g., parent entities, subsidiaries, Affiliates, etc.) that results in:

- (i) Impaired Objectivity of a Contracting Party;
- (ii) An Unfair Competitive Advantage for any Respondent with respect to a Procurement;
- (iii) Biased Ground Rules; or
- (iv) Impropriety, as determined by the Chief Procurement Officer, with respect to any of the State’s Procurements or contracts.

“Person” means any individual, corporation, limited liability company, partnership (general or limited), joint venture, association, joint stock company, trust, government (or any agency or political subdivision thereof), other business entity, or other organization recognized by law.

“Personnel” means all employees, evaluators or subject matter experts, whether or not an employee of the Central Procurement Office, a Covered State Agency, or the State, involved in drafting Solicitations, evaluating Responses, providing advice or assistance in connection with evaluating Responses, or awarding contracts pursuant to a Procurement on behalf of the Central Procurement Office or a Covered State Agency.

“Procurement” means the act of buying, purchasing, renting, leasing, or otherwise acquiring any goods or services covered by the Rules of the Central Procurement Office or this policy. It also includes all functions that pertain to the obtaining of any goods or service, including the description of requirements, selection and solicitation of sources, preparation and award of a contract, and all phases of Contract Administration.

“Respondent” means a Person with the capacity to contract and sue and be sued who has submitted a Response to a solicitation.

“Response” means a written response to a Solicitation for goods or services.

“Solicitation” means a written document that facilitates the award of a contract to Contracting Parties for goods or services. Examples of solicitations include, but are not limited to, an Invitation to Bid, a Request for Information, a Request for Proposals, and a Request for Qualifications.

“State” means the State of Tennessee, including its departments, agencies, and entities that fall under its purview.

“State Agency” means the departments, agencies, and entities of the State of Tennessee.

“Unfair Competitive Advantage” means a situation that exists when a Person competing for the award of a contract has obtained:

- (i) Access to proprietary or confidential State information, or other State information that is not available to the public or other Respondents, and that would assist Respondents in responding to a Solicitation or in obtaining the contract; or
- (ii) Scoring criteria or points allocation information, or other source selection information, that is relevant to the contract but is not available to all Respondents to a Solicitation and that would assist the Respondents in responding to a Solicitation or in obtaining the contract.

4. Requirement of Good Faith and Fair Dealing.

All Central Procurement Office or Covered State Agency Personnel involved in public Procurement or Contract Administration must act in good faith and deal with the public in a fair and impartial manner. All Central Procurement Office or Covered State Agency Personnel must act with honesty and integrity and shall remove themselves from Procurement or Contract Administration in the event they cannot act in good faith or conduct their work in a fair and unbiased manner.

5. Fiduciary Duty.

Involvement by Personnel in the Procurement or Contract Administration involves a public trust. All Central Procurement Office or Covered State Agency Personnel owe a fiduciary duty to the State and all Personnel play an important role in ensuring that the State’s needed goods or services are procured in an efficient, transparent and economical manner on terms and conditions in the best interests of the State.

6. Avoiding Conflicts of Interest.

All Central Procurement Office or Covered State Agency Personnel should avoid any actions, relationships, or business transactions that conflict with the State’s best interests or otherwise create individual or Organizational Conflicts of Interests that taint the procurement process or the reputation of the State.

No Personnel of the Central Procurement Office or a Covered State Agency who is involved in Procurement or Contract Administration shall participate in any portion of the process when:

- The Personnel is contemporaneously employed by a Respondent to a Solicitation;
- The Personnel, any member of the Personnel’s Immediate Family, or persons with whom the Personnel has a personal relationship that precludes the Personnel from acting in a fair and impartial manner, or holds a position with a Respondent or Affiliate or subcontractor as an officer, director, trustee, partner or the like;
- The Personnel, any member of the Personnel’s Immediate Family, or persons with whom the employee has a personal relationship that precludes the Personnel from acting in a fair and impartial manner; or The Personnel, a member of the Personnel’s Immediate Family, or persons with whom the Personnel has a personal relationship that impairs the Personnel’s ability to act in a fair and impartial manner, is negotiating, or has an

arrangement concerning prospective employment with Respondents, Contracting Parties, subcontractors, or Affiliates.

7. Prohibition against Rebates, Gifts, Compensation.

No Central Procurement Office or Covered State Agency Personnel shall solicit, demand, accept, or agree to accept from any Person, which includes without limitation, Respondents, Contracting Parties, subcontractors or Affiliates, any rebate, gift, money, or anything of value whatsoever, or any promise, obligation, or contract for future rewards or compensation in connection with Procurement or Contract Administration.

8. Organizational Conflicts of Interest.

- A. All Central Procurement Office or Covered State Agency Personnel shall at all time conduct and carry out their duties and responsibilities in a manner intended to uphold high ethical standards and to comply with this policy. If Personnel of the Central Procurement Office or a Covered State Agency have actual knowledge of an Organizational Conflict of Interest, the Organizational Conflict of Interest shall be disclosed to the Chief Procurement Officer and shall be Avoided, Mitigated or Waived as more particularly described in Section 8.D. below.
- B. The Central Procurement Office or a Covered State Agency must consider potential Organizational Conflicts of Interest during preparation of all Solicitation documents, during the evaluation of Responses, during the award of contracts and must disclose the existence of Organizational Conflicts of Interest that become known or discovered at any time during the term of any contract.
- C. All Respondents or Contracting Parties must disclose the existence of Organizational Conflicts of Interest that are known or discovered at any time during the Procurement process or during the term of any contract awarded pursuant to a Procurement, and must upon request, disclose all facts bearing on Organizational Conflicts of Interest.
- D. Upon identification of an Organizational Conflict of Interest, the Central Procurement Office or any Covered State Agency shall, as soon as reasonably possible, simultaneously notify the Chief Procurement Officer of the Organizational Conflict of Interest and submit to the Chief Procurement Officer a plan to address the Organizational Conflict of Interest, which plan shall include actions or agreements necessary to Avoid, Mitigate, or Waive (as these terms are described below) the Organizational Conflict of Interest.
 - i. Avoidance may involve the removal or limitation of Personnel of the Central Procurement Office or any Covered State Agency from being involved in the drafting of the Solicitation, Procurement activities, evaluation of Responses, or management of a contract awarded to a Respondent or the award of future contracts.
 - ii. Mitigation may involve specific actions by a Respondent, a Contracting Party or Personnel of the Central Procurement Office or any Covered State Agency to limit the effect of an Organizational Conflict of Interest. Mitigation may also

involve more general efforts or recognitions when the circumstances are covered by applicable State statutes, rules, policies or procedures.

- iii. The Central Procurement Office or any Covered State Agency may, upon written approval of the Chief Procurement Officer, waive the requirement to resolve an Organizational Conflict of Interest if the Chief Procurement Officer concurs with the determination of the Central Procurement Office or Covered State Agency that resolution is not feasible or is not in the best interests of the State. Such determination must be documented in writing and maintained by the Central Procurement Office or the Covered State Agency.
- iv. No Organizational Conflict of Interest occurs when (i) all material facts of the transaction and the basis for a possible Organizational Conflict of Interest are disclosed and the contract, Procurement or transaction is approved by the Chief Procurement Officer or (ii) the Procurement, contract, or transaction is fair to the State, which such determination shall be documented in writing and filed with and approved by the Chief Procurement Officer.
- v. Neither the Central Procurement Office nor a Covered State Agency shall commence with implementation of the plan to Avoid, Mitigate, or Waive the Organizational Conflict of Interest, as required by subparagraphs 8.D.i, 8.D.ii. or 8.D.iii., until the Central Procurement Office or Covered State Agency has documented the basis in writing and has received written approval of the plan from the Chief Procurement Officer.
- vi. In all instances where an Organizational Conflict of Interest exists in a Procurement or contract in which the Chief Procurement Officer has participated, the use of the term "Chief Procurement Officer" in Section 8 of this policy, shall mean the Procurement Commission or its designee.

9. Site Visits Related to a Procurement.

Site visits to Respondent locations needed to properly evaluate goods or services for a pending or future Solicitation are allowed subject to the following conditions:

- If site visits are required within the Solicitation for evaluation purposes, the State, and not the Respondent being evaluated, must pay for such visits.
- Exceptions to this policy may be made by the Chief Procurement Officer or his or her designee. Any exception must be made on a case-by-case basis. If an exception is made, a written determination signed by the Chief Procurement Officer or his or her designee shall be included in the contract file.
- Central Procurement Office or Covered State Agency Personnel making such site visits will incur and recover travel costs from the State entity for which the Procurement is being conducted in accordance with State travel regulations.
- No direct reimbursement of Personnel by a Respondent is permitted. The Central Procurement Office or Covered State Agency will determine all costs incurred by Personnel in connection with the site visit. ~~and bill the appropriate Respondent for reimbursement of costs by means of a check payable to the State Agency.~~

10. Required Disclosures for Central Procurement Office and Covered State Agency Personnel.

All Personnel of the Central Procurement Office or a Covered State Agency involved in Procurement or Contract Administration shall make disclosures to the Chief Procurement Officer in the following situations:

- When the Personnel has family or personal relationships that conflict with, or could potentially give rise to an individual or Organizational Conflict of Interest;
- When the Personnel has an interest, Immediate Familial, personal, professional or financial interest, that conflicts with the best interests of the State;
- When the Personnel was previously employed by a Respondent or Contracting Party involved in the procurement;
- When the Personnel is aware of or should be aware of any other facts or circumstances that compromise the Personnel's ability to carry out his or her fiduciary duty to the State and act in a fair and impartial manner with respect to the State or the public;
- When the Personnel has knowledge of an Organizational Conflict of Interest that arises during the Procurement or contract processes.

All Personnel of the Central Procurement Office or any Covered State Agency who participate in Solicitation development for a procurement where an award of the contract is based in whole or in part on subjective criteria (e.g., an RFQ or a RFP) shall execute a disclosure substantially in form to Attachment A to this policy, the Solicitation Development Conflict of Interest Disclosure Statement. Any potential conflict shall be brought to the attention of the Chief Procurement Officer to determine whether re-assignment is warranted.

From time-to-time, Personnel, by virtue of the nature of their roles as evaluators, will be privy to confidential or sensitive information that is only available to evaluation team members. The Chief Procurement Officer shall require Personnel participating in Response evaluation for a procurement where an award of the contract is based in whole or in part on subjective criteria (e.g., RFQ or a RFP) to execute a confidentiality agreement, substantially in form to Attachment B1 to this policy, whereby the Personnel agree not to disclose any information, whether written or oral, received by the Personnel during the evaluation process.

All Personnel of the Central Procurement Office or a Covered State Agency who participate in the Response evaluation for a procurement where an award of the contract is based in whole or in part on subjective criteria (e.g., an RFQ or a RFP) shall execute a disclosure substantially in form to Attachment B2 to this policy, the Response Evaluation Conflict of Interest Disclosure Statement. Any potential conflict shall be brought to the attention of the Chief Procurement Officer to determine whether re-assignment is warranted.

Covered State Agency Personnel Procurement or Contract Administration roles are also responsible for filing annual conflict of interest disclosures in accordance with their particular agency's policies and procedures. If no policies and procedures exist within the Personnel's agency, then the Personnel shall file an annual conflict of interest and confidentiality attestation in accordance with the policies and procedures of the Central Procurement Office. Filing an annual disclosure statement does not absolve Personnel involved in a particular procurement from disclosing known individual or Organizational Conflicts of Interest on a case-by-case basis.

Such disclosures shall be made available to the Central Procurement Office upon request. The annual conflict of interest disclosures of Covered State Agency Personnel shall be maintained by the Covered State Agency.

All Central Procurement Office Personnel with Procurement or Contract Administration roles shall execute an annual conflict of interest and confidentiality attestations ~~substantially in form to Attachment C to this policy~~ in accordance with the Department of General Services Policy.

Filing an annual disclosure statement does not absolve Personnel involved in a particular procurement from disclosing known individual or Organizational Conflicts of Interest on a case-by-case basis. ~~The annual attestations of Central Procurement Office Personnel shall be maintained by the Director of Category Management and Legal Team.~~

Related Statutes, Rules and Policies

Tenn. Code Ann. §§ 4-56-101, *et seq.*

Tenn. Code Ann. §§ 12-3-101, *et seq.*

Tenn. Code Ann. §§ 12-4-101, *et seq.*

ATTACHMENT A

SOLICITATION DEVELOPMENT CONFLICT OF INTEREST DISCLOSURE STATEMENT

INSTRUCTIONS FOR THE STATEMENT SIGNATORY:

Complete the space provided with the Solicitation number applicable to the statement.

Complete, sign and date the applicable section (solicitation development or response evaluation).

Complete each space provided beside the disclosure statements by either "initialing" the statement (to indicate an affirmation of the corresponding statement) OR by writing "N/A" (to indicate that the corresponding statement is not applicable).

If a possible conflict of interest is identified, as described in CPO Policy 2013-009, a description of such should be attached to this document. Please see Central Procurement Office Policy Number 2013-009 Business Conduct and Ethics Policy and Procedures for more information.

**SOLICITATION
NUMBER:**

--

PERSONNEL INVOLVED WITH SOLICITATION DEVELOPMENT—

	I did not identify any potential conflict of interest, financial or otherwise, regarding my involvement with the development, formulation, drafting or review of the subject Solicitation or its specifications or scope of services.
	I identified the following possible individual or Organizational Conflict of Interest issues, detailed and attached hereto, which might adversely reflect on or threaten the integrity of the subject Procurement process:

SIGNATURE & DATE:

PRINTED NAME:

ATTACHMENT B1

**ATTESTATION REGARDING CONFIDENTIALITY IN THE EVALUATION OF [INSERT
PROCUREMENT METHOD] # _____ FOR _____**

Personnel Name: _____

Personnel Phone Number: _____

Personnel Email Address: _____

I, _____ (*print name*), do hereby attest, certify, warrant, and assure that I shall not disclose any Procurement evaluation information, including but not limited to the identity of evaluators or the number or identity of Respondents related to [INSERT PROCUREMENT METHOD] # _____ for _____ until the Notice of Intent to Award is communicated in writing or electronic transmission to all Respondents.

Personnel's Signature

Date

ATTACHMENT B2

RESPONSE EVALUATION CONFLICT OF INTEREST DISCLOSURE STATEMENT

IMPORTANT: COMPLETE AND SIGN ATTACHMENT B1 PRIOR TO ATTACHMENT B2

INSTRUCTIONS FOR THE STATEMENT SIGNATORY:
Complete the space provided with the Solicitation number applicable to the statement.
Complete, sign and date the applicable section (solicitation development or response evaluation).
Complete each space provided beside the disclosure statements by either "initialing" the statement (to indicate an affirmation of the corresponding statement) OR by writing "N/A" (to indicate that the corresponding statement is not applicable).
If a possible conflict of interest, as described in CPO Policy 2013-009, is identified, a description of such should be attached to this document. Please see Central Procurement Office Policy Number 2013-009 Business Conduct and Ethics Policy and Procedures for more information.

**SOLICITATION
NUMBER:**

PERSONNEL INVOLVED WITH RESPONSE EVALUATIONS—

	I reviewed the attached listing of prospective Respondents expressing an interest in the subject Solicitation and did not identify any potential conflict of interest, financial or otherwise, regarding my ability to fairly evaluate OR assist with the evaluation of all Responses.
	I reviewed the attached listing of prospective Respondents expressing an interest in the subject Solicitation and identified the following possible Organizational Conflict of Interest issues, detailed and attached hereto, which might adversely reflect on my ability to fairly evaluate OR assist with the evaluation of all proposals OR that may give rise to an Organizational Conflict of Interest.

SIGNATURE & DATE:

PRINTED NAME:

ATTACHMENT C

**CENTRAL PROCUREMENT OFFICE OR COVERED STATE AGENCY EMPLOYEE
ANNUAL ATTESTATIONS**

Employee Name: _____

Employee Phone Number: _____

Employee Email Address: _____

CONFLICT OF INTEREST

I, _____ (*print name*), do hereby attest, certify, warrant and assure that I will not participate in any portion of a Procurement that involved a potential conflict of interest, financial or otherwise.

Furthermore, I _____ (*print name*), do hereby attest, certify, warrant and assure that I will make disclosures to the Chief Procurement Officer in the following situations:

- When I have an Immediate Family or a personal relationship that conflicts with, or potentially creates a conflict;
- When I have an interest, Immediate Familial, personal, professional or financial, that conflicts with the best interests of the State;
- If I was previously employed by a Respondent involved in the Procurement;
- When I am aware of or should be aware of any other facts or circumstances that compromise my ability to carry out my fiduciary duty to the State and act in a fair and impartial manner with respect to the State or the public;
- When I have actual knowledge of an Organizational Conflict of Interest involving a Solicitation, a contract award, or the circumstances giving rise to an Organizational Conflict of Interest during the term of any contract awarded pursuant to a Solicitation.

CONFIDENTIALITY

I, _____ (*print name*), do hereby attest, certify, warrant, and assure that I shall not disclose any Procurement evaluation information related to a Procurement until the Notice of Intent to Award is communicated in writing or electronic transmission to all Respondents.

Employee's Signature

Date

***BUSINESS CONDUCT AND ETHICS
POLICY AND PROCEDURES, POLICY
NUMBER 2013- 009***

CLEAN

Policy Number 2013-009
Central Procurement Office
Business Conduct and Ethics Policy and Procedures

Effective: May 28, 2013
Last Amended: November 8, 2018
Prepared by: The Central Procurement Office of the State of Tennessee

1. Purpose.

The purposes of this Policy Number 2013-009 are as follows:

- To establish a code of business and ethical conduct for Central Procurement Office or Covered State Agency Personnel involved in Procurement or Contract Administration on behalf of the State of Tennessee.
- To prescribe an Organizational Conflicts of Interest policy applicable to Central Procurement Office or Covered State Agency Personnel who are involved in Procurement or Contract Administration and to provide guidance in identifying and managing Organizational Conflicts of Interest, all of which serves to:
 - Promote full and open competition, integrity, and transparency in Procurement or Contract Administration;
 - Promote an environment conducive to Contracting Parties providing goods or services to the State in an impartial and objective manner;
 - Provide guidance to enable Contracting Parties to make informed decisions while conducting business with the State; and
 - Protect the validity of the State's Procurement or Contract Administration, protect the State's interests, and protect the State's confidential and sensitive information.

2. Scope.

The Central Procurement Office recognizes that Personnel involved in Procurement or Contract Administration on behalf of the Central Procurement Office and Covered State Agencies represent the State in all facets of their work. All Central Procurement Office and Covered State Agency Personnel involved in Procurement or Contract Administration are expected to conduct themselves such that their personal and professional conduct does not have a negative effect on the work of the Central Procurement Office or the Covered State Agency or reflect poorly on the public image, reputation, or credibility of the State. Accordingly, this policy applies to all Personnel of the Central Procurement Office and Covered State Agencies involved in Procurement or Contract Administration, which includes by way of example, drafting Solicitations, negotiations, evaluations of Responses, contract awards and amendments to contracts, protests or termination hearings with respect to contracts. Moreover, this policy

requires all Central Procurement Office or Covered State Agency Personnel involved in Procurement or Contract Administration to manage Organizational Conflicts of Interest through Avoidance, Mitigation or Waiver, as described below, when they know of the existence of an Organizational Conflict of Interest.

3. Definitions.

For purposes of this policy, the following terms shall have the meanings described below:

“Affiliate” of a Contracting Party means (i) any member, partner or joint venture member of the Contracting Party; (ii) any shareholder of the Contracting Party having an interest of at least ten percent (10%) in any class of stocks; (iii) any Person that directly or indirectly through one or more intermediaries Controls (as hereinafter defined), or is Controlled by, or is under common Control with, the Contracting Party or any of the Contracting Party’s shareholders, members, partners or joint venture members; or (iv) any entity for which ten percent (10%) or more of the equity interest in such entity is held directly or indirectly, beneficially or of record by (a) the Contracting Party, (b) any of the shareholders, members, partners or joint venture members of the Contracting Party, or (c) any affiliate of the Contracting Party.

“Biased Ground Rules” means the requirements for a contract or prerequisites for competition for a contract that have been written by a Person who, as a part of its performance of a State contract, directly or indirectly participates in writing statements of work or specifications for another contract for which the Person who established the requirements or prerequisites, or any of its Affiliates, seeks to compete.

“Contract Administration” means the roles within the Central Procurement Office or a Covered State Agency associated with contract management, which includes evaluating contractor performance, managing contract compliance, and whether or not to renew or extend a contract. Contract Administration does not include ancillary State Agency programmatic roles related to a contract or ministerial roles, such as paying contract invoices or administrative support functions.

“Contracting Party” means any Person, or its Affiliates or subcontractors, retained by the State to perform Procurement or program implementation services for the State, or proposing to perform such services.

“Control” means the possession, directly or indirectly, of the power to cause the direction of the management of an entity, whether through voting securities, by contract, Immediate Family relationship or otherwise.

“Covered State Agency” means a State Agency that is not exempt from the rules and regulations, or policies and procedures of the Central Procurement Office under the provisions of Tenn. Code Ann. § 12-3-102.

“Employee” means natural persons who are employees of the State of Tennessee and State Agencies.

“Immediate Family” means spouse, dependent children or stepchildren, or relatives related by blood or marriage.

“Impaired Objectivity” means when a Person evaluates Responses or contract performance for its own products or services or for the products or services of competitors. Impaired Objectivity can exist where a contract requires the exercise of judgment, and the economic interests of the Person will be harmed through the free and unbiased exercise of that judgment.

“Organizational Conflict of Interest” means, as to Procurements, contracts or proposed contracts with the State, a circumstance arising out of a Contracting Party’s existing or past activities, business or financial interests, Immediate Familial relationships, contractual relationships, or organizational structure (e.g., parent entities, subsidiaries, Affiliates, etc.) that results in:

- (i) Impaired Objectivity of a Contracting Party;
- (ii) An Unfair Competitive Advantage for any Respondent with respect to a Procurement;
- (iii) Biased Ground Rules; or
- (iv) Impropriety, as determined by the Chief Procurement Officer, with respect to any of the State’s Procurements or contracts.

“Person” means any individual, corporation, limited liability company, partnership (general or limited), joint venture, association, joint stock company, trust, government (or any agency or political subdivision thereof), other business entity, or other organization recognized by law.

“Personnel” means all employees, evaluators or subject matter experts, whether or not an employee of the Central Procurement Office, a Covered State Agency, or the State, involved in drafting Solicitations, evaluating Responses, providing advice or assistance in connection with evaluating Responses, or awarding contracts pursuant to a Procurement on behalf of the Central Procurement Office or a Covered State Agency.

“Procurement” means the act of buying, purchasing, renting, leasing, or otherwise acquiring any goods or services covered by the Rules of the Central Procurement Office or this policy. It also includes all functions that pertain to the obtaining of any goods or service, including the description of requirements, selection and solicitation of sources, preparation and award of a contract, and all phases of Contract Administration.

“Respondent” means a Person with the capacity to contract and sue and be sued who has submitted a Response to a solicitation.

“Response” means a written response to a Solicitation for goods or services.

“Solicitation” means a written document that facilitates the award of a contract to Contracting Parties for goods or services. Examples of solicitations include, but are not limited to, an Invitation to Bid, a Request for Information, a Request for Proposals, and a Request for Qualifications.

“State” means the State of Tennessee, including its departments, agencies, and entities that fall under its purview.

“State Agency” means the departments, agencies, and entities of the State of Tennessee.

“Unfair Competitive Advantage” means a situation that exists when a Person competing for the award of a contract has obtained:

- (i) Access to proprietary or confidential State information, or other State information that is not available to the public or other Respondents, and that would assist Respondents in responding to a Solicitation or in obtaining the contract; or
- (ii) Scoring criteria or points allocation information, or other source selection information, that is relevant to the contract but is not available to all Respondents to a Solicitation and that would assist the Respondents in responding to a Solicitation or in obtaining the contract.

4. Requirement of Good Faith and Fair Dealing.

All Central Procurement Office or Covered State Agency Personnel involved in public Procurement or Contract Administration must act in good faith and deal with the public in a fair and impartial manner. All Central Procurement Office or Covered State Agency Personnel must act with honesty and integrity and shall remove themselves from Procurement or Contract Administration in the event they cannot act in good faith or conduct their work in a fair and unbiased manner.

5. Fiduciary Duty.

Involvement by Personnel in the Procurement or Contract Administration involves a public trust. All Central Procurement Office or Covered State Agency Personnel owe a fiduciary duty to the State and all Personnel play an important role in ensuring that the State’s needed goods or services are procured in an efficient, transparent and economical manner on terms and conditions in the best interests of the State.

6. Avoiding Conflicts of Interest.

All Central Procurement Office or Covered State Agency Personnel should avoid any actions, relationships, or business transactions that conflict with the State’s best interests or otherwise create individual or Organizational Conflicts of Interests that taint the procurement process or the reputation of the State.

No Personnel of the Central Procurement Office or a Covered State Agency who is involved in Procurement or Contract Administration shall participate in any portion of the process when:

- The Personnel is contemporaneously employed by a Respondent to a Solicitation;
- The Personnel, any member of the Personnel’s Immediate Family, or persons with whom the Personnel has a personal relationship that precludes the Personnel from acting in a fair and impartial manner, or holds a position with a Respondent or Affiliate or subcontractor as an officer, director, trustee, partner or the like;
- The Personnel, any member of the Personnel’s Immediate Family, or persons with whom the employee has a personal relationship that precludes the Personnel from acting in a fair and impartial manner; or The Personnel, a member of the Personnel’s Immediate Family, or persons with whom the Personnel has a personal relationship that impairs the Personnel’s ability to act in a fair and impartial manner, is negotiating, or has an

arrangement concerning prospective employment with Respondents, Contracting Parties, subcontractors, or Affiliates.

7. Prohibition against Rebates, Gifts, Compensation.

No Central Procurement Office or Covered State Agency Personnel shall solicit, demand, accept, or agree to accept from any Person, which includes without limitation, Respondents, Contracting Parties, subcontractors or Affiliates, any rebate, gift, money, or anything of value whatsoever, or any promise, obligation, or contract for future rewards or compensation in connection with Procurement or Contract Administration.

8. Organizational Conflicts of Interest.

- A. All Central Procurement Office or Covered State Agency Personnel shall at all time conduct and carry out their duties and responsibilities in a manner intended to uphold high ethical standards and to comply with this policy. If Personnel of the Central Procurement Office or a Covered State Agency have actual knowledge of an Organizational Conflict of Interest, the Organizational Conflict of Interest shall be disclosed to the Chief Procurement Officer and shall be Avoided, Mitigated or Waived as more particularly described in Section 8.D. below.
- B. The Central Procurement Office or a Covered State Agency must consider potential Organizational Conflicts of Interest during preparation of all Solicitation documents, during the evaluation of Responses, during the award of contracts and must disclose the existence of Organizational Conflicts of Interest that become known or discovered at any time during the term of any contract.
- C. All Respondents or Contracting Parties must disclose the existence of Organizational Conflicts of Interest that are known or discovered at any time during the Procurement process or during the term of any contract awarded pursuant to a Procurement, and must upon request, disclose all facts bearing on Organizational Conflicts of Interest.
- D. Upon identification of an Organizational Conflict of Interest, the Central Procurement Office or any Covered State Agency shall, as soon as reasonably possible, simultaneously notify the Chief Procurement Officer of the Organizational Conflict of Interest and submit to the Chief Procurement Officer a plan to address the Organizational Conflict of Interest, which plan shall include actions or agreements necessary to Avoid, Mitigate, or Waive (as these terms are described below) the Organizational Conflict of Interest.
 - i. Avoidance may involve the removal or limitation of Personnel of the Central Procurement Office or any Covered State Agency from being involved in the drafting of the Solicitation, Procurement activities, evaluation of Responses, or management of a contract awarded to a Respondent or the award of future contracts.
 - ii. Mitigation may involve specific actions by a Respondent, a Contracting Party or Personnel of the Central Procurement Office or any Covered State Agency to limit the effect of an Organizational Conflict of Interest. Mitigation may also

involve more general efforts or recognitions when the circumstances are covered by applicable State statutes, rules, policies or procedures.

- iii. The Central Procurement Office or any Covered State Agency may, upon written approval of the Chief Procurement Officer, waive the requirement to resolve an Organizational Conflict of Interest if the Chief Procurement Officer concurs with the determination of the Central Procurement Office or Covered State Agency that resolution is not feasible or is not in the best interests of the State. Such determination must be documented in writing and maintained by the Central Procurement Office or the Covered State Agency.
- iv. No Organizational Conflict of Interest occurs when (i) all material facts of the transaction and the basis for a possible Organizational Conflict of Interest are disclosed and the contract, Procurement or transaction is approved by the Chief Procurement Officer or (ii) the Procurement, contract, or transaction is fair to the State, which such determination shall be documented in writing and filed with and approved by the Chief Procurement Officer.
- v. Neither the Central Procurement Office nor a Covered State Agency shall commence with implementation of the plan to Avoid, Mitigate, or Waive the Organizational Conflict of Interest, as required by subparagraphs 8.D.i, 8.D.ii. or 8.D.iii., until the Central Procurement Office or Covered State Agency has documented the basis in writing and has received written approval of the plan from the Chief Procurement Officer.
- vi. In all instances where an Organizational Conflict of Interest exists in a Procurement or contract in which the Chief Procurement Officer has participated, the use of the term "Chief Procurement Officer" in Section 8 of this policy, shall mean the Procurement Commission or its designee.

9. Site Visits Related to a Procurement.

Site visits to Respondent locations needed to properly evaluate goods or services for a pending or future Solicitation are allowed subject to the following conditions:

- If site visits are required within the Solicitation for evaluation purposes, the State, and not the Respondent being evaluated, must pay for such visits.
- Exceptions to this policy may be made by the Chief Procurement Officer or his or her designee. Any exception must be made on a case-by-case basis. If an exception is made, a written determination signed by the Chief Procurement Officer or his or her designee shall be included in the contract file.
- Central Procurement Office or Covered State Agency Personnel making such site visits will incur and recover travel costs from the State entity for which the Procurement is being conducted in accordance with State travel regulations.

10. No direct reimbursement of Personnel by a Respondent is permitted. The Central Procurement Office or Covered State Agency will determine all costs incurred by Personnel in connection with the site visit. Required Disclosures for Central Procurement Office and Covered State Agency Personnel.

All Personnel of the Central Procurement Office or a Covered State Agency involved in

Procurement or Contract Administration shall make disclosures to the Chief Procurement Officer in the following situations:

- When the Personnel has family or personal relationships that conflict with, or could potentially give rise to an individual or Organizational Conflict of Interest;
- When the Personnel has an interest, Immediate Familial, personal, professional or financial interest, that conflicts with the best interests of the State;
- When the Personnel was previously employed by a Respondent or Contracting Party involved in the procurement;
- When the Personnel is aware of or should be aware of any other facts or circumstances that compromise the Personnel's ability to carry out his or her fiduciary duty to the State and act in a fair and impartial manner with respect to the State or the public;
- When the Personnel has knowledge of an Organizational Conflict of Interest that arises during the Procurement or contract processes.

All Personnel of the Central Procurement Office or any Covered State Agency who participate in Solicitation development for a procurement where an award of the contract is based in whole or in part on subjective criteria (e.g., an RFQ or a RFP) shall execute a disclosure substantially in form to Attachment A to this policy, the Solicitation Development Conflict of Interest Disclosure Statement. Any potential conflict shall be brought to the attention of the Chief Procurement Officer to determine whether re-assignment is warranted.

From time-to-time, Personnel, by virtue of the nature of their roles as evaluators, will be privy to confidential or sensitive information that is only available to evaluation team members. The Chief Procurement Officer shall require Personnel participating in Response evaluation for a procurement where an award of the contract is based in whole or in part on subjective criteria (e.g., RFQ or a RFP) to execute a confidentiality agreement, substantially in form to Attachment B1 to this policy, whereby the Personnel agree not to disclose any information, whether written or oral, received by the Personnel during the evaluation process.

All Personnel of the Central Procurement Office or a Covered State Agency who participate in the Response evaluation for a procurement where an award of the contract is based in whole or in part on subjective criteria (e.g., an RFQ or a RFP) shall execute a disclosure substantially in form to Attachment B2 to this policy, the Response Evaluation Conflict of Interest Disclosure Statement. Any potential conflict shall be brought to the attention of the Chief Procurement Officer to determine whether re-assignment is warranted.

Covered State Agency Personnel Procurement or Contract Administration roles are also responsible for filing annual conflict of interest disclosures in accordance with their particular agency's policies and procedures. If no policies and procedures exist within the Personnel's agency, then the Personnel shall file an annual conflict of interest and confidentiality attestation in accordance with the policies and procedures of the Central Procurement Office. Filing an annual disclosure statement does not absolve Personnel involved in a particular procurement from disclosing known individual or Organizational Conflicts of Interest on a case-by-case basis.

Such disclosures shall be made available to the Central Procurement Office upon request. The annual conflict of interest disclosures of Covered State Agency Personnel shall be maintained by the Covered State Agency.

All Central Procurement Office Personnel with Procurement or Contract Administration roles shall execute an annual conflict of interest and confidentiality attestations in accordance with the Department of General Services Policy. Filing an annual disclosure statement does not absolve Personnel involved in a particular procurement from disclosing known individual or Organizational Conflicts of Interest on a case-by-case basis.

Related Statutes, Rules and Policies

Tenn. Code Ann. §§ 4-56-101, *et seq.*

Tenn. Code Ann. §§ 12-3-101, *et seq.*

Tenn. Code Ann. §§ 12-4-101, *et seq.*

ATTACHMENT A

SOLICITATION DEVELOPMENT CONFLICT OF INTEREST DISCLOSURE STATEMENT

INSTRUCTIONS FOR THE STATEMENT SIGNATORY:

Complete the space provided with the Solicitation number applicable to the statement.

Complete, sign and date the applicable section (solicitation development or response evaluation).

Complete each space provided beside the disclosure statements by either "initialing" the statement (to indicate an affirmation of the corresponding statement) OR by writing "N/A" (to indicate that the corresponding statement is not applicable).

If a possible conflict of interest is identified, as described in CPO Policy 2013-009, a description of such should be attached to this document. Please see Central Procurement Office Policy Number 2013-009 Business Conduct and Ethics Policy and Procedures for more information.

**SOLICITATION
NUMBER:**

--

PERSONNEL INVOLVED WITH SOLICITATION DEVELOPMENT—

	I did not identify any potential conflict of interest, financial or otherwise, regarding my involvement with the development, formulation, drafting or review of the subject Solicitation or its specifications or scope of services.
	I identified the following possible individual or Organizational Conflict of Interest issues, detailed and attached hereto, which might adversely reflect on or threaten the integrity of the subject Procurement process:

SIGNATURE & DATE:

PRINTED NAME:

ATTACHMENT B1

**ATTESTATION REGARDING CONFIDENTIALITY IN THE EVALUATION OF [INSERT
PROCUREMENT METHOD] # _____ FOR _____**

Personnel Name: _____

Personnel Phone Number: _____

Personnel Email Address: _____

I, _____ (*print name*), do hereby attest, certify, warrant, and assure that I shall not disclose any Procurement evaluation information, including but not limited to the identity of evaluators or the number or identity of Respondents related to [INSERT PROCUREMENT METHOD] # _____ for _____ until the Notice of Intent to Award is communicated in writing or electronic transmission to all Respondents.

Personnel's Signature

Date

ATTACHMENT B2

RESPONSE EVALUATION CONFLICT OF INTEREST DISCLOSURE STATEMENT

IMPORTANT: COMPLETE AND SIGN ATTACHMENT B1 PRIOR TO ATTACHMENT B2

INSTRUCTIONS FOR THE STATEMENT SIGNATORY:
Complete the space provided with the Solicitation number applicable to the statement.
Complete, sign and date the applicable section (solicitation development or response evaluation).
Complete each space provided beside the disclosure statements by either "initialing" the statement (to indicate an affirmation of the corresponding statement) OR by writing "N/A" (to indicate that the corresponding statement is not applicable).
If a possible conflict of interest, as described in CPO Policy 2013-009, is identified, a description of such should be attached to this document. Please see Central Procurement Office Policy Number 2013-009 Business Conduct and Ethics Policy and Procedures for more information.

**SOLICITATION
NUMBER:**

--

PERSONNEL INVOLVED WITH RESPONSE EVALUATIONS—

	I reviewed the attached listing of prospective Respondents expressing an interest in the subject Solicitation and did not identify any potential conflict of interest, financial or otherwise, regarding my ability to fairly evaluate OR assist with the evaluation of all Responses.
	I reviewed the attached listing of prospective Respondents expressing an interest in the subject Solicitation and identified the following possible Organizational Conflict of Interest issues, detailed and attached hereto, which might adversely reflect on my ability to fairly evaluate OR assist with the evaluation of all proposals OR that may give rise to an Organizational Conflict of Interest.

SIGNATURE & DATE:

PRINTED NAME:

ATTACHMENT C

**CENTRAL PROCUREMENT OFFICE OR COVERED STATE AGENCY EMPLOYEE
ANNUAL ATTESTATIONS**

Employee Name: _____

Employee Phone Number: _____

Employee Email Address: _____

CONFLICT OF INTEREST

I, _____ (*print name*), do hereby attest, certify, warrant and assure that I will not participate in any portion of a Procurement that involved a potential conflict of interest, financial or otherwise.

Furthermore, I _____ (*print name*), do hereby attest, certify, warrant and assure that I will make disclosures to the Chief Procurement Officer in the following situations:

- When I have an Immediate Family or a personal relationship that conflicts with, or potentially creates a conflict;
- When I have an interest, Immediate Familial, personal, professional or financial, that conflicts with the best interests of the State;
- If I was previously employed by a Respondent involved in the Procurement;
- When I am aware of or should be aware of any other facts or circumstances that compromise my ability to carry out my fiduciary duty to the State and act in a fair and impartial manner with respect to the State or the public;
- When I have actual knowledge of an Organizational Conflict of Interest involving a Solicitation, a contract award, or the circumstances giving rise to an Organizational Conflict of Interest during the term of any contract awarded pursuant to a Solicitation.

CONFIDENTIALITY

I, _____ (*print name*), do hereby attest, certify, warrant, and assure that I shall not disclose any Procurement evaluation information related to a Procurement until the Notice of Intent to Award is communicated in writing or electronic transmission to all Respondents.

Employee's Signature

Date

**NO COST CONTRACT TEMPLATE
("NC")**

REDLINE

NO COSTNG MODEL TEMPLATE (NC)

This No Cost Template is appropriate when the contract does not result in a pecuniary obligation between the State and the contracting party.

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

~~Insignificant deviations from this model, while always subject to disapproval, will typically not require a specific rule exception unless an oversight examiner requires separate documentation in a particular instance. If a formal rule exception request is not required, oversight approval of the document will constitute selected rule exception(s) as may be necessary. The models are intended to be used as helpful guides or minimum standards that may be modified as needed, as long as any modifications are in compliance with any applicable statutory or regulatory requirements. Notwithstanding the foregoing, any modifications or additions to the contract model provisions prescribed by statute or by Tenn. Comp. R. and Regs. 0690-03-01-.17(2) or adding model contract provisions that are prohibited by Tenn. Comp. R. and Regs. 0690-03-01-.17(3) shall require an approved Rule Exception Request.~~

Use of this model template shall require an approved Special Contract Request.

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

Complete summary cover sheet fields as indicated within the template template.

Ownership/Control

optional – procuring party's ownership/control...

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

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

- (A) African American, a person having origins in any of the black racial groups of Africa;
- (B) Asian American, a person having origins in any of the original peoples of the Far East, Southeast Asia, the Indian subcontinent, or the Pacific Islands;
- (C) Hispanic American, a person of Mexican, Puerto Rican, Cuban, Central or South American, or other Spanish culture or origin, regardless of race;
- (D) Native American, a person having origins in any of the original peoples of North America.

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

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

- (A) Is at least fifty-one percent (51%) owned and controlled by one (1) or more service-disabled veterans;
- (B) In the case of a business solely owned by one (1) service-disabled veteran and such person's spouse, is at least fifty percent (50%) owned and controlled by the service-disabled veteran; or
- (C) In the case of any publicly owned business, at least fifty-one percent (51%) of the stock of which is owned and controlled by one (1) or more service-disabled veterans and whose management and daily business operations are under the control of one (1) or more service-disabled veteran.

Disabled Owned Businesses (DSBE): select if a business owned by persons with disabilities, which means a continuing, independent, for-profit business that performs a commercially useful function, and is at least fifty-one percent (51%) owned and controlled by one (1) or more persons with a disability; or, in the case of any publicly owned business, at least fifty-one percent (51%) of the stock of which is owned and controlled by one (1) or more persons with a disability and whose management and under the control of one (1) or more persons with a disability.

Small Business Enterprise (SBE): select if a small business, which means a business that is a continuing, independent, for profit business which performs a commercially useful function with residence in Tennessee and has gross receipts of no more than ten million dollars (\$10,000,000)

averaged over a three-year period or employs no more than ninety-nine (99) persons on a full-time basis.

Non-Minority/Disadvantaged if the contractor is not \geq 51% owned or controlled by minority or disadvantaged persons & is not a small business.

- For additional guidance, please visit: <https://www.tn.gov/generalservices/procurement/central-procurement-office-cpo/governor-s-office-of-diversity-business-enterprise-godbe-/program-eligibility.html><http://tn.gov/generalservices/article/godbe-program-eligibility>

A summary cover sheet properly completed and in accordance the model template is required for every copy of the contracting document.

PREAMBLE

Add additional information only if necessary.

A. SCOPE OF SERVICES

Draft the scope of services to clearly, specifically, and definitively detail contractor duties, responsibilities, and associated performance requirements and describe, in detail, the service and deliverable requirements and all related specifications.

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

B. TERM OF CONTRACT

Do NOT route a contract for approval after the Effective Date.

Procurement professionals should plan procurements and draft Draft the contract with an appropriate, definitive, and complete contract period not to exceed the Term of no longer than five sixty (60) months, including extensions or renewals. A contract requiring a Term greater than sixty (60) months shall require an approved Rule Exception Request, year maximum permitted by service contracting rules.

Option: Term Renewal or Extension

To reserve the right to extend the Contract's Term, change the designation of the paragraph under B. to B.1. and add one or both of the following sections, revising the length of the extension period(s) as appropriate.

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

B.#. Term Extension. It is understood and agreed that 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. In no event, however, shall the maximum Term, including all extensions or renewals, exceed a total of sixty (60) months.

D. STANDARD TERMS AND CONDITIONS

Do NOT add terms and conditions to section D (additional, necessary terms and conditions may be added to the section E, Special Terms and Conditions).

Termination for Convenience

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

Option: Bilateral Termination

Replace the section-standard Termination for Convenience section with the following bilateral termination provision only if the contracting agency can justify that the bilateral provision is in the best interest of the Sstate.

D.3. Termination for Convenience. The Contract may be terminated by either Pparty by giving written notice to the other, at least thirty (30) days before the effective date of termination. Said termination shall not be deemed a breach of contract. Upon such termination, neither the State nor the Contractor shall have a right to any actual general, special, incidental, consequential, or any other damages whatsoever of any description or amount.

Nondiscrimination

Replace the section with the following ONLY if contracting with a RELIGIOUS ORGANIZATION.

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

HIPAA Compliance

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

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

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Insurance Options

Commercial General Liability, Workers' Compensation and Employer Liability Insurance, and Automobile Liability Insurance are included as Mandatory Terms and Conditions. An approved Rule Exception Request is required to remove the Commercial General Liability and Workers' Compensation and Employer Liability insurance types. Automobile Insurance may be removed without an approved Rule Exception Request if vehicles will not be used to perform the Scope. Certain situations call for adjusting the coverage requirements to provide adequate protection to the State. If the procurement involves activities that present either a higher risk (e.g., heavy machinery, frequent use of automobiles, medical industry, etc.) or a unique risk (e.g., internet-based services, employee-committed crime, etc.), please consult with the CPO Risk Manager to determine if a deviation from the default coverage requirements is appropriate. Enter any revised coverage amounts as "written amount Dollars (\$NUMBER AMOUNT)." If additional insurance coverage is appropriate, add as new subsections and number accordingly.

Option 1: Workers' Compensation and Employer Liability Insurance – Low Risk Option

Consider the risk of each contract (value, type of services or work provided). Option 1 should only be used where the risk of the Contractor Employee injury is low. If an agency has any questions concerning the risks involved please contact the CPO Risk Manager.

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 and employer liability insurance in the amounts required by appropriate state statutes.

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.

Option 2: Professional Liability Insurance

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

D.#.

d. Professional Liability Insurance

1) Professional liability insurance shall be written on an occurrence basis or on a claims-made basis. If this coverage is written on a claims-made basis, then:

i. The retroactive date must be shown, and must be on or before the earlier of the Effective Date of the Contract or the beginning of Contract work or provision of goods and services;

ii. Insurance must be maintained and evidence of insurance must be provided for at least five (5) full years from the date of the final Contract payment; and

iii. If coverage is canceled or non-renewed, and not replaced with another claims-made policy form with a retroactive date on or prior to the Contract Effective Date, the Contractor must purchase "extended reporting" or "tail coverage" for a minimum of five (5) full years from the date of the final Contract payment.

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

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

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Option 3: Low Risk Insurance for Independent Contractors

Certain situations may arise where the Contract is with an Independent Contractor or otherwise presents a low risk procurement where standard Template Insurance requirements may not be appropriate but where best practices would still dictate some level of insurance verification. This option, if approved by CPO, replaces the D.32. Insurance provision in its entirety. This option may only be used with the approval of the CPO Risk Manager.

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. The State reserves the right to require complete, certified copies of all required insurance policies, including endorsements required by these specifications, at any time. If Contractor loses insurance coverage, fails to renew coverage, or for any reason becomes uninsured during the Term, Contractor shall immediately notify the State.

The insurance obligations under this Contract shall be: 1—all the insurance coverage and policy limits carried by or available to the Contractor; or 2—the minimum insurance coverage requirements and policy limits shown in this Contract; whichever is greater. Any insurance proceeds or policies 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 under this Contract. The Contractor shall obtain and maintain, at a minimum, the following insurance coverage(s) and policy limits.

a. Automobile Liability Insurance

1) In the event that the Contractor (1) owns, leases, or otherwise operates an automotive vehicle and (2) intends to use such vehicle in furtherance of their Contractual duties or for regular or periodic transportation onto State property for the purposes of performing the Contractor's duties under the Terms of this Contract, then the Contractor shall provide to the State proof of the Contractor's automobile liability insurance policy. Such automobile liability insurance policy shall maintain limits not less than the minimum liability limits established by the relevant authority under which said vehicle is licensed. Such verification is required whether or not the State intends to reimburse the Contractor for mileage.

2) If the Contractor DOES NOT (1) own, lease, or otherwise operate an automotive vehicle or (2) WILL NOT operate or otherwise employ a personal vehicle in furtherance of their contractual duties or for regular or periodic transportation onto State property for the purposes of performing the Contractor's duties under the Terms of this Contract, then the Contractor shall provide to the State a letter signed by the Contractor certifying as to the above. In the event that such situation changes over the course of the Term of this Contract as described in provision 1) above, the Contractor shall inform the State and provide proof of automobile liability insurance before such time as the Contractor shall use such vehicle in furtherance of their Contractual duties or for regular or periodic transportation onto State property for the purposes of performing the Contractor's duties under the Terms of this Contract.

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E. SPECIAL TERMS AND CONDITIONS

Add the following sections as indicated **and** in the order below. After which, add other special terms and conditions sections as appropriate, provided that none conflict with state interests or standard contract provisions.

Wherever instructions direct legal counsel involvement, compliance will be assumed.

Confidentiality of Records

v

As appropriate, add the following section or an alternative recommended by the contracting agency legal counsel.

E.#. Confidentiality of Records. Strict standards of confidentiality of records and information shall be maintained in accordance with applicable state and federal law. All material and information, regardless of form, medium or method of communication, provided to the Contractor by the State or acquired by the Contractor on behalf of the State shall be regarded as confidential information in accordance with the provisions of applicable state and federal law, state and federal rules and regulations, departmental policy, and ethical standards. Such confidential information shall not be disclosed, and all necessary steps shall be taken by the Contractor to safeguard the confidentiality of such material or information in conformance with applicable state and federal law, state and federal rules and regulations, departmental policy, and ethical standards.

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. Nothing in this paragraph shall permit Contractor to disclose any information that is confidential under federal or state law or regulations, regardless of whether it has been disclosed or made available to the Contractor due to intentional or negligent actions or inactions of agents of the State or third parties.

It is expressly understood and agreed the obligations set forth in this section shall survive the termination of this Contract.

State Furnished Property

Add the following section as appropriate.

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

Incorporation of Additional Documents

~~Add the~~ Revise this following section as appropriate.

~~Incorporation of Additional Documents. Included in this Contract by reference are the following documents:~~

- ~~a. The Contract document and its attachments~~
- ~~b. All Clarifications and addenda made to the Contractor's Proposal~~
- ~~c. The Request for Proposal and its associated amendments~~
- ~~d. Technical Specifications provided to the Contractor~~
- ~~e. The Contractor's Proposal~~

~~In the event of a discrepancy or ambiguity regarding the Contractor's duties, responsibilities, and performance under this Contract, these documents shall govern in order of precedence detailed above.~~

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Prohibited Advertising or Marketing

Add the following section as appropriate.

- E.#. ~~Prohibited Advertising or Marketing. The Contractor shall not suggest or imply refer to this Contract or the Contractor's relationship with the State hereunder in commercial advertising in such a manner advertising or marketing materials that the Contractor's goods or services as to state or imply that the Contractor or the Contractor's services are endorsed by the State. The restrictions on Contractor advertising or marketing materials under. It is expressly understood and agreed that the obligations set forth in this section shall survive the termination of this Contract in perpetuity.~~

Environmental Tobacco Smoke

Add the following section as appropriate.

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

Lobbying

Add the following section as appropriate.

- E.#. Lobbying. The Contractor certifies, to the best of its knowledge and belief, that:
- a. No federally appropriated funds have been paid or will be paid, by or on behalf of the undersigned, 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 this 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 section 1352, title 31, *U.S. Code*.

Contractor Commitment to Diversity

Add the following section as appropriate (typically only in standard RFP *pro forma* contracts).

E.#. **Contractor Commitment to Diversity.** The Contractor shall comply with and make reasonable business efforts to exceed the commitment to diversity represented by the Contractor's proposal responding to RFP-NUMBER (Attachment REFERENCE) and resulting in this Contract.

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

Performance Bond

A Performance Bond requirement is generally not recommended for several reasons. A performance bond can be very expensive and difficult for any business to obtain, and the requirement makes it virtually impossible for small and minority businesses to seek contract award. A performance bond is not a usual cost of doing business, and the cost associated with meeting the requirement will most certainly be passed directly to the state. Consequently, the requirement will undoubtedly increase state cost. Finally, the benefit purported to result from a performance bond is highly questionable. This type of bond can be difficult to enforce, and the state has little or no experience in enforcing such obligations. A performance bond is a poor insurance policy. There are much better methods for the state to ensure contractor performance (e.g., scope of service sufficiently detailed to ensure contractor accountability and results; payment methodology involving contingent, incremental payments; a retention of final payment provision; liquidated damages; and not least, sound contract management).

Add the following section only as appropriate, and Provided That the contracting agency legal counsel: (1) drafts the referenced, state-prescribed, bond form; and (2) makes a determination that the bond requirement will be reasonably and legally enforceable under the subject contract as drafted.

E.#. **Performance Bond.** The Contractor shall provide to the State a performance bond guaranteeing full and faithful performance of all undertakings and obligations under this Contract and in the amount equal to **Written Dollar Amount (\$Number)**. The Contractor shall submit the bond no later than the day immediately preceding the Contract start date and in the manner and form prescribed by the State (at Attachment Reference hereto), and the bond shall be issued through a company licensed to issue such a bond in the state of Tennessee. The performance bond shall guarantee full and faithful performance of all undertakings and obligations under this Contract for:

- a. the Contract term and all extensions thereof; or
- b. the first, calendar year of the Contract (ending December 31st following the Contract start date) in the amount of **Written Dollar Amount (\$Number)** and, thereafter, a new performance bond in the amount of **Written Dollar Amount (\$Number)** covering each subsequent calendar year of the contract period. In which case, the Contractor shall provide such performance bonds to the State no later than each December 10th preceding the calendar year period covered beginning on January 1st of each year.

Failure to provide to the State the performance bond(s) as required herein prior to the Contract start date and, as applicable, no later than December 10th preceding each calendar year period covered beginning on January 1st of each year, shall result in contract termination. The Contractor understands that the stated amount of the performance bond required hereunder shall not be reduced during the contract period for any reason.

Copyrights and Patents

Add the following as appropriate if recommended by the contracting agency legal counsel.

E.#. **Copyrights and Patents.** 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 for infringement of any laws regarding patents or copyrights which may arise from the Contractor's performance of this Contract. In any such action brought against the State, the Contractor shall satisfy and indemnify the State for the

amount of any final judgment for infringement. The Contractor further agrees it shall be liable for the reasonable fees of attorneys for the State in the event such service is necessitated to enforce the terms of this Contract or otherwise enforce the obligations of the Contractor to the State. The State shall give the Contractor written notice of any such claim or suit and full right and opportunity to conduct the Contractor's own defense thereof.

Hold Harmless

~~Inclusion of this requirement should be carefully considered. The requirement is likely to chill interest in seeking the contract award, and so, it may reduce competition and increase cost (for a contractor to take on the additional risk). Add the following as appropriate if recommended by the contracting agency legal counsel.~~

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

~~In the event of any such suit or claim, the Contractor shall give the State immediate notice thereof and shall provide all assistance required by the State in the State's defense. The State shall give the Contractor written notice of any such claim or suit, and the Contractor shall have full right and obligation to conduct the Contractor's own defense thereof. Nothing contained herein shall be deemed to accord to the Contractor, through its attorney(s), the right to represent the State of Tennessee in any legal matter, such rights being governed by Tennessee Code Annotated, Section 8-6-106.~~

Partial Takeover

Add the following or a similar section as appropriate if recommended by the contracting agency legal counsel.

E.#. **Partial Takeover.** The State may, at its convenience and without cause, exercise a partial takeover of any service which the Contractor is obligated to perform under this Contract, including but not limited to any service which is the subject of a subcontract between Contractor and a third party, although the Contractor is not in Breach (hereinafter referred to as "Partial Takeover"). Said Partial Takeover shall not be deemed a Breach of Contract by the State. Contractor shall be given at least 30 days prior written notice of said Partial Takeover with said notice to specify the area(s) of service the State will assume and the date of said assumption. Any Partial Takeover by the State shall not alter in any way Contractor's other obligations under this Contract. The State may withhold from amounts due the Contractor the amount the Contractor would have been paid to deliver the service as determined by the State. The amounts shall be withheld effective as of the date the State assumes the service. Upon Partial Takeover, the Contractor shall have no right to recover from the State any actual, general, special, incidental, consequential, or any other damages whatsoever of any description or amount.

Disclosure of Personal Identity Information

Add the following section as appropriate.

E.#. **Disclosure of Personal Identity Information.** The Contractor shall report to the State any instances of unauthorized disclosure of confidential information that come to the attention of the Contractor. Any such report shall be made by the Contractor within twenty-four (24) hours after the instance has come to the attention of the Contractor. The Contractor, at the sole discretion of the State, shall provide no cost credit monitoring services for individuals that are deemed to be part of a potential disclosure. The Contractor shall bear the cost of notification to individuals having personal identity information involved in a potential disclosure event, including individual letters and/or public notice.

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Transfer of Contractor's Obligations

Add the following section as appropriate.

~~E.#xx.~~ ~~Transfer~~ ~~RANSFER-OF-~~ ~~of Contractor's Obligations~~ ~~CONTRACTOR'S OBLIGATIONS~~

~~E.xx.~~a. The Contractor shall immediately notify the State in writing of a proposed merger, acquisition or sale of its business operation, or the part of its business operation that provides services under this Contract, or that this Contract will be sold to or assumed by another entity. The entity that is proposed to assume the Contractor's duties under this Contract, whether through merger, acquisition, sale or other transaction, will be hereinafter described as the "New Entity".

~~E.xx.~~b. The Contractor (or, if the Contractor no longer exists as a legal entity, the New Entity) will provide to the State within a reasonable time, information that the State may require about the merger, acquisition or sale, which may include:

- i. the date and terms of the merger, acquisition or sale, including specifically, but not limited to, adequate documentation of the financial solvency and adequate capitalization of the proposed New Entity
- ii. evidence of financial solvency and adequate capitalization of the proposed New Entity which may consist of,
 - (1) Debt;
 - (2) Assets;
 - (3) Liabilities;
 - (4) Cash flow
 - (5) Percentage of the total revenues of the company that are represented by this Contract;
 - (6) The most recent annual financial reports;
 - (7) The most recent annual financial reports filed with government agencies, if applicable.
- iii. a complete description of the relationship of any New Entity to any parent company or subsidiary or division resulting from the merger, acquisition or sale of the original Contractor's business or the part of the original Contractor's business that provides services under this Contract or from assumption by, or sale to, another entity of the contract itself, including:
 - (1) the names and positions of corporate or company officers, project managers, other Contractor management staff with responsibilities under the Contract, and numbers and the type of technical or other personnel who will be responsible for fulfilling the obligations of the Contract, and any subcontracts that will be used to provide any personal or other services under the Contract by the New Entity and,
 - (2) an organizational chart clearly describing the organizational structure of the New Entity, parent company, subsidiary, division or other unit of the entity or parent company with which it has merged or by which it, or the Contract, has been acquired.
- iv. such additional evidence of financial solvency, adequate capitalization and information regarding corporate organizational and personnel assigned to the Contract as the State determines is necessary to evaluate the status of the proposed or consummated merger, acquisition or sale.

~~E.xx.~~c. The original Contractor shall immediately notify the State in writing in the event of a change in its legal name and/or Federal Employer Identification Number (FEIN). The Contractor shall comply with State requests for copies of any documents that have been filed with state corporate records officials or other officials in the state of its incorporation that verify the name change and a narrative description of the reasons for the name change. If a New Entity has succeeded to the interest of the original Contractor, it shall immediately provide the State written notification of its Federal Employer Identification Number (FEIN), its complete corporate name, State of

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incorporation, and other documentation required to effectuate the transfer.

- ~~E.xx~~.d. Notwithstanding any other provisions of this Contract to the contrary, the State may immediately terminate this Contract in whole or in stages in the event that it determines that the New Entity
- i. has been debarred from State or Federal contracting in the past five years
 - ii. has had a contract terminated for cause by the State of Tennessee within the past five years.

The Contractor shall be entitled to compensation for satisfactory, authorized service completed as of the termination date, but in no event shall the State be liable to the Contractor or New Entity for compensation for any service which has not been rendered. Upon such termination, the Contractor or New Entity shall have no right to any actual general, special, incidental, consequential, or any other damages whatsoever of any description or amount.

- ~~E.xx~~.e. The New Entity shall provide to the State within ten (10) business days of the State's request, a notarized statement signed by an individual authorized to bind the New Entity certifying that all liabilities and obligations incurred by the former Contractor are assumed by the New Entity.
- ~~E.xx~~.f. If the New Entity owes money to the State of Tennessee, it acknowledges that Tennessee Code Annotated Ann. § Section 9-4-604 requires repayment of these funds and will enter into a legally binding agreement for repayment.

Contractor Hosted Services Requirements and Confidential Data Options

General Instructions:

If the contract will allow a Contractor or Subcontractor to host State services or State data in the cloud (e.g., Software as a Service (SaaS), Infrastructure as a Service (IaaS), Platform as a Service (PaaS)), then follow the instructions as described in the various options below. Include all applicable sections, renumbering as may be appropriate.

Section E.#.a: Confidential State Data

If the Contractor or Subcontractor will host data that is deemed confidential by State or Federal statute or regulation, or process data per the payment card industry (Confidential State Data), including data in transit, include Section E.#.a. If there is any type of Confidential State Data, also include the standard language covering Disclosure of Personally Identifiable Information (PII) from the Section E options provided in the FA Template.

Section E.#.b and c. Minimum Requirements and Comptroller Audit Requirements

Include Section E.#.b as minimum Strategic Technology Solutions (STS) requirements and Section E.#.c as minimum Comptroller audit requirements for all contracts where the Contractor or any Subcontractors will host State services or State data in the cloud (e.g., SaaS, IaaS, PaaS).

Section E.#.e: CAFR or Single Audit Requirements

Add Section E.#.e as an additional Comptroller audit requirement, if the Contractor or Subcontractor will host services that store or process State financial or other data that (1) is used for reporting through the State's Comprehensive Annual Financial Report (CAFR) or (2) is used for demonstrating compliance with the requirements of Title 2, Code of Federal Regulations, Part 200, "Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards" (Uniform Guidance). The Contractor must provide to the State a System and Organization Controls (SOC) 1 Type II or SOC 2 Type II audit report annually. The Contractor must also verify that all Subcontractors, including data center vendors, successfully complete and provide to the State an annual SOC Type II audit report. Additionally, the State should consider obtaining and reviewing the latest available SOC report for the Contractor and Subcontractor prior to the awarding of the Contract. This requirement should be added to the solicitation Technical Response requirements.

If Section E.#.e, CAFR or Single Audit Requirements is included, remove Section E.#.a.3 unless the contract will involve CJIS data, FTI data, or CMS data, which requires replacing E.#.a.3 as described in the options below. In this case, both a SOC Type II audit report and FEDRAMP authorization are required.

Please direct any questions regarding these requirements to STS, Security Area, or the Comptroller's Office, Office of Management Services. Direct any questions regarding the types of Confidential State Data to STS, Security Area.

Criminal Justice Information Services ("CJIS") Data

The contracting state agency must obtain prior approval from the Tennessee Bureau of Investigation ("TBI") before contracting for external hosting of CJIS data.

Health Insurance Portability and Accountability Act ("HIPAA") Data

Keep all language in E.#.a, and do the following:

Contractor must enter into a Business Associate Agreement (BAA) with the State. Therefore, include as a contract attachment a BAA agreement. Please visit the following website link, available on TEAM TN, for the ["HIPAA Business Associate Agreement Example."](#)

General Requirements

E.#. 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 validated encryption technologies.
- (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: [NUMBER OF HOURS/MINUTES]
 - 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: [NUMBER OF HOURS/MINUTES]
 - (2) The Contractor and the Subcontractor(s) 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 Recover Test that its Disaster Recovery Capabilities meet the RPO and RTO requirements.

Option: Minimum Requirements

Delete and Replace the standard (b)(1), referring to a URL, if the State's Enterprise Information Security Policy will be included as a Contract Attachment.

(1) The Contractor and all data centers used by the Contractor to host State data, including

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those of all Subcontractors, must comply with the State's Enterprise Information Security Policies. The State's Enterprise Information Security Policies document is attached to this Contract at Attachment [Reference](#).

Option: CAFR or Single Audit Requirements

If the contract will involve applications that store or process State financial or other data that is used for reporting through the State's Comprehensive Annual Financial Report (CAFR) or for demonstrating compliance with Uniform Guidance, include Section E.#.e.

e. The Contractor and any Subcontractor used by the Contractor to host State data, including data center vendors, shall 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 the State with the Contractor's and Subcontractor's annual 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 and 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 audits as they are included in the Maximum Liability of this Contract.

Option: Federal Risk and Authorization Management Program ("FedRAMP")

If the contract will involve CJIS data, FTI data, or CMS data include all of the General Requirements above, except replace section E.#.a.(3) with the following and add each additional requirement as applicable.

(3) The Contractor shall maintain a Security Management Certification from the Federal Risk and Authorization Management Program ("FedRAMP"). A "Security Management Certification" shall mean written confirmation from FedRAMP that FedRAMP has assessed the Contractor's information technology Infrastructure, using a standardized approach to security assessment, authorization, and continuous monitoring for cloud products and services, and has certified that the Contractor meets FedRAMP standards. Information technology "Infrastructure" shall mean the Contractor's entire collection of hardware, software, networks, data centers, facilities and related equipment used to develop, test, operate, monitor, manage and/or support information technology services. The Contractor shall provide proof of current certification annually and upon State request.

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Option: Federal Tax Information ("FTI") Data

If the contract will contain FTI data, also add the following sentence to the optional section E.#.a.(3) (FedRAMP) language above. Also include the FTI attachment contained elsewhere in this FA Template.

Contractor shall meet all applicable requirements of the most current version of Internal Revenue Service Publication 1075.

Option: Centers for Medicare and Medicaid Services ("CMS") Data

If the contract will involve CMS data, also add the following sentence to the optional section E.#.a.(3) (FedRAMP) language above:

Contractor shall meet requirements of current version of Minimum Acceptable Risk Standards for Exchanges ("MARS-E") controls.

Option: Payment Card Industry ("PCI") Data

If the contract will involve PCI data, include all of the General Requirements above, and add the following as section E.#.a.(5):

(5) Contractor shall be certified to host Payment Card Industry ("PCI") data in accordance with the current version of PCI DSS ("Data Security Standard"), maintained by the PCI Security Standards Council.

Drug-Free Workplace.

Add the following Section as appropriate:

E. #. Drug-Free Workplace. The Contractor shall provide a drug-free workplace pursuant to the Drug-Free Workplace Act of 1988, Title 41 U.S.C. §§ 701, *et seq.*, and the regulations in Title 41 U.S.C.A. §§ 8101 through 8106.

Tennessee Department of Mental Health and Substance Abuse Services

The Tennessee Department of Mental Health and Substance Abuse Services may add the following Sections as appropriate:

E. #. Code of Conduct. The Contractor shall ensure that there is a code of conduct applicable to all Contractor employees that covers, at minimum, business practices, clinical practices, and workplace interaction. Contractor employees shall conduct their practice in conformity with all

applicable statutes, rules and regulations, and recognized ethical standards pertaining to Contractor's profession. Contractor shall develop procedures for reporting violations of the ethical standards, which shall be communicated to Contractor's employees, including new hires, on at least an annual basis. Contractor's code of conduct shall prohibit Contractor, its officers, directors, and employees from retaliating against any Contractor employee who reports any violations or acts or omissions that appear to be violations. Contractor's non-retaliation policy shall prescribe discipline for violating the Contractor's code of conduct. Failure to implement a code of conduct in accordance with this section and to adequately address suspected violations of the code of conduct shall entitle the State to exercise any right it has at law or in equity, including, but not limited to termination of this Contract.

E. #. Additional Subcontracting Requirements. Contractor shall ensure in all subcontracts between it and Contractor's State approved subcontractors that each subcontract shall contain the sections of "Confidentiality of Records", "HIPAA Compliance", and "Rule 2 Compliance" (as identified by the section headings) as these may be modified from time to time. Notwithstanding any use of State approved subcontractors, the Contractor shall be the prime contractor and shall be responsible for all work performed by its subcontractors or other providers of goods or services.

E. #. Rule 2 Compliance. The State and the Contractor shall comply with the obligations under Rule 2 of the Confidentiality of Alcohol and Drug Abuse Patient Records, and its accompanying regulations as codified at 42 CFR §§ 2.1, *et seq.* ("Rule 2").

- a. The Contractor warrants to the State that it is familiar with the requirements of Rule 2 and its accompanying regulations, and that it will comply with all requirements imposed by Rule 2 during the Term of this Contract.
- b. The Contractor warrants that it will cooperate with the State, including cooperation and coordination with State privacy officials and other compliance officers required by Rule 2 during the Term of this Contract.
- c. The State and the Contractor will execute such documents, including but not limited to business associate agreements, as required by Rule 2 that are reasonably necessary for the State and the Contractor to comply with Rule 2. This provision shall not apply if information received by the State under this Contract is NOT "protected health information" as defined by Rule 2 or if Rule 2 permits the State to receive such information without entering into a business associate agreement or other agreement.

E.#. Prohibitions on Use of Federal Substance Abuse Block Grant Funds. Pursuant to federal law, Contractor shall not use any funds paid or services rendered under the federal Substance Abuse Prevention and Treatment Block Grant to supplant any other funds available for the goods or services provided under this Contract. Contractor shall not use any federal Substance Abuse Prevention and Treatment Block Grant funds under this Contract for any of the following purposes:

- a. to provide inpatient hospital or inpatient community mental health services;
- b. to make cash payments to intended recipients of health services;
- c. to purchase or improve land; purchase, construct, or permanently improve (other than minor remodeling) any building or facility; or purchase major medical equipment;
- d. to satisfy any requirement for the expenditure of non-federal funds as a condition for the receipt of federal funds;
- e. to provide financial assistance to any entity other than a public or non-profit entity;
- f. to carry out any program of distributing sterile needles for the hypodermic injection of any illegal drug or distributing bleach for the purpose of cleansing needles for such hypodermic injection; or
- g. to carry out any testing for the etiologic agent for acquired immune deficiency syndrome unless such testing is accompanied by the appropriate pre-test and post-test counseling.

SIGNATURES

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

**CONTRACT**

(no cost contract, involving no monetary obligation between the parties, with an individual, business, non-profit, or government entity of another state or country)

Begin Date	End Date	Agency Tracking #	Edison ID
Contractor Legal Entity Name			Edison Vendor ID (optional)
Service Caption			
Ownership/Control <input type="checkbox"/> Minority Business Enterprise (MBE): <input type="checkbox"/> African American <input type="checkbox"/> Asian American <input type="checkbox"/> Hispanic American <input type="checkbox"/> Native American <input type="checkbox"/> Woman Business Enterprise (WBE) <input type="checkbox"/> Service-Disabled Veteran Enterprise (SDVBE) <input type="checkbox"/> Disabled Owned Businesses (DSBE) <input type="checkbox"/> Small Business Enterprise (SBE): \$10,000,000.00 averaged over a three (3) year period or employs no more than ninety-nine (99) employees. <input type="checkbox"/> Government <input type="checkbox"/> Non-Minority/Disadvantaged <input type="checkbox"/> Other:			
Selection Method & Process Summary (mark the correct response to confirm the associated summary)			
<input type="checkbox"/> RFP	The procurement process was completed in accordance with the approved RFP document and associated regulations.		
<input type="checkbox"/> Competitive Negotiation	The predefined, competitive, impartial, negotiation process was completed in accordance with the associated, approved procedures and evaluation criteria.		
<input type="checkbox"/> Alternative Competitive Method	The predefined, competitive, impartial, procurement process was completed in accordance with the associated, approved procedures and evaluation criteria.		
<input type="checkbox"/> Non-Competitive Negotiation	The non-competitive contractor selection was completed as approved, and the procurement process included a negotiation of best possible terms & price.		
<input type="checkbox"/> Other	The contractor selection was directed by law, court order, settlement agreement, or resulted from the state making the same agreement with <u>all</u> interested parties or <u>all</u> parties in a predetermined "class."		
CPO USE - NC			

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

This Contract, by and between the State of Tennessee, State Agency Name, ~~hereinafter referred to as the ("State")~~ and Contractor Legal Entity Name, ~~hereinafter referred to as the ("Contractor,")~~ is for the provision of Scope of Service Caption, as further defined in the "SCOPE OF SERVICES." 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

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A. SCOPE OF SERVICES:

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

B. TERM OF CONTRACT:

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

C. PAYMENT TERMS AND CONDITIONS:

There shall be no cost to the State for the performance of services under this Ccontract.

D. STANDARD 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 signed by the contract parties and approved by appropriate State officials in accordance with applicable Tennessee laws and regulations, ~~(D~~depending upon the specifics of this Ccontract, ~~this may include approvals by 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, ~~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. 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 stated below or any other address provided in writing by a Party.

The State:

State Contact Name & Title
State Agency Name
Address

Email Address
Telephone # Number
FAX # Number

The Contractor:

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

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

- D.32. Modification and Amendment. This Contract may be modified only by a written amendment signed by all ~~Parties hereto~~ and approved by ~~both the all applicable State 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.43. Termination for Convenience. The State may terminate this Contract for convenience without cause and for any reason. ~~Said termination shall not be deemed a Breach of Contract by the State.~~ The State shall give the Contractor at least thirty (30) days written notice before the effective termination date. 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.54. 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. Notwithstanding the above, the Contractor shall not be relieved of liability to the State for damages sustained by virtue of any Breach Condition of this Contract by the Contractor and the State may seek other remedies allowed at law or in equity for beach of this Contract.
- D.65. Assignment and 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 State. ~~If such subcontracts are approved by the State, 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 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 of the use of subcontractors in fulfilling the Contractor's obligations under this Contract.
- D.76. Conflicts of Interest. The Contractor warrants that 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 Contractor in connection with any work contemplated or performed ~~relative to~~ 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

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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.87. 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, Tennessee State constitutional, or statutory state 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.98. Prohibition of Illegal Immigrants. The requirements of Tennessee Code Annotated, §Section 12-34-309124, et seq., addressing the use of illegal immigrants in the performance of any cContract 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 agrees that the Contractor shall not knowingly utilize the services of an illegal immigrant in the performance of this Contract and shall not knowingly utilize the services of any subcontractor who will utilize the services of an illegal immigrant in the performance of this Contract. The Contractor shall reaffirm this attestation, in writing, by submitting to the State a completed and signed copy of the document at Attachment Reference, hereto, semi-annually during the period of this Contract 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 –Such attestations shall be maintained by the Contractor and made available to Sstate 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 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 relative to 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 relative to under this Contract. Attestations obtained from such subcontractors shall be maintained by the Contractor and made available to Sstate officials upon request.
 - c. The Contractor shall maintain records for all personnel used in the performance of this Contract. Said 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 Tennessee Code Annotated, §Section 12-43-124, et seq-309 for acts or omissions occurring after its effective date. This law requires the Commissioner of Finance and Administration Chief Procurement Officer 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.

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D.109. **Records.** The Contractor shall maintain documentation of services rendered under this Contract. The books, records and documents of the Contractor, insofar as they relate to work performed under this Contract, shall be maintained for a period of five (5) full years from the final date of this Contract 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.

D.110. **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.12. Progress Reports. The Contractor shall submit brief, periodic, progress reports to the State as requested.

D.134. **Strict Performance.** Failure by any Pparty to this Contract to ~~require, 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 Pparties ~~hereto~~.

D.142. **Independent Contractor.** The Pparties ~~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 Pparties ~~hereto~~ that such Pparties 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 State, 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.15. 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.163. **State 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.

D.174. **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.185. **State and Federal Compliance.** The Contractor shall comply with all applicable State and Federal laws and regulations in the performance of this Contract.

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D.196. 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. 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, or remedies against the State of Tennessee or its employees hereunder arising under this Contract, and any remedies arising therefrom, shall be subject to and limited to those rights and remedies, if any, available under Tennessee Code Ann. stated, §§Sections 9-8-101 through 9-8-4087.~~

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D.2017. 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.2148. 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 thereof 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.2249. Headings. Section headings of this Contract are for reference purposes only and shall not be construed as part of this Contract.

D.23. 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 of this Contract, these items shall govern in the order of precedence below:~~

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

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D.24. 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., 3rd 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, certified 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.25. 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.-260. 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 the 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 ~~thesuch~~ information without entering into a business associate agreement or signing another such document.

d.
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.

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 State:

State Contact Name & Title
State Agency Name

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Address
Email Address
Telephone # Number
FAX # Number

The Contractor:

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

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

DE.27.3 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 be registered with the Department of Revenue for the collection of Tennessee sales and use tax. This registration requirement is a material requirement of this Contract.

DE.284. 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.

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 be subordinate to the Contract's other terms and conditions.**

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~~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 State:~~

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

~~The Contractor:~~

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

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

~~E.3. Tennessee Department of Revenue Registration. The Contractor shall be registered with the Department of Revenue for the collection of Tennessee sales and use tax. This registration requirement is a material requirement of this Contract.~~

~~E.4. 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.~~

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

IN WITNESS WHEREOF,

CONTRACTOR LEGAL ENTITY NAME:

CONTRACTOR SIGNATURE

DATE

PRINTED NAME AND TITLE OF CONTRACTOR SIGNATORY (above)

STATE AGENCY NAME:

NAME & TITLE

DATE

ATTACHMENT REFERENCE

ATTESTATION RE PERSONNEL USED IN CONTRACT PERFORMANCE

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

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

CONTRACTOR SIGNATURE

NOTICE: This attestation MUST be signed by an individual empowered to contractually bind the Contractor. 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.

PRINTED NAME AND TITLE OF SIGNATORY

DATE OF ATTESTATION

**NO COST CONTRACT TEMPLATE
("NC")**

CLEAN

NO COST TEMPLATE (NC)

This No Cost Template is appropriate when the contract does not result in a pecuniary obligation between the State and the contracting party.

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

Use of this template shall require an approved Special Contract Request.

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

Complete summary cover sheet fields as indicated within the template.

Ownership/Control optional – procuring party's ownership/control.

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

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

- (A) African American, a person having origins in any of the black racial groups of Africa;
- (B) Asian American, a person having origins in any of the original peoples of the Far East, Southeast Asia, the Indian subcontinent, or the Pacific Islands;
- (C) Hispanic American, a person of Mexican, Puerto Rican, Cuban, Central or South American, or other Spanish culture or origin, regardless of race;
- (D) Native American, a person having origins in any of the original peoples of North America.

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

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

- (A) Is at least fifty-one percent (51%) owned and controlled by one (1) or more service-disabled veterans;
- (B) In the case of a business solely owned by one (1) service-disabled veteran and such person's spouse, is at least fifty percent (50%) owned and controlled by the service-disabled veteran; or
- (C) In the case of any publicly owned business, at least fifty-one percent (51%) of the stock of which is owned and controlled by one (1) or more service-disabled veterans and whose management and daily business operations are under the control of one (1) or more service-disabled veteran.

Disabled Owned Businesses (DSBE): select if a business owned by persons with disabilities, which means a continuing, independent, for-profit business that performs a commercially useful function, and is at least fifty-one percent (51%) owned and controlled by one (1) or more persons with a disability; or, in the case of any publicly owned business, at least fifty-one percent (51%) of the stock of which is owned and controlled by one (1) or more persons with a disability and whose management and under the control of one (1) or more persons with a disability.

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

Non-Minority/Disadvantaged if the contractor is not \geq 51% owned or controlled by minority or disadvantaged persons & is not a small business.

- For additional guidance, please visit: <https://www.tn.gov/generalservices/procurement/central-procurement-office--cpo-/governor-s-office-of-diversity-business-enterprise--godbe--/program-eligibility.html>

A summary cover sheet properly completed and in accordance the template is required for every copy of the contracting document.

PREAMBLE

Add additional information only if necessary.

A. SCOPE OF SERVICES

Draft the scope of services to clearly, specifically, and definitively detail contractor duties, responsibilities, and associated performance requirements and describe, in detail, the service and deliverable requirements and all related specifications.

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

B. TERM OF CONTRACT

Do NOT route a contract for approval after the Effective Date.

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

Option: Term Renewal or Extension

To reserve the right to extend the Contract's Term, change the designation of the paragraph under B. to B.1. and add one or both of the following sections, revising the length of the extension period(s) as appropriate.

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

B.#. Term Extension. It is understood and agreed that 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. In no event, however, shall the maximum Term, including all extensions or renewals, exceed a total of sixty (60) months.

D. STANDARD TERMS AND CONDITIONS

Do NOT add terms and conditions to section D (additional, necessary terms and conditions may be added to the section E, Special Terms and Conditions).

Termination for Convenience

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

Option: Bilateral Termination

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

D.3. **Termination for Convenience.** The Contract may be terminated by either Party by giving written notice to the other, at least thirty (30) days before the effective date of termination. Said termination shall not be deemed a breach of contract. Upon such termination, neither the State nor the Contractor shall have a right to any actual general, special, incidental, consequential, or any other damages whatsoever of any description or amount.

Nondiscrimination

Replace the section with the following ONLY if contracting with a RELIGIOUS ORGANIZATION.

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

HIPAA Compliance

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

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

Insurance Options

Commercial General Liability, Workers' Compensation and Employer Liability Insurance, and Automobile Liability Insurance are included as Mandatory Terms and Conditions. An approved Rule Exception Request is required to remove the Commercial General Liability and Workers' Compensation and Employer Liability insurance types. Automobile Insurance may be removed without an approved Rule Exception Request if vehicles will not be used to perform the Scope.

Certain situations call for adjusting the coverage requirements to provide adequate protection to the State. If the procurement involves activities that present either a higher risk (e.g., heavy machinery, frequent use of automobiles, medical industry, etc.) or a unique risk (e.g., internet-based services, employee-committed crime, etc.), please consult with the CPO Risk Manager to determine if a deviation from the default coverage requirements is appropriate. Enter any revised coverage amounts as "written amount Dollars (\$NUMBER AMOUNT)." If additional insurance coverage is appropriate, add as new subsections and number accordingly.

Option 1: Workers' Compensation and Employer Liability Insurance – Low Risk Option

Consider the risk of each contract (value, type of services or work provided). Option 1 should only be used where the risk of the Contractor Employee injury is low. If an agency has any questions concerning the risks involved please contact the CPO Risk Manager.

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 and employer liability insurance in the amounts required by appropriate state statutes.

- 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.

Option 2: Professional Liability Insurance

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

D.#.

d. Professional Liability Insurance

- 1) Professional liability insurance shall be written on an occurrence basis or on a claims-made basis. If this coverage is written on a claims-made basis, then:
 - i. The retroactive date must be shown, and must be on or before the earlier of the Effective Date of the Contract or the beginning of Contract work or provision of goods and services;
 - ii. Insurance must be maintained and evidence of insurance must be provided for at least five (5) full years from the date of the final Contract payment; and
 - iii. If coverage is canceled or non-renewed, and not replaced with another claims-made policy form with a retroactive date on or prior to the Contract Effective Date, the Contractor must purchase "extended reporting" or "tail coverage" for a minimum of five (5) full years from the date of the final Contract payment.
- 2) Any professional liability insurance policy shall have a limit not less than **one million** dollars (**\$1,000,000**) per claim and **two million** dollars (**\$2,000,000**) in the aggregate; and
- 3) If the Contract involves the provision of services by medical professionals, a policy limit not less than **three million** (**\$3,000,000**) per claim and **three million** dollars (**\$3,000,000**) in the aggregate for medical malpractice insurance.

Option 3: Low Risk Insurance for Independent Contractors

Certain situations may arise where the Contract is with an Independent Contractor or otherwise presents a low risk procurement where standard Template Insurance requirements may not be appropriate but where best practices would still dictate some level of insurance verification. This option, if approved by CPO, replaces the D.32. Insurance provision in its entirety. This option may only be used with the approval of the CPO Risk Manager.

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. The State reserves the right to require complete, certified copies of all required insurance policies, including endorsements required by these specifications, at any time. If Contractor loses insurance coverage, fails to renew coverage, or for any reason becomes uninsured during the Term, Contractor shall immediately notify the State.

The insurance obligations under this Contract shall be: 1—all the insurance coverage and policy limits carried by or available to the Contractor; or 2—the minimum insurance coverage requirements and policy limits shown in this Contract; whichever is greater. Any insurance proceeds or policies 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 under this Contract. The Contractor shall obtain and maintain, at a minimum, the following insurance coverage(s) and policy limits.

a. Automobile Liability Insurance

1) In the event that the Contractor (1) owns, leases, or otherwise operates an automotive vehicle and (2) intends to use such vehicle in furtherance of their Contractual duties or for regular or periodic transportation onto State property for the purposes of performing the Contractor's duties under the Terms of this Contract, then the Contractor shall provide to the State proof of the Contractor's automobile liability insurance policy. Such automobile liability insurance policy shall maintain limits not less than the minimum liability limits established by the relevant authority under which said vehicle is licensed. Such verification is required whether or not the State intends to reimburse the Contractor for mileage.

2) If the Contractor DOES NOT (1) own, lease, or otherwise operate an automotive vehicle or (2) WILL NOT operate or otherwise employ a personal vehicle in furtherance of their contractual duties or for regular or periodic transportation onto State property for the purposes of performing the Contractor's duties under the Terms of this Contract, then the Contractor shall provide to the State a letter signed by the Contractor certifying as to the above. In the event that such situation changes over the course of the Term of this Contract as described in provision 1) above, the Contractor shall inform the State and provide proof of automobile liability insurance before such time as the Contractor shall use such vehicle in furtherance of their Contractual duties or for regular or periodic transportation onto State property for the purposes of performing the Contractor's duties under the Terms of this Contract.

E. SPECIAL TERMS AND CONDITIONS

Add the following sections as indicated and in the order below. Afterwhich, add other special terms and conditions sections as appropriate, provided that none conflict with state interests or standard contract provisions.

Wherever instructions direct legal counsel involvement, compliance will be assumed.

Confidentiality of Records

As appropriate, add the following section or an alternative recommended by the contracting agency legal counsel.

E.#. **Confidentiality of Records.** Strict standards of confidentiality of records and information shall be maintained in accordance with applicable state and federal law. All material and information, regardless of form, medium or method of communication, provided to the Contractor by the State or acquired by the Contractor on behalf of the State shall be regarded as confidential information in accordance with the provisions of applicable state and federal law, state and federal rules and regulations, departmental policy, and ethical standards. Such confidential information shall not be disclosed, and all necessary steps shall be taken by the Contractor to safeguard the confidentiality of such material or information in conformance with applicable state and federal

law, state and federal rules and regulations, departmental policy, and ethical standards.

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. Nothing in this paragraph shall permit Contractor to disclose any information that is confidential under federal or state law or regulations, regardless of whether it has been disclosed or made available to the Contractor due to intentional or negligent actions or inactions of agents of the State or third parties.

It is expressly understood and agreed the obligations set forth in this section shall survive the termination of this Contract.

State Furnished Property

Add the following section as appropriate.

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

Incorporation of Additional Documents

Revise this section as appropriate.

Prohibited Advertising or Marketing

Add the following section as appropriate.

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

Environmental Tobacco Smoke

Add the following section as appropriate.

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

Lobbying

Add the following section as appropriate.

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

- a. No federally appropriated funds have been paid or will be paid, by or on behalf of the undersigned, 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 this 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 section 1352, title 31, *U.S. Code*.

Contractor Commitment to Diversity

Add the following section as appropriate (typically only in standard RFP *pro forma* contracts).

E.#. Contractor Commitment to Diversity. The Contractor shall comply with and make reasonable business efforts to exceed the commitment to diversity represented by the Contractor's proposal responding to RFP-**NUMBER** (Attachment **REFERENCE**) and resulting in this Contract.

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

Performance Bond

A Performance Bond requirement is generally not recommended for several reasons. A performance bond can be very expensive and difficult for any business to obtain, and the requirement makes it virtually impossible for small and minority businesses to seek contract award. A performance bond is not a usual cost of doing business, and the cost associated with meeting the requirement will most certainly be passed directly to the state. Consequently, the requirement will undoubtedly increase state cost. Finally, the benefit purported to result from a performance bond is highly questionable. This type of bond can be difficult to enforce, and the state has little or no experience in enforcing such obligations. A performance bond is a poor insurance policy. There are much better methods for the state to ensure contractor performance (*e.g.*, scope of service sufficiently detailed to ensure contractor accountability and results; payment methodology involving contingent, incremental payments; a retention of final payment provision; liquidated damages; and not least, sound contract management).

Add the following section only as appropriate, and Provided That the contracting agency legal counsel: (1) drafts the referenced, state-prescribed, bond form; and (2) makes a determination that the bond requirement will be reasonably and legally enforceable under the subject contract as drafted.

E.#. Performance Bond. The Contractor shall provide to the State a performance bond guaranteeing full and faithful performance of all undertakings and obligations under this Contract and in the amount equal to **Written Dollar Amount (\$Number)**. The Contractor shall submit the bond no later

than the day immediately preceding the Contract start date and in the manner and form prescribed by the State (at Attachment **Reference** hereto), and the bond shall be issued through a company licensed to issue such a bond in the state of Tennessee. The performance bond shall guarantee full and faithful performance of all undertakings and obligations under this Contract for:

- a. the Contract term and all extensions thereof; or
- b. the first, calendar year of the Contract (ending December 31st following the Contract start date) in the amount of **Written Dollar Amount (\$Number)** and, thereafter, a new performance bond in the amount of **Written Dollar Amount (\$Number)** covering each subsequent calendar year of the contract period. In which case, the Contractor shall provide such performance bonds to the State no later than each December 10th preceding the calendar year period covered beginning on January 1st of each year.

Failure to provide to the State the performance bond(s) as required herein prior to the Contract start date and, as applicable, no later than December 10th preceding each calendar year period covered beginning on January 1st of each year, shall result in contract termination. The Contractor understands that the stated amount of the performance bond required hereunder shall not be reduced during the contract period for any reason.

Copyrights and Patents

Add the following as appropriate if recommended by the contracting agency legal counsel.

- E.#.** Copyrights and Patents. 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 for infringement of any laws regarding patents or copyrights which may arise from the Contractor's performance of this Contract. In any such action brought against the State, the Contractor shall satisfy and indemnify the State for the amount of any final judgment for infringement. The Contractor further agrees it shall be liable for the reasonable fees of attorneys for the State in the event such service is necessitated to enforce the terms of this Contract or otherwise enforce the obligations of the Contractor to the State. The State shall give the Contractor written notice of any such claim or suit and full right and opportunity to conduct the Contractor's own defense thereof.

Partial Takeover

Add the following or a similar section as appropriate if recommended by the contracting agency legal counsel.

- E.#.** Partial Takeover. The State may, at its convenience and without cause, exercise a partial takeover of any service which the Contractor is obligated to perform under this Contract, including but not limited to any service which is the subject of a subcontract between Contractor and a third party, although the Contractor is not in Breach (hereinafter referred to as "Partial Takeover"). Said Partial Takeover shall not be deemed a Breach of Contract by the State. Contractor shall be given at least 30 days prior written notice of said Partial Takeover with said notice to specify the area(s) of service the State will assume and the date of said assumption. Any Partial Takeover by the State shall not alter in any way Contractor's other obligations under this Contract. The State may withhold from amounts due the Contractor the amount the Contractor would have been paid to deliver the service as determined by the State. The amounts shall be withheld effective as of the date the State assumes the service. Upon Partial Takeover, the Contractor shall have no right to recover from the State any actual, general, special, incidental, consequential, or any other damages whatsoever of any description or amount.

Disclosure of Personal Identity Information

Add the following section as appropriate.

- E.#.** Disclosure of Personal Identity Information. The Contractor shall report to the State any instances of unauthorized disclosure of confidential information that come to the attention of the Contractor. Any such report shall be made by the Contractor within twenty-four (24) hours after

the instance has come to the attention of the Contractor. The Contractor, at the sole discretion of the State, shall provide no cost credit monitoring services for individuals that are deemed to be part of a potential disclosure. The Contractor shall bear the cost of notification to individuals having personal identity information involved in a potential disclosure event, including individual letters and/or public notice.

Transfer of Contractor's Obligations

Add the following section as appropriate.

E.#. Transfer of Contractor's Obligations.

- a. The Contractor shall immediately notify the State in writing of a proposed merger, acquisition or sale of its business operation, or the part of its business operation that provides services under this Contract, or that this Contract will be sold to or assumed by another entity. The entity that is proposed to assume the Contractor's duties under this Contract, whether through merger, acquisition, sale or other transaction, will be hereinafter described as the "New Entity".
- b. The Contractor (or, if the Contractor no longer exists as a legal entity, the New Entity) will provide to the State within a reasonable time, information that the State may require about the merger, acquisition or sale, which may include:
 - i. the date and terms of the merger, acquisition or sale, including specifically, but not limited to, adequate documentation of the financial solvency and adequate capitalization of the proposed New Entity
 - ii. evidence of financial solvency and adequate capitalization of the proposed New Entity which may consist of,
 - (1) Debt;
 - (2) Assets;
 - (3) Liabilities;
 - (4) Cash flow
 - (5) Percentage of the total revenues of the company that are represented by this Contract;
 - (6) The most recent annual financial reports;
 - (7) The most recent annual financial reports filed with government agencies, if applicable.
 - iii. a complete description of the relationship of any New Entity to any parent company or subsidiary or division resulting from the merger, acquisition or sale of the original Contractor's business or the part of the original Contractor's business that provides services under this Contract or from assumption by, or sale to, another entity of the contract itself, including:
 - (1) the names and positions of corporate or company officers, project managers, other Contractor management staff with responsibilities under the Contract, and numbers and the type of technical or other personnel who will be responsible for fulfilling the obligations of the Contract, and any subcontracts that will be used to provide any personal or other services under the Contract by the New Entity and,
 - (2) an organizational chart clearly describing the organizational structure of the New Entity, parent company, subsidiary, division or other unit of the entity or parent company with which it has merged or by which it, or the Contract, has been acquired.
 - iv. such additional evidence of financial solvency, adequate capitalization and information regarding corporate organizational and personnel assigned to the Contract as the State determines is necessary to evaluate the status of the proposed or consummated merger, acquisition or sale.
- c. The original Contractor shall immediately notify the State in writing in the event of a change in its

legal name and/or Federal Employer Identification Number (FEIN). The Contractor shall comply with State requests for copies of any documents that have been filed with state corporate records officials or other officials in the state of its incorporation that verify the name change and a narrative description of the reasons for the name change. If a New Entity has succeeded to the interest of the original Contractor, it shall immediately provide the State written notification of its Federal Employer Identification Number (FEIN), its complete corporate name, State of incorporation, and other documentation required to effectuate the transfer.

- d. Notwithstanding any other provisions of this Contract to the contrary, the State may immediately terminate this Contract in whole or in stages in the event that it determines that the New Entity
- i. has been debarred from State or Federal contracting in the past five years
 - ii. has had a contract terminated for cause by the State of Tennessee within the past five years.

The Contractor shall be entitled to compensation for satisfactory, authorized service completed as of the termination date, but in no event shall the State be liable to the Contractor or New Entity for compensation for any service which has not been rendered. Upon such termination, the Contractor or New Entity shall have no right to any actual general, special, incidental, consequential, or any other damages whatsoever of any description or amount.

- e. The New Entity shall provide to the State within ten (10) business days of the State's request, a notarized statement signed by an individual authorized to bind the New Entity certifying that all liabilities and obligations incurred by the former Contractor are assumed by the New Entity.
- f. If the New Entity owes money to the State of Tennessee, it acknowledges that Tennessee Code Ann. § 9-4-604 requires repayment of these funds and will enter into a legally binding agreement for repayment.

Contractor Hosted Services Requirements and Confidential Data Options

General Instructions:

If the contract will allow a Contractor or Subcontractor to host State services or State data in the cloud (e.g., Software as a Service (SaaS), Infrastructure as a Service (IaaS), Platform as a Service (PaaS)), then follow the instructions as described in the various options below. Include all applicable sections, renumbering as may be appropriate.

Section E.#.a: Confidential State Data

If the Contractor or Subcontractor will host data that is deemed confidential by State or Federal statute or regulation, or process data per the payment card industry (Confidential State Data), including data in transit, include Section E.#.a. If there is any type of Confidential State Data, also include the standard language covering Disclosure of Personally Identifiable Information (PII) from the Section E options provided in the FA Template.

Section E.#.b and c. Minimum Requirements and Comptroller Audit Requirements

Include Section E.#.b as minimum Strategic Technology Solutions (STS) requirements and Section E.#.c as minimum Comptroller audit requirements for all contracts where the Contractor or any Subcontractors will host State services or State data in the cloud (e.g., SaaS, IaaS, PaaS).

Section E.#.e: CAFR or Single Audit Requirements

Add Section E.#.e as an additional Comptroller audit requirement, if the Contractor or Subcontractor will host services that store or process State financial or other data that (1) is used for reporting through the State's Comprehensive Annual Financial Report (CAFR) or (2) is used for demonstrating compliance with the requirements of Title 2, Code of Federal Regulations, Part 200, "Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards" (Uniform Guidance). The Contractor must provide to the State a System and Organization Controls (SOC) 1 Type II or SOC 2 Type II

audit report annually. The Contractor must also verify that all Subcontractors, including data center vendors, successfully complete and provide to the State an annual SOC Type II audit report. Additionally, the State should consider obtaining and reviewing the latest available SOC report for the Contractor and Subcontractor prior to the awarding of the Contract. This requirement should be added to the solicitation Technical Response requirements.

If Section E.#.e, CAFR or Single Audit Requirements is included, remove Section E.#.a.3 unless the contract will involve CJIS data, FTI data, or CMS data, which requires replacing E.#.a.3 as described in the options below. In this case, both a SOC Type II audit report and FEDRAMP authorization are required.

Please direct any questions regarding these requirements to STS, Security Area, or the Comptroller's Office, Office of Management Services. Direct any questions regarding the types of Confidential State Data to STS, Security Area.

Criminal Justice Information Services ("CJIS") Data

The contracting state agency must obtain prior approval from the Tennessee Bureau of Investigation ("TBI") before contracting for external hosting of CJIS data.

Health Insurance Portability and Accountability Act ("HIPAA") Data

Keep all language in E.#.a, and do the following:

Contractor must enter into a Business Associate Agreement (BAA) with the State. Therefore, include as a contract attachment a BAA agreement. Please visit the following website link, available on TEAM TN, for the ["HIPAA Business Associate Agreement Example."](#)

General Requirements

E.#.	<p>Contractor Hosted Services Confidential Data, Audit, and Other Requirements</p> <p>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:</p> <ol style="list-style-type: none"> (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 validated encryption technologies. (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. <p>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</p>
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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: **[NUMBER OF HOURS/MINUTES]**
 - 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: **[NUMBER OF HOURS/MINUTES]**
 - (2) The Contractor **and the Subcontractor(s)** 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 Recover Test that its Disaster Recovery Capabilities meet the RPO and RTO requirements.

Option: Minimum Requirements

Delete and Replace the standard (b)(1), referring to a URL, if the State's Enterprise Information Security Policy will be included as a Contract Attachment.

- (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. The State's Enterprise Information Security Policies document is attached to this Contract at Attachment Reference.

Option: CAFR or Single Audit Requirements

If the contract will involve applications that store or process State financial or other data that is used for reporting through the State's Comprehensive Annual Financial Report (CAFR) or for demonstrating compliance with Uniform Guidance, include Section E.#.e.

- e. The Contractor and any Subcontractor used by the Contractor to host State data, including data center vendors, shall 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 the State with the Contractor's and Subcontractor's annual 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 and 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 audits as they are included in the Maximum Liability of this Contract.

Option: Federal Risk and Authorization Management Program ("FedRAMP")

If the contract will involve CJIS data, FTI data, or CMS data include all of the General Requirements above, except replace section E.#.a.(3) with the following and add each additional requirement as applicable.

- (3) The Contractor shall maintain a Security Management Certification from the Federal Risk and Authorization Management Program ("FedRAMP"). A "Security Management Certification" shall mean written confirmation from FedRAMP that FedRAMP has assessed the Contractor's information technology Infrastructure, using a standardized approach to security assessment, authorization, and continuous monitoring for cloud products and services, and has certified that the Contractor meets FedRAMP standards. Information technology "Infrastructure" shall mean the Contractor's entire collection of hardware, software, networks, data

centers, facilities and related equipment used to develop, test, operate, monitor, manage and/or support information technology services. The Contractor shall provide proof of current certification annually and upon State request.

Option: Federal Tax Information (“FTI”) Data

If the contract will contain FTI data, also add the following sentence to the optional section E.#.a.(3) (FedRAMP) language above. Also include the FTI attachment contained elsewhere in this FA Template.

Contractor shall meet all applicable requirements of the most current version of Internal Revenue Service Publication 1075.

Option: Centers for Medicare and Medicaid Services (“CMS”) Data

If the contract will involve CMS data, also add the following sentence to the optional section E.#.a.(3) (FedRAMP) language above:

Contractor shall meet requirements of current version of Minimum Acceptable Risk Standards for Exchanges (“MARS-E”) controls.

Option: Payment Card Industry (“PCI”) Data

If the contract will involve PCI data, include all of the General Requirements above, and add the following as section E.#.a.(5):

(5) Contractor shall be certified to host Payment Card Industry (“PCI”) data in accordance with the current version of PCI DSS (“Data Security Standard”), maintained by the PCI Security Standards Council.

Drug-Free Workplace.

Add the following Section as appropriate:

E. #. Drug-Free Workplace. The Contractor shall provide a drug-free workplace pursuant to the Drug-Free Workplace Act of 1988, Title 41 U.S.C. §§ 701, *et seq.*, and the regulations in Title 41 U.S.C.A. §§ 8101 through 8106.

Tennessee Department of Mental Health and Substance Abuse Services

The Tennessee Department of Mental Health and Substance Abuse Services may add the following Sections as appropriate:

E. #. Code of Conduct. The Contractor shall ensure that there is a code of conduct applicable to all Contractor employees that covers, at minimum, business practices, clinical practices, and workplace interaction. Contractor employees shall conduct their practice in conformity with all applicable statutes, rules and regulations, and recognized ethical standards pertaining to Contractor’s profession. Contractor shall develop procedures for reporting violations of the ethical standards, which shall be communicated to Contractor’s employees, including new hires, on at least an annual basis. Contractor’s code of conduct shall prohibit Contractor, its officers, directors,

and employees from retaliating against any Contractor employee who reports any violations or acts or omissions that appear to be violations. Contractor's non-retaliation policy shall prescribe discipline for violating the Contractor's code of conduct. Failure to implement a code of conduct in accordance with this section and to adequately address suspected violations of the code of conduct shall entitle the State to exercise any right it has at law or in equity, including, but not limited to termination of this Contract.

E. #. Additional Subcontracting Requirements. Contractor shall ensure in all subcontracts between it and Contractor's State approved subcontractors that each subcontract shall contain the sections of "Confidentiality of Records", "HIPAA Compliance", and "Rule 2 Compliance" (as identified by the section headings) as these may be modified from time to time. Notwithstanding any use of State approved subcontractors, the Contractor shall be the prime contractor and shall be responsible for all work performed by its subcontractors or other providers of goods or services.

E. #. Rule 2 Compliance. The State and the Contractor shall comply with the obligations under Rule 2 of the Confidentiality of Alcohol and Drug Abuse Patient Records, and its accompanying regulations as codified at 42 CFR §§ 2.1, *et seq.* ("Rule 2").

- a. The Contractor warrants to the State that it is familiar with the requirements of Rule 2 and its accompanying regulations, and that it will comply with all requirements imposed by Rule 2 during the Term of this Contract.
- b. The Contractor warrants that it will cooperate with the State, including cooperation and coordination with State privacy officials and other compliance officers required by Rule 2 during the Term of this Contract.
- c. The State and the Contractor will execute such documents, including but not limited to business associate agreements, as required by Rule 2 that are reasonably necessary for the State and the Contractor to comply with Rule 2. This provision shall not apply if information received by the State under this Contract is NOT "protected health information" as defined by Rule 2 or if Rule 2 permits the State to receive such information without entering into a business associate agreement or other agreement.

E. #. Prohibitions on Use of Federal Substance Abuse Block Grant Funds. Pursuant to federal law, Contractor shall not use any funds paid or services rendered under the federal Substance Abuse Prevention and Treatment Block Grant to supplant any other funds available for the goods or services provided under this Contract. Contractor shall not use any federal Substance Abuse Prevention and Treatment Block Grant funds under this Contract for any of the following purposes:

- a. to provide inpatient hospital or inpatient community mental health services;
- b. to make cash payments to intended recipients of health services;
- c. to purchase or improve land; purchase, construct, or permanently improve (other than minor remodeling) any building or facility; or purchase major medical equipment;
- d. to satisfy any requirement for the expenditure of non-federal funds as a condition for the receipt of federal funds;
- e. to provide financial assistance to any entity other than a public or non-profit entity;
- f. to carry out any program of distributing sterile needles for the hypodermic injection of any illegal drug or distributing bleach for the purpose of cleansing needles for such hypodermic injection; or
- g. to carry out any testing for the etiologic agent for acquired immune deficiency syndrome unless such testing is accompanied by the appropriate pre-test and post-test counseling.

SIGNATURES

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



CONTRACT

(no cost contract, involving no monetary obligation between the parties, with an individual, business, non-profit, or government entity of another state or country)

Begin Date	End Date	Agency Tracking #	Edison ID
Contractor Legal Entity Name		Edison Vendor ID (optional)	
Service Caption			
Ownership/Control <input type="checkbox"/> Minority Business Enterprise (MBE): <input type="checkbox"/> African American <input type="checkbox"/> Asian American <input type="checkbox"/> Hispanic American <input type="checkbox"/> Native American <input type="checkbox"/> Woman Business Enterprise (WBE) <input type="checkbox"/> Service-Disabled Veteran Enterprise (SDVBE) <input type="checkbox"/> Disabled Owned Businesses (DSBE) <input type="checkbox"/> Small Business Enterprise (SBE): \$10,000,000.00 averaged over a three (3) year period or employs no more than ninety-nine (99) employees. <input type="checkbox"/> Government <input type="checkbox"/> Non-Minority/Disadvantaged <input type="checkbox"/> Other:			
Selection Method & Process Summary (mark the correct response to confirm the associated summary)			
<input type="checkbox"/> RFP	The procurement process was completed in accordance with the approved RFP document and associated regulations.		
<input type="checkbox"/> Competitive Negotiation	The predefined, competitive, impartial, negotiation process was completed in accordance with the associated, approved procedures and evaluation criteria.		
<input type="checkbox"/> Alternative Competitive Method	The predefined, competitive, impartial, procurement process was completed in accordance with the associated, approved procedures and evaluation criteria.		
<input type="checkbox"/> Non-Competitive Negotiation	The non-competitive contractor selection was completed as approved, and the procurement process included a negotiation of best possible terms & price.		
<input type="checkbox"/> Other	The contractor selection was directed by law, court order, settlement agreement, or resulted from the state making the same agreement with <u>all</u> interested parties or <u>all</u> parties in a predetermined "class."		
<i>CPO USE - NC</i>			

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

This Contract, by and between the State of Tennessee, **State Agency Name** ("State") and **Contractor Legal Entity Name** ("Contractor") is for the provision of **Scope of Service Caption**, as further defined in the "SCOPE OF SERVICES." 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 OF SERVICES:

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

B. TERM OF CONTRACT:

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

C. PAYMENT TERMS AND CONDITIONS:

There shall be no cost to the State for the performance of services under this Contract.

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. 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 stated below or any other address provided in writing by a Party.

The State:

State Contact Name & Title
State Agency Name
Address
Email Address

Telephone # **Number**
 FAX # **Number**

The Contractor:

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

All instructions, notices, consents, demands, or other communications shall be considered effectively given 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. 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 effective termination date. 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.5. 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. 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.6. Assignment and 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 State. Notwithstanding any use of 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 of the use of subcontractors in fulfilling the Contractor's obligations under this Contract.
- D.7. Conflicts of Interest. The Contractor warrants that 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 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.8. 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.9. Prohibition of Illegal Immigrants. The requirements of Tennessee 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 hereby agrees that the Contractor shall not knowingly utilize the services of an illegal immigrant in the performance of this Contract and shall not knowingly utilize the services of any subcontractor who will utilize the services of an illegal immigrant in the performance of this Contract. The Contractor shall reaffirm this attestation, in writing, by submitting to the State a completed and signed copy of the document at Attachment Reference, hereto, 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 Tennessee Code Ann. § 12-3-309 for acts or omissions occurring after its effective date. This law requires the Chief Procurement Officer 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.10. Records. The Contractor shall maintain documentation of services rendered under this Contract. The books, records and documents of the Contractor, insofar as they relate to work performed under this Contract, shall be maintained for a period of five (5) full years from the final date of this Contract 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.
- D.11. 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.12. Progress Reports. The Contractor shall submit brief, periodic, progress reports to the State as requested.
- D.13. 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 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.
- D.14. Independent Contractor. The Parties shall not act as employees, partners, joint venturers, or associates of one another. It is expressly acknowledged by the Parties 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 State, 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.15. 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.16. State 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.
- D.17. 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.18. State and Federal Compliance. The Contractor shall comply with all applicable State and Federal laws and regulations in the performance of this Contract.
- D.19. 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 Tennessee Code Ann. §§ 9-8-101-408.
- D.20. 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.21. 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.22. Headings. Section headings of this Contract are for reference purposes only and shall not be construed as part of this Contract.
- D.23. 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 of this Contract, these items shall govern in the order of precedence below:
- a. any amendment to this Contract, with the latter in time controlling over any earlier amendments;
 - b. this Contract with any attachments or exhibits (excluding the items listed at subsections c. through f., below), which includes [identify attachments and exhibits];
 - c. any clarifications of or addenda to the Contractor's proposal seeking this Contract;
 - d. the State solicitation, as may be amended, requesting responses in competition for this Contract;
 - e. any technical specifications provided to proposers during the procurement process to award this Contract; and
 - f. the Contractor's response seeking this Contract.
- D.24. 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., 3rd 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, certified 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.25. 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.26. 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 the 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 such document.
- d. The Contractor will indemnify the State and hold it harmless for any violation by the Contractor or its subcontractors of the Privacy Rules. This includes the costs of responding to a breach of protected health information, the costs of responding to a government enforcement action related to the breach, and any fines, penalties, or damages paid by the State because of the violation.

D.27. 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.28. Debarment and Suspension. The Contractor certifies, to the best of its knowledge and belief, that it, its current and future principals, its current and future subcontractors and their principals:

- a. are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any federal or state department or agency;
- b. have not within a three (3) year period preceding this Contract been convicted of, or had a civil judgment rendered against them from commission of fraud, or a criminal offence in connection with obtaining, attempting to obtain, or performing a public (federal, state, or local) transaction or grant under a public transaction; violation of federal or state antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification, or destruction of records, making false statements, or receiving stolen property;
- c. are not presently indicted or otherwise criminally or civilly charged by a government entity (federal, state, or local) with commission of any of the offenses detailed in section b. of this certification; and
- d. have not within a three (3) year period preceding this Contract had one or more public transactions (federal, state, or local) terminated for cause or default.

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

E. SPECIAL TERMS AND CONDITIONS:

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

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

IN WITNESS WHEREOF,

CONTRACTOR LEGAL ENTITY NAME:

CONTRACTOR SIGNATURE

DATE

PRINTED NAME AND TITLE OF CONTRACTOR SIGNATORY (above)

STATE AGENCY NAME:

NAME & TITLE

DATE

ATTACHMENT REFERENCE

ATTESTATION RE PERSONNEL USED IN CONTRACT PERFORMANCE

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

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

CONTRACTOR SIGNATURE

NOTICE: This attestation **MUST** be signed by an individual empowered to contractually bind the Contractor. 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.

PRINTED NAME AND TITLE OF SIGNATORY**DATE OF ATTESTATION**

GOVERNING LAW CONTRACT TERM

REDLINE

Request: Insert the following Governing Law contract term in the configurator, all Contract and Grant Contract Templates as follows:

D. #. 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 - 4087.

D.#. Governing Law. This Grant 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 Grantee 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 Grant Contract. The Grantee acknowledges and agrees that any rights or claims against the State of Tennessee or its employees hereunder, and any remedies arising there from, shall be subject to and limited to those rights and remedies, if any, available under Tenn. Code Ann. §§ 9-8-101 through 9-8-4087.

GOVERNING LAW CONTRACT TERM

CLEAN

Request: Insert the following Governing Law contract term in the configurator, all Contract and Grant Contract Templates as follows:

D.#. 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.#. Governing Law. This Grant 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 Grantee 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 Grant Contract. The Grantee acknowledges and agrees that any rights or claims against the State of Tennessee or its employees hereunder, and any remedies arising there from, shall be subject to and limited to those rights and remedies, if any, available under Tenn. Code Ann. §§ 9-8-101 through 9-8-408.

HOLD HARMLESS CONTRACT TERM

REDLINE

Request: Revise the Hold Harmless contract term in the configurator, all Contract and Grant Contract Templates as follows:

D.#. 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.

E.#. Hold Harmless. The Grantee 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 Grantee, its employees, or any person acting for or on its or their behalf relating to this Grant Contract. The Grantee 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 Grant Contract.

In the event of any such 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 Grantee of its obligations under this Section to the extent that the Grantee can demonstrate actual prejudice arising from the failure to give notice. This Section shall not grant the Grantee, through its attorney(s), the right to represent the State of Tennessee in any legal matter, as the right to represent the State is governed by Tenn. Code Ann. § 8-6-106.

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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.

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In the event of any such 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 Grantee of its obligations under this Section to the extent that the Grantee can demonstrate actual prejudice arising from the failure to give notice. This Section shall not grant the Grantee, through its attorney(s), the right to represent the State of Tennessee in any legal matter, as the right to represent the State is governed by Tenn. Code Ann. § 8-6-106.

**STATE FURNISHED PROPERTY
CONTRACT TERM**

REDLINE

Request: Revise the State Furnished Property contract term in the configurator, all Contract and Grant Contract Templates as follows:

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

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

**STATE FURNISHED PROPERTY
CONTRACT TERM**

CLEAN

Request: Revise the State Furnished Property contract term in the configurator, all Contract and Grant Contract Templates as follows:

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

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

**FEE FOR GOODS OR SERVICES
CONTRACT TEMPLATE (“FA”) –
SECTION D.32 – INSURANCE OPTIONS**

NEW

REQUEST: Add the following new insurance options to the FA Template.

Option 4: Technology Professional Liability (Errors & Omissions) / Cyber Liability Insurance

Add the following if the Contractor will have access to or be involved in the collection of confidential, privileged, or sensitive personally identifiable information to provide coverage in the event of a data breach.

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 **ten million dollars (\$10,000,000)** per occurrence or claim and **ten million dollars (\$10,000,000)** 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 **ten million dollars (\$10,000,000)** 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.

Option 5: Crime Insurance

Add the following when adding Cyber Liability Insurance coverage to protect exposure from crimes related to data theft, breach, fraudulent impersonation, and social engineering.

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.
- 2) 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.

Option 6: Sexual Abuse and Molestation Insurance

Add the following insurance coverage if the Contractor has duties involving minors, persons with disabilities, or senior adults. For example, include if the Contractor is involved in a child day care center, healthcare facility, or a nursing home.

f. Sexual Abuse and Molestation Insurance

- 1) The Contractor shall maintain sexual abuse and molestation insurance written on either an occurrence or a claims-made basis. 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.
- 2) Any sexual abuse and molestation insurance policy shall have a limit not less than **one million dollars (\$1,000,000)** per occurrence and **two million dollars (\$2,000,000)** in the aggregate.
- 3) In lieu of this coverage requirement, the Contractor may provide an Educator's Legal Liability (ELL) insurance policy endorsed to provide equivalent coverages as indicated in this provision.

Option 7: Aviation Premises Liability Insurance and Hangerkeeper's Liability Insurance

Add the following Aviation Premises Liability insurance coverage if the Contract involves an aircraft. Hangarkeeper's Liability Insurance should also be included to protect the aircraft while docketed in a hangar space, when applicable.

g. Aviation Premises Liability Insurance

- 1) The Contractor shall maintain Aviation Premises Liability Insurance, which shall include Products/Completed Operations Liability, On Airport Premises Auto Liability and War Liability for a Combined Single Limit of not less than **fifty million dollars (\$50,000,000)** per occurrence and in the annual aggregate as respects Products/Completed Operations and War Liability. The State shall be included as an additional insured on the Contractor's policy or the policy shall be endorsed to include the State as an additional insured.
- 2) The Contractor shall maintain Aviation Premises Liability Insurance written on a per occurrence basis:
 - i. Insurance must be maintained and evidence of insurance must be provided for at least five (5) years after completion of the Contract.
 - ii. If coverage is cancelled or non-renewed, and not replaced with another claims-made policy form with a retroactive date prior to the Contract Effective Date, the Contractor must purchase an extended period coverage for a minimum of five (5) years after completion of the Contract.

h. Hangerkeeper's Liability Insurance

Contractor shall maintain a limit not less than **fifteen million dollars (\$15,000,000)** per aircraft and **one hundred million dollars (\$100,000,000)** per occurrence basis.