

CONTRACT
BETWEEN THE STATE OF TENNESSEE,
LABOR & WORKFORCE DEVELOPMENT, ADULT EDUCATION
AND
CONTRACTOR NAME

This Contract, by and between the State of Tennessee, **Labor & Workforce Development, Adult Education Division** ("State") and **Contractor Legal Entity Name** ("Contractor"), is for the provision of **case management and labor market solution**, as further defined in the "SCOPE." State and Contractor may be referred to individually as a "Party" or collectively as the "Parties" to this Contract.

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

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

Contractor Edison Registration ID # **Number**

A. SCOPE:

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

A.2. Definitions. For purposes of this Contract, definitions shall be as follows and as outlined in the Contract:

- a. **Agency Partners.** "Agency Partners" shall mean non-state employees who are authorized users by the Adult Education Administrator.
- b. **Change Management Plan.** "Change Management Plan" shall mean a plan that defines activities and roles to manage and control change during the execution and control stage of a project.
- c. **Components.** "Component" shall mean a separate unit of software.
- d. **End User.** "End User" shall mean the person who ultimately uses or intends to use the product.
- e. **Enhancement.** "Enhancement" shall mean any modification or addition made or added to the Program that materially changes its utility, efficiency, functional capability, or application but does not constitute solely an Error correction. The State shall designate an Enhancement as minor or major.
- f. **Error.** "Error" shall mean a statement or omission in the System that causes or results in an incorrect function and a failure to comply in any material respect with the applicable specifications.
- g. **Error Correction.** "Error Correction" shall mean either a modification or addition that, when made or added to the Program, brings the Program into material conformity with its specifications and avoids the practical adverse effect of such nonconformity.
- h. **Grantee.** "Grantee" shall mean an external grant recipient serving Adult Education individuals.
- i. **Jobs4TN.** "Jobs4TN" shall mean the State's web portal, case management system, used in Tennessee to record participant services and report on the Workforce Innovation and Opportunity Act (WIOA) Programs.
- j. **Program.** "Program" shall mean the WIOA-funded grantees.

- k. **Providers.** “Providers” shall mean either training or service Providers in the Jobs4TN system.
- l. **State Owned Data.** “State Owned Data” shall mean data provided by the State to the Contractor or input by or on behalf of the State or its Agency Partners.
- m. **Technical Support.** “Technical Support” shall mean a set of software and platform services provided by the Contractor to the State for the system to resolve any issues or defects with a product or service.
- n. **WIOA.** “WIOA” shall mean the Workforce Innovation and Opportunity Act.
- o. **SWIS.** “SWIS” shall mean State Wage Interchange System.
- p. **Business Capability Model (“BCM”).** shall mean a model. describing the abilities, skills, and resources required to deliver the system.
- q. **Project Management Plan (“PMP”).** shall mean the plan describing the scope, schedule, execution and continuing technical support
- r. **HiSET.** “HiSET” shall mean High School Equivalency Test.
- s. **GED.** “GED” shall mean General Education Development tests.
- t. **PSI.** “PSI” is a vendor company that provides HiSET tests and results.
- u. **DRC.** “DRC” Data Recognition Corporation is a vendor company that provides Tests of Adult Basic Education (TABE).
- v. **CASAS TOPSpro.** “CASAS TOPSpro is a vendor company that provides tests for English as Second Language Learners.
- w. **DiplomaSender.** “DiplomaSender” is a vendor company that provides test data and outcomes for Adult Education students.
- x. **ACT WorkKeys.** “ACT WorkKeys” is a vendor company that provides test data and outcomes for Adult Education students.
- y. **Commercial Off the Shelf (COTS).** A single source provided software and/or hardware product that is commercially ready-made but allows customization of features, functions, and configuration components, and is available for sale, lease, or license to the general public.

A.3. The Contractor shall provide all goods or services and deliverables as required, described, and detailed below and meet all service and delivery timelines as specified by this Contract.

- a. The Contractor shall provide an Adult Education Management information system that integrates with all the Adult Education programs in the state of Tennessee, WIOA Title II and SWIS reporting requirements.
- b. This Contractor shall provide all services, including Technical Support, State and Federal Policy updates, maintenance, customization, configuration, and training for required adult education.
- c. This Contract shall provide, update and maintain the system relating to adult education.

- A.4. System Overview. The Contractor shall provide for the design, development, and implementation of a new Adult Education management information system (the "System") that meets the requirements set forth herein. The System shall comprise a quality, web-based platform in accordance with the State's required implementation schedule at contract time and other State requirements outlined in this Contract and its attachments. The Contractor shall ensure that the system allows availability, customization, integration, interoperability, modifiability, scalability, and other quality attributes specific to Adult Education. The System shall:
- a. Provide all necessary functionality needed to process individuals, track all data measures, and report on individual and grantee services and processes promptly and efficiently.
 - b. Provide all necessary functionality to process real-time and historical adult education information.
 - c. Facilitate the timely implementation of changes to meet the State's existing requirements and hereinafter enacted federal and state policies and laws.
 - d. Facilitate alignment of key functions with the system. The State's Business Capability Model ("BCM") identifies the foundational business functions,
 - a. Manage students' information.
 - b. Class registration and attendance
 - c. Manage service location data.
 - d. Manage staff user information.
 - e. Manage Provider relationships & information.
 - f. Leverage and report Adult Education Data state and federal.
 - g. Manage Adult Education Programs (Title II)
 - h. Manage data integration with testing and diploma partners.

The Contractor shall provide all federal and state regulatory updates, modifications, and reports for the contract's life based on the requirements described in applicable federal and state law at no additional cost to the State. The Contractor shall not require the State to sign additional End User license agreements or any other form of additional terms and conditions to access the necessary updates.

- A.5. The Contractor's System shall interface with other systems actively used by the State and include any new system the State may use in the future. System should have the ability to export and import data from these tests, vendors, local programs and more :
- a. GED
 - b. PSI
 - c. DRC
 - d. TOPSPro
 - e. DiplomaSender
 - f. ACT WorkKeys
 - g. Local individual program registrations

- A.6. System Requirements. The Contractor shall ensure the System meets the State's high-level System requirements as described below:
- a. The contractor shall deliver, implement, test and maintain the software system as set forth herein. The software functional and technical requirements shall be a system that currently meets the states requirements at time of award of this contract. It is understood that the Contractor's Commercial Off-The-Shelf ("COTS") software may not meet all State requirements outlined herein and that

the Contractor may, therefore, have to customize and/or configure the software to provide all required functionality. The contractor shall take no longer than Four (4) Weeks to complete all necessary customizations to meet the States requirements in this contract.

- b. Delivers the functionality detailed in the Contract and any additional functionality proposed by the Contractor to be provided at no additional cost to the State.
- c. Provides configuration options/tools and capabilities.
- d. As needed, the State may request services to address new or modified functionality.
- e. The system shall be robust and designed to continue working without slowdowns, consistent with its specifications, despite internal and external stresses.
- f. Provides configuration options/tools and capabilities to ensure a continually modernizing system.

A.7. Project Implementation. The Contractor shall complete implementation of the System within [TBD per RFP response] months of the Effective Date, unless otherwise agreed to by the State. After the System has been implemented, the Contractor shall provide a post-implementation period of twelve (12) months, focusing on Error Correction, stabilization, and additional training and support.

A.8. Data Rights. The State shall own all right, title and interest in data that is provided by the State or provided by the Contractor for the sole use of the State related to the services provided by this Contract ("State Data").

- a. All State Data obtained by the Contractor in the performance of this Contract shall become and remain the property of the State.
- b. Protection of personal privacy and State Data shall be an integral part of the business activities of the Contractor to ensure, to the extent reasonably possible, that there is no inappropriate or unauthorized use of State information at any time. The Contractor shall not use or disclose any State Data related to this Contract except as specifically authorized by the State in writing, or as required to perform their obligations under this Contract.
- c. The Contractor shall ensure that the State has access to all data provided under this Contract twenty-four (24) hours a day, seven (7) days a week, three hundred sixty-five (365) days a year. The State shall have further access to the Contractor's data schema, including the ability to submit queries against the Contractor's data schema, upon request. The obligations set forth in this Section shall survive the termination of this Contract.
- d. The Contractor shall provide a backup copy of database throughout the Contract Term as import or export, or as requested by the State.

A.9. Technical Requirements. The Contractor shall review and validate the requirements that pertain to the System during validation sessions with the State to develop detailed requirements for the System. The Contractor shall provide the following:

- a. Evaluation of the State's existing interfaces and identification of any modifications, enhancements, or replacements necessary for successful implementation. For those interfaces which require encryption, the Contractor shall use validated encryption modules as determined by the Contractor and approved by the State during design phase.
- b. Development of interfaces that feature standardized data formats, methods of communication, and data interchange where applicable. Any cost associated with development of interfaces shall be included in Contractor's development phase cost.

- c. The Contractor shall aid the State in maintaining any State-hosted components or environments. This solution shall be hosted by the contractor, with services co-managed by the State and the Contractor.
- d. The Contractor hosted solution and all its environments shall comply with all Federal and State information security policies, procedures, and regulations.

A.10. Deliverables. The Contractor shall provide all deliverables as required, described, and detailed below. The Contractor shall ensure that all deliverables shall align with industry best practices, state and federal guidelines, as well as any specific standards identified in the Contract or developed through the mutual effort of both parties. The Contractor shall revisit and update each deliverable to reflect any changes that occur in downstream phases at agreed upon intervals or at State request. Deliverables shall be approved in writing by the State prior to being considered final.

The following items shall be considered, at minimum, mandatory for the completion of each Project phase:

PHASE	DESCRIPTION	PHASE DELIVERABLE
1 - Analysis Phase	Analysis	Project Kickoff Meeting Project Approach Document Project Schedule Project Management Plan
1 - Analysis Phase	Software Installation	Software Installed to Pre-Production Environment
1 - Analysis Phase	Data Conversion	Data Conversion Completion Gap Analysis Report
1 - Analysis Phase	Document Migration	Conversion of Business Rules Completion Gap Analysis Report
1 - Analysis Phase	Requirements Definition Document	Gap Analysis Report Requirements Definitions Traceability Matrix Project Repository Business Requirements Functional Requirements System Requirements
2 - Design and Development Phase	Business Rule Conversion	Conduct Design Interviews
2 - Design and Development Phase	System Configuration	Functional Design Detail Technical Design Detail Disaster Recovery & Business Continuity Plan Security Plan Source Code and Supporting Documentation Development Completion
3 - Testing Phase	Customization	Execution of pre-defined test scripts

PHASE	DESCRIPTION	PHASE DELIVERABLE
3 - Testing Phase	User Training and Documentation	UAT Completion Comprehensive Test Plan Finalized Test Plan Test Results Sandbox
3 - Testing Phase	System Integration and Testing	Data Conversion and Migration Plan Production Data Migration Completion Data Migration, Test Results, Data Migration Documentation, (including but not limited to data dictionary, data models, data flow models, and process models) Test Scenarios, and Scripts to document and test specific cases Test Results Completed Requirements Traceability Matrix
3 - Testing Phase	User Acceptance Testing	Document Migration Completion
4 - Go-Live Implementation Phase	Production Data Migration	Training and Knowledge Transfer Plan User Manual Operations Manual End User Training Materials Technical Staff Knowledge Transfer Materials Technical Staff Knowledge Transfer Technical Staff Knowledge Transfer Report
4 - Go-Live Implementation Phase	Go-Live Support & Implementation	Organizational Change Management Plan Organizational Readiness Assessment Workforce Transition Activities Implementation Plan Release Plan System Implementation System Implementation Report
5 - Post-Implementation Phase	Post-Implementation	Application Support Operational Support Updated Documentation Accuracy Reports Maintenance Support System Enhancements

- A.11. Project Kickoff Meeting. In conjunction with the State's Project team, the Contractor shall plan and conduct a project kickoff meeting within ten (10) business days, or another mutually agreed upon time frame, following the Effective Date of this Contract. Key stakeholders shall be in attendance, including State staff representing different Program areas. The Contractor shall focus specifically on the responsibilities of the Contractor and provide an outline of their planned interactions with State staff.
- A.12. Project Schedule. The Contractor shall submit the Project Schedule in Microsoft Project format, or another format approved by the State. The Contractor shall update the Project Schedule weekly and provide the latest version to the State along with a weekly Project Status Report, as provided in this Contract. All Components of the Project Schedule shall be subject to State review and approval. The Contractor shall ensure that the Project Schedule shall include at a minimum the following:

- a. A work-breakdown structure that conforms to industry standards and provides clear coordination of the various activity types, key functions, and Components of the System.
- b. Estimated start and completion dates, actual start, and completion dates, estimated and actual task hours, and completion percentages for all in-progress tasks.
- c. Estimates of State resources (including positions and work hours) needed for the Contractor's completion of each task.
- d. Critical path timeline, with parallel and dependent project tasks.
- e. Initial assumptions and potential constraints.
- f. Accommodation for working with State staff within the State's standard business hours, which are 8:00 a.m. to 4:30 p.m. Central Time, Monday through Friday, except State Office Holidays; and,

A.13. Project Approach Document. The Contractor shall submit an overview of their planned approach to the Project on the date of the Project Kickoff Meeting (A.12.). The Project Approach Document shall be subject to the review and approval of the State, and the Contractor shall include the following:

- a. Listing of the Contractor's key personnel with contact information.
- b. Draft version of the Project Schedule.
- c. A non-technical overview of the Contractor's project methodology, how the Project goals shall be met, and how any potential impacts or constraints shall be assessed.
- d. Overview of each Project phase and how the System will flow through each phase.
- e. Detailed description of how the Contractor plans to work and communicate with the State.

A.14. Project Management Plan ("PMP"). The Contractor and the State shall develop a mutually agreed upon PMP, that may include the following Components as defined below:

- a. Communication Management Plan: Describes how project communications shall be planned, structured, monitored, and controlled. In this plan, the Contractor shall establish communication procedures for meeting agendas and minutes, protocols for webcast meetings, standards for information to be included in communications, timing for dissemination of materials, etc. The Contractor shall also define how all project management teams plan and manage communications for their tasks, and how the Contractor shall keep State and Contractor Project teams, stakeholders, and executive management apprised of Project activities.
- b. Scope Management Plan: Defines processes and procedures that will determine how the Project scope will be defined, documented, verified, managed, controlled and to ensure that all updates are escalated appropriately and addressed in a timely manner.
- c. Risk Management Plan: Defines processes and procedures to ensure that important risks are monitored, have a corresponding mitigation strategy, are monitored for escalation to an issue and resolved in a timely manner. This plan may show both the State and Contractor's respective responsibilities and planned activities regarding project risk. It must cover the following topics:
 - 1) The Contractor shall identify potential risks to the Project, their probability, and potential impact.
 - 2) The Contractor shall develop options and contingency approaches that reduce threats to the completion of Project tasks.
- d. Issue Management Plan: Defines issue escalation processes and procedures to ensure that important issues are escalated appropriately and resolved in a timely manner.
- e. Quality Management Plan: Describes quality assurance policies and procedures for Project deliverables and processes.

- f. Configuration Management Plan: Defines processes and procedures to ensure all materials developed during the project can be tracked and identified throughout the Project lifecycle.
- g. Change Management Plan: This plan shall be developed in consultation with the State to include the change control process;
- h. Resource Management Plan: A chart with the number of Contractor staff per position shall be maintained, along with information on how personnel shall be deployed throughout the Project.

The Contractor shall submit a draft PMP within twenty (20) days after the Kick-off Meeting. The State will provide feedback to the Contractor and the Contractor shall update the PMP until approval is received. The Contractor shall update the PMP as changes occur. The Contractor shall not make any changes to or deviations from the approved PMP without the written approval of the State.

A.15. Gap Analysis Report. The Contractor shall perform gap analysis, which shall comprise at a minimum, of the following activities:

- a. Detailed plan for the performance of the analysis.
- b. Review of existing State processes, automated and otherwise, which are currently utilized to deliver the required services.
- c. Interviews with identified Project stakeholders.
- d. Draft and validation of gap analysis with key stakeholders.
- e. Final gap analysis.

Following the detailed gap analysis, submit a gap analysis report identifying System configuration and development needs.

A.16. Requirements Definitions. The Contractor shall lead and document sessions with the State's small-to-medium enterprises to validate, refine, and document the functional requirements for the System. Prior to conducting validation sessions, the Contractor shall review all available documentation regarding existing plans, business processes, and procedures and federal certification requirements to ensure that each planning deliverable and subsequent deliverables align with state and federal standards, including all relevant laws, rules and regulations, and documentation.

The Contractor shall produce a document that defines the system's relevant operational, performance, application, and architectural requirements, along with any potential issues and proposed Systems documented with updated business flows.

A.17. Traceability Matrix. The Contractor shall create and maintain throughout the project, a traceability matrix that shall be used to trace each requirement and deliverable to design Components, test cases, database tables, code models, etc. The Contractor shall ensure that the matrix provides a roadmap from the lowest level data elements associated with each function or process to the many places where they are used.

The Contractor shall notify the State in the event that changes affecting the matrix are needed so that the State can work collaboratively with the Contractor to understand the full impact of each change and mitigate any potential issues, prior to modifications to the delivered System being considered for full approval by the State.

A.18. Project Repository. The Contractor shall actively maintain and manage all project documentation in the Project Repository during the Contract Term in accordance with the document management and retention policies specified by the State. The Contractor shall ensure that the documentation required by this Contract includes without limitation, the Project Schedule, technical specifications, test plans, and System documentation developed during the Term. The

Contractor shall ensure that the repository excludes elements deemed proprietary to the Contractor (which may include certain software, Program object code, documentation and source code). The Contractor shall store all versions of Project deliverables and other Project documentation as they are delivered to the State, in this Project Repository.

The Contractor shall provide all applicable documentation, including the PMP, using Microsoft and/or Adobe PDF formats. The Contractor shall provide files/documents in their original format if requested by the State. The Contractor shall ensure compliance with current State versions of software. The Contractor shall ensure that the Project Repository is made accessible to the Contractor's employees who are assigned to provide services under the Contract that, because of their nature and scope, require such access. The Contractor shall ensure that all of its employees requiring access complete and sign a confidentiality/nondisclosure agreement and a security agreement as required by the State prior to access being provided. The Contractor shall work with the State to establish a secure connection, as designated by the State, for Contractor staff working outside of State's offices.

- A.19. Correspondence. In order to track and document requests for decisions and/or information and the subsequent response to those requests, the State and the Contractor shall use a controlled correspondence method. Each correspondence document submitted via this method shall be signed by the State project manager (or designee) and the Contractor's project manager (or designee). No such correspondence document shall be effective until both signatures are attached to the document. All correspondence documents shall be maintained by the Contractor and shall become part of the status reporting process. The Contractor shall be responsible for providing a system or tool that shall be used to store specification documentation, request Enhancements by a ticketing system, assign staff to work on projects, track incidents, track updates to tickets, provide quotes for change orders, track approvals, assign priority levels, document system configurations, Enhancements, training materials, data dictionary and table layouts, release notes, etc. The Contractor's tool shall have the ability to add attachments. The tool shall have the ability to run various reports and data to help management.
- A.20. Meetings, Status Reports, and Progress. During all phases of the Project, the Contractor and State shall conduct meetings to review Project progress. The Contractor shall provide the following:
- a. Weekly Project status reports and monthly executive status reports, containing elements specified by the State, throughout the Contract Term. The report shall reflect current progress and any issues affecting the timely achievement of Project tasks.
 - b. Monthly reports on achievement of identified performance targets, as well as any delays and the reasons for delay.
 - c. Weekly session between the State and Contractor project managers to review the Project Schedule and discuss tasks completed since last review, as well as any issues, concerns, risks, and potential mitigation strategies.
 - d. Action item tracking and risk and issue identification.
 - e. Reporting any deviations from the Project Schedule per the agreed-upon frequency in the PMP. At the discretion of the State, the Contractor shall develop contingency and recovery plans to address major deviations. These plans shall include the tasks, timing, and named resources for each task needed to bring the project back on track with the approved Project Schedule.
- A.21. Customization & Design Activities. The Contractor shall work closely with State staff to fully define and review each aspect of the System, along with the staffing requirements and any software tools to be utilized. Requirements shall be reviewed, refined, validated, and documented by the Contractor with business process changes suggested by the Contractor subject to the review and approval of the State. The Contractor shall ensure their System design meets all State requirements. The Contractor shall clearly describe any modifications and expansions required for the System design to conform to the State's unique requirements, which shall be consistent

with the processes defined by this Contract. The following items shall be considered, at minimum, mandatory for the completion of the Design Phase and shall be included by the Contractor in the Design Phase:

- a. Organize and conduct design sessions with the State's identified subject matter
- b. experts to develop the detailed System design.
- c. Provide input and conform to the direction of the State enterprise architectural
- d. standards.
- e. Facilitate and participate in design sessions required to support the System's
- f. development and interfaces to external and internal data sources.
- g. Compile the Architecture Design Documents, comprised of the following Components, which must receive State approval:
 - i. Architectural System Design.
 - ii. Interface Design, See Attachment D for a list of anticipated interfaces for the System
 - iii. Database design.
- h. The Contractor shall include a Security Plan that includes a full security risk assessment composed of the following steps:
 - i. Identify and/or validate threats and vulnerabilities.
 - ii. Determine the probability and severity of risks.
 - iii. Identify adequacy of planned security controls to mitigate risks.
 - iv. Recommend cost-effective security controls to implement.
 - v. Create a security matrix with roles/responsibilities.
 - vi. Identify and define the security testing tools used by the Contractor
- i. Customize all forms and reports per State-approved design requirements.
- j. Develop functional design detail, including business rules documentation.
- k. Develop technical design detail, including forms design, reports design, and interface design.
- l. Develop disaster recovery and business continuity plan.

A.22. Reporting. The Contractor shall provide a comprehensive approach to the implementation of the System reporting requirements in compliance with WIOA Title II. The Contractor shall at no additional cost to the State, make all necessary changes to the Program code and reporting capabilities, which are necessary to comply with all federal and state law changes and reporting requirements. The Contractor shall provide all federally required reports. The Contractor shall be responsible for staying updated on all performance reporting changes and making those changes to the reports prior to reporting deadlines. The Contractor shall validate the current reports and document reporting requirements, in accordance with WIOA Title II. The reports are categorized as operational, audit, financial, and management.

A.23. Custom Reporting. The Contractor shall provide a custom reporting system to fit the needs of state staff. Including, not limited to individual, location, class, attendance, student exits, activities and wage reporting.

A.24. Development Activities. The Contractor shall establish all parameters that affect how the System performs and the information to be gathered and processed, from initial entry into the System until final determination and eventual archival.

The Contractor shall provide System configuration documents that solicit specific decisions from the State affecting how the System will work, gather information, and process information. The Contractor shall modify screen designs; generate new or additional screens; create reports, correspondence, and notices; and demonstrate to the State how functionality is enabled based on the configuration parameters selected by the State. The Contractor shall advise State staff during their review and validate their choices are working properly based on the effect on inputs, outputs, edits, functions, and other processes. Help screens, interfaces, and interactions by the State with claimants and other users shall be reviewed and modifications made as needed.

The Contractor shall provide requirements traceability to object models, data models, data flow diagrams, data dictionaries, technical infrastructure models, navigation techniques, screen

layouts, report layouts, correspondence layouts, notice layouts, forms, and messaging formats. The Contractor shall ensure that the models reflect real-time, and on-line integration with external entities.

The Contractor shall provide the following mandatory items for the completion of Development Phase:

- a. Apply consistent development standards including coding, database, and field naming conventions, in alignment with industry standards;
- b. Develop and deliver interface partner data exchange agreements in coordination with the State. Develop the required interfaces and perform/support all necessary testing activities required to implement the interfaces.
- c. Perform necessary configuration, development, and testing required to implement the functional and technical design. This includes unit testing, integration testing, regression testing, and usability testing with End Users, customers, and service Providers.
- d. Receive State authorization for the use of legacy system resources, such as source files, and data derived from the State's legacy systems for conversion by Contractor.
- e. Follow the process and procedures defined by the State or its designees with respect to use of all shared technical and business services and Components.
- f. Provide and implement application lifecycle management processes to manage requirements through the entire application lifecycle.
- g. Support automatic promotion and deployment of code.
- h. Support continuous integration through the use of a State approved version control tool.

A.25. Source Code Requirements. The Contractor shall:

- a. Facilitate code reviews with State technology staff to ensure software customizations and interfaces comply with industry coding standards and to minimize defects.
- b. Provide the State with access to both source/object codes for software Components and documentation during design, development, and implementation.
- c. Maintain source code and copies on State-owned environment.
- d. Support State staff in reviews of documentation and code to ensure the application is conforming to State-approved standards.
- e. Provide the State with well-documented, readable source code and object executable code and documentation for all functionalities.

A.26. Comprehensive Test Plan. The Contractor shall develop and execute a comprehensive testing plan before beginning any testing activities. The Contractor shall ensure that Comprehensive Test Plan covers the period that begins when the System is delivered in whole or in part for testing and ends when the System is fully implemented. The Comprehensive Test Plan shall be approved by the State before testing activities can begin.

A.27. Testing Activities. Upon the State's approval of the Comprehensive Test Plan, the Contractor shall:

- a. Conduct pre-testing validation of functional requirements.
- b. Train relevant State staff in testing and test procedures.

- c. Manage each test cycle, tracking progress and producing progress and quality reports. Provide ad hoc support as needed.
- d. Develop test plans for each testing type, including entrance and exit criteria, approach to test issue management, and progress tracking.
- e. Support the testing environment throughout the course of the project, including creating the test datasets, creating de-identified test datasets, and resetting the test data to support re-running of test scripts. Work must be performed on state-managed infrastructure.
- f. Develop test scripts covering all of the functionality included in the release for each testing cycle in collaboration with the State. Assist the State in developing UAT test scripts when requested;
- g. Refine, update, and make available all test documents, procedures, and scripts throughout development and through full System acceptance to reflect the current requirements.
- h. Include testing of time-sensitive elements. As System events contain date- and time-sensitive elements, the testing infrastructure must provide a method of altering and synchronizing the System date throughout each test phase. This requires changing the System date and time in some scenarios. (Note: Tennessee falls into two (2) time zones - Eastern and Central. The Contractor must accommodate this in their testing approach.).
- i. Provide stress-test software that shall simulate actual System use for the State during acceptance testing. The Contractor shall work in consultation with the State on testing requirements.
- j. Execute the test scripts for all test cycles with minimal State involvement. Prior to being promoted to user acceptance testing, the test scripts must pass criteria with user security/permissions enabled that is aligned with the Security Plan.
- k. Compile testing results for all test cycles. This includes user acceptance test results from the State.
- l. Participate in check-point meetings, including testing phase entrance and exit gates and provide relevant information for the State to make informed decisions to migrate into/out of testing phases;
- m. Provide and use a test issue tracking tool to track progress in resolving identified test issues. The test issue tracking tool shall be provided at no additional cost to the State.
- n. Re-test a test script in its entirety and associated test scripts when a failure occurs at any stage of testing, such as a failure in user acceptance testing that necessitates a code change requiring the component to go back through unit testing, or integration testing.
- o. Use a State-approved load testing tool to identify System load/availability issues with performance and required metrics. The Contractor shall conduct a series of load tests designed to ensure the System can continue to operate adequately and meet performance service levels at the high and low ends of the planned scale, in terms of users, transaction throughput, and data volumes of operations.
- p. Provide and leverage a testing tool/test harness which supports automated regression testing and other testing functions. The Contractor shall develop a suite of automated regression test scripts to automate regression testing for the entire System, leveraging the test harness. Prior to submitting the changes to the pre-production environment for user acceptance testing and reporting results, the Contractor shall execute the automated regression test scripts as required to ensure changes do not break the intended functionality.
- q. Develop test scripts including developing test data sets. Contractor shall develop test scenarios and test scripts to document and test specific cases.

- r. Work with State staff to validate data capture and System functionality before user acceptance testing.
 - s. Ensure the testing schedule accommodates the provision of the required test data for each testing cycle.
- A.28. Testing Review and Testing Environment. The Contractor shall facilitate any required state or federal review of the test results, pre- and post-UAT. The Contractor shall ensure that testing conforms to all federal testing guidelines and develop reports and supporting materials required to pass any required or requested federal review of the testing results.
- A.29. Data Conversion and Migration. The Contractor shall identify data conversion requirements and perform data migration in accordance with approved conversion requirements in conjunction with the State's technical staff and subject matter experts, including database administrators and the State's functional subject matter experts, as required. All conversion and migration activities are the responsibility of the Contractor. The Contractor shall:
- a. Develop a data conversion and migration plan to describe the conversion and migration strategy.
 - b. Collaborate with the State to identify the amount of historical data to be converted from each legacy system to the new System, including whether there is a concurrent period of operation where data will be maintained in both the System and any legacy systems, how data will be synchronized during concurrent operations, and which version will contain the official record during concurrent operations.
 - c. The Contractor shall conduct an initial assessment of current production data to identify what, if any, data problems exist.
 - d. Provide a data dictionary, data models, data flow models, process models, and other related planning and design documents to the State in a timely manner prior to data conversion/migration validation.
 - e. Lead data conversion and migration activities including developing a schedule for all data mapping and conversion activities involving State resources. The Contractor shall perform data conversion, mapping and loading in consultation with the State. The Contractor shall develop an exception handling process for data that fails the migration or conversion processing.
 - f. Provide data correction and cleansing in the existing source systems prior to migration, as well as corrections during the data migration process (note: most data cleansing is expected to take place in the staging database). Data cleansing shall include elimination of unnecessary data records, identification and correction of inaccurate data, merging of duplicated data, reformatting and standardization of data to be converted, and gathering of information that does not exist in legacy systems but which may be required for the new System.
 - g. Provide tools to minimize the manual effort required to convert data from the legacy System and/or synchronize the data between the initial release and the retirement of the State's legacy systems, including the creation of an archival database of historical and non-migrated for storage without directly burdening the System.
 - h. Stage all data necessary to populate the new System. The Contractor shall work with the State's current software vendor and other State agencies in data migration and in resolving data issues during the migration.
 - i. Coordinate all automated and manual data loads during data conversion testing and user acceptance testing.
 - j. Perform and pass, at a minimum, one trial data conversion prior to UAT using a full or partial dataset as determined and approved by the State during planning phase.
 - k. Perform data conversion testing and provide tools or guidance to help data conversion by identifying common Error conditions, such as duplicate records) and minimizing manual effort during the data conversion and migration process

by automating where possible the corrective action process (e.g. merging duplicate records).

- l. Conduct data validation and reconciliation during implementation. This shall include development of an archival database system, to store data both in a pre-conversion state and data not converted.
- m. Develop audit trails and logs, which shall ensure that all data has been correctly migrated and, when appropriate, that the correct synchronization has been achieved.

A.30. User Account Management. The Contractor shall develop the System's user account maintenance procedures for State staff maintenance including, but not limited to:

- a. Configuration of up to 300 new users, roles, responsibilities, and credentials.
- b. User refresh, changes, deletions, and updates.
- c. Assistance, as required, in administering single sign-on user accounts, including provisioning and decommissioning per State-approved procedures.

A.31. End User Training. The Contractor shall provide train-the-trainer training to prepare the State trainers to conduct training for End Users who use the System to perform daily job functions. State trainers shall train other End Users with Contractor training team support. The Contractor shall structure training around the new End User roles that are defined during the design phase. The Contractor shall schedule the train-the-trainer training and assist with the scheduling of training of State staff in a manner that is least disruptive to normal business operations. The Contractor shall also coordinate with the State to ensure that materials are ready in advance of training. The curricula and materials shall cover, at a minimum, the following topics:

- a. System overview, including System benefits, data inputs, outputs, and reports produced, major business functions, and user manual contents and usage.
- b. System usage, including data entry and validation; workflow processes, data correction and user help features; menu and System function navigation; problem recovery; report contents and generation; search and inquiry features; and record update procedures.
- c. System operation, including seeking technical help (application and equipment assistance).
- d. System training, including live, self-service and proposed training delivery methods.

A.32. Federal Requirements and Reviews. The State anticipates oversight and review by federal entities. The Contractor's System shall meet any federal and state requirements and remain current throughout the Contract Term. The Contractor shall have fifteen days (15) to update the System to meet any new federal and state requirements.

A.33. Software Maintenance, and Operational Support.

- a. Ongoing Software Maintenance. From the Contract's Effective Date until the date that the State provides written approval of the Post-Implementation Phase to the Contractor, the Contractor shall provide all technical and maintenance support services described herein at no additional cost to the State.

1. The Contractor shall:

- b. Make necessary adjustments and repairs to keep the software operating without abnormal interruptions and to correct latent deficiencies with respect to the software specifications.
- c. Make all necessary modifications, adjustments, and repairs to keep the software operating in compliance with relevant applicable federal laws and regulations; and,

- d. Maintain a copy of the State's current production version on a computer system owned by the Contractor.
 - e. The Contractor shall provide help desk and Technical Support services per the following requirements.
 - 1. Support Hours. Regular help desk support hours shall be between 8:00 a.m. and 6:00 p.m. CT, Monday through Friday, excluding regularly scheduled State holidays.
 - 2. Telephone Technical Support. The Contractor shall provide the State priority telephone Technical Support during regular State business hours. Such Technical Support shall permit the State to report problems and seek assistance in the use of the Program.
 - 3. E-Mail Support. The Contractor shall provide the State priority E-mail Technical Support during regular State business hours. Such support shall permit the State to report problems and seek assistance in the use of the Program.
 - 4. Emergency Support. The Contractor shall provide emergency support 24/7 x 365 via emergency support number.
 - f. Remedies. In the event the Contractor does not meet the target SLAs outlined in this section, the State may in addition to any other remedies available:
 - 1. Request an action plan from the Contractor within five (5) business days to outline improvement initiatives and the process(es) the Contractor shall implement.
 - 2. Request detailed documentation from the Contractor for review and approval of the identified senior leadership for the State. Detailed documentation shall include, at minimum:
 - 1. Date of the State's request
 - 2. Identification of the priority level, target response time, status reporting, and target repair time
 - 3. Summary of the problem, request for Technical Support, or information request
 - 4. A justification of the missed SLA or delivery plan
 - 5. The plan of corrective action
 - 6. The expected delivery day for correction of the problem, Technical Support to be provided, or response to information
- A.35. Customization Service. The State may request that the Contractor perform customization during the entire contract to meet the changing requirements of business needs, policy changes and State and Federal Requirements through an amendment to this Contract.
- A.36. System Availability/Disaster Recovery. Following implementation, the Contractor shall ensure that System availability is at ninety-nine (99.9%) availability for any given period.
- A.37. System Performance/Monitoring. The contractor shall define, document, and propose System monitoring policies, procedures, and standards.
- A.38. Break Fix Services. The contractor shall design, develop, and test System fixes based on the severity and priority and in consultation with the State.
- A.39. Quality Assurance. The Contractor shall perform a quarterly quality review that focuses on all aspects of the Project and/or the System according to the needs of the State. The Contractor shall submit the results of each review to the State for evaluation and approval.

- A.40. Tool Usage. The Contractor shall be responsible for providing a system or tool that will be used to store specification documentation, request enhancements by a ticketing system, assign staff to work on projects, track incidents, track updates to tickets, provide quotes for change orders, track approvals, assign priority levels, document system configurations, enhancements, training materials, data dictionary and table layouts, release notes, etc. The tool shall be able to add attachments. The tool should be able to run various reports and data to help management. The tool should be able to add State staff as users with a role collaboratively defined by the Contractor and the State.
- A.41. Transition Plan. The Contractor shall create and deliver a detailed Transition Plan that covers all activities and the efforts of all involved parties before six (6) months from the end of the maintenance services period, or as soon as notified by the State, in the event termination of this Contract. The Contractor shall ensure that the Transition Plan provides the time and budget requirements, action ownership, and Program governance. The Contractor shall ensure that the Transition Plan defines the means by which no interruption of the provision of the services or reduction in service levels will occur during the transition to State or the new service Provider.
- A.42. Project Staffing. The Contractor shall:
- a. Provide all staffing for its project team with the expertise and skills to ensure that all services required under this Contract are provided efficiently, effectively, and timely.
 - b. Assign staff with prior experience in this Contract's assigned functional roles.
 - c. Keep track of resource costs, both personnel and technical, on an activity basis, in order to comply with applicable state and federal reporting requirements. The Contractor shall maintain accurate resource cost breakdown that shall be maintained by the Contractor and provided to the State upon request.
- A.43. Change Management Process. The State and the Contractor shall manage changes to the Project or any related deliverables. The Contractor shall track the status of approved in-progress Change Orders and provide status reports to the State, at the State's request.
- A.44. No-Cost Changes. The following changes shall be completed at no additional cost to the State under this Contract:
- a. Activities necessary for the System to continue functioning in compliance with state and federal laws and policies.
 - b. Activities necessary in response to guidance issued by a federal entity;
 - c. Activities to correct defects;
 - d. Activities to keep any commercial software used within the System up-to-date by ensuring all such commercial software is no more than two (2) versions behind the current commercially available production version. The Contractor requires the State to install new versions of software if the State does not deem such installation to be in its best interests;
 - e. Activities and/or modifications necessary to ensure that data, tables, Programs, and documentation are current and errors are found and corrected.
- A.46. Contractor shall limit contractor resources to US-based (onshore) resources only (includes personnel).
- A.45. Inspection and Acceptance. The State shall have the right to inspect all goods or services provided by Contractor under this Contract. If, upon inspection, the State determines that the goods or services are Defective, the State shall notify Contractor, and Contractor shall re-deliver the goods or provide the services at no additional cost to the State. If after a period of thirty (30)

days following delivery of goods or performance of services the State does not provide a notice of any Defects, the goods or services shall be deemed to have been accepted by the State.

- A.46. Warranty. The contractor represents and warrants that the term of the warranty (“Warranty Period”) shall be the greater of the Term of this Contract or any other warranty generally offered by the Contractor, its suppliers, or manufacturers to customers of its goods or services. The goods or services provided under this Contract shall conform to the terms and conditions of this Contract throughout the Warranty Period. Any nonconformance of the goods or services to the terms and conditions of this Contract shall constitute a “Defect” and shall be considered “Defective.” If Contractor receives notice of a Defect during the Warranty Period, then Contractor shall correct the Defect at no additional charge.

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

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

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

B. TERM OF CONTRACT:

- B.1. This Contract shall be effective on **DATE** (“Effective Date”) and extend for a period of thirty-six (36) months after the Effective Date (“Term”). The State shall have no obligation for goods or services provided by the Contractor prior to the Effective Date.
- B.2. **Renewal Options.** This Contract may be renewed upon satisfactory completion of the Term. The State reserves the right to execute 2 times of renewal terms and 1 year renewal options under the same terms and conditions, at the State's sole option. In no event, however, shall the maximum Term, including all renewals or extensions, exceed a total of sixty (60) months.

C. PAYMENT TERMS AND CONDITIONS:

- C.1. Maximum Liability. In no event shall the maximum liability of the State under this Contract exceed **Written Dollar Amount (\$Number)** (“Maximum Liability”). This Contract does not grant the Contractor any exclusive rights. The State does not guarantee that it will buy any minimum quantity of goods or services under this Contract. Subject to the terms and conditions of this Contract, the Contractor will only be paid for goods or services provided under this Contract after a purchase order is issued to Contractor by the State or as otherwise specified by this Contract.
- C.2. Compensation Firm. The payment methodology in Section C.3. of this Contract shall constitute the entire compensation due the Contractor for all goods or services provided under this Contract regardless of the difficulty, materials or equipment required. The payment methodology includes all applicable taxes, fees, overhead, and all other direct and indirect costs incurred or to be incurred by the Contractor.
- C.3. Payment Methodology. The Contractor shall be compensated based on the payment methodology for goods or services authorized by the State in a total amount as set forth in Section C.1.

- a. The Contractor’s compensation shall be contingent upon the satisfactory provision of goods or services as set forth in Section A.
- b. The Contractor shall be compensated based upon the following payment methodology:

Goods or Services Description	Amount (per compensable increment)
Implementation, Licensing, Hosting, Software, Maintenance and Operations – Quarterly (Year 1)	\$ Number
Implementation, Licensing, Hosting, Software, Maintenance and Operations – Quarterly (Year 2)	\$ Number
Implementation, Licensing, Hosting, Software, Maintenance and Operations – Quarterly (Year 3)	\$ Number
Implementation, Licensing, Hosting, Software, Maintenance and Operations – Quarterly (Option Year 4)	\$ Number
Implementation, Licensing, Hosting, Software, Maintenance and Operations – Quarterly (Option Year 5)	\$ Number

- C.4. Travel Compensation. The Contractor shall not be compensated or reimbursed for travel time, travel expenses, meals, or lodging.
- C.5. Invoice Requirements. The Contractor shall invoice the State only for goods delivered and accepted by the State or services satisfactorily provided at the amounts stipulated in Section C.3., above. Contractor shall submit invoices and necessary supporting documentation, no more frequently than once a month, and no later than thirty (30) days after goods or services have been provided to the following address:

220 French Landing Drive, 4A, Nashville, TN 37243

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

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

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

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

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

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

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

D. MANDATORY TERMS AND CONDITIONS:

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

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

The State:

Don Cain
Labor & workforce Development
220 French Landing, 4A
Nashville, TN 37243
don.cain@tn.gov

The Contractor:

Contractor Contact Name & Title

Contractor Name

Address

Email Address

Telephone # Number

FAX # Number

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

- D.3. Modification and Amendment. This Contract may be modified only by a written amendment signed by all Parties and approved by all applicable State officials.
- D.4. Subject to Funds Availability. The Contract is subject to the appropriation and availability of State or federal funds. In the event that the funds are not appropriated or are otherwise unavailable, the State reserves the right to terminate this Contract upon written notice to the Contractor. The State's exercise of its right to terminate this Contract shall not constitute a breach of Contract by the State. Upon receipt of the written notice, the Contractor shall cease all work associated with the Contract. If the State terminates this Contract due to lack of funds availability, the Contractor shall be entitled to compensation for all conforming goods requested and accepted by the State and for all satisfactory and authorized services completed as of the termination date. Should the State exercise its right to terminate this Contract due to unavailability of funds, the Contractor shall have no right to recover from the State any actual, general, special, incidental, consequential, or any other damages of any description or amount.
- D.5. Termination for Convenience. The State may terminate this Contract for convenience without cause and for any reason. The State shall give the Contractor at least thirty (30) days written notice before the termination date. The Contractor shall be entitled to compensation for all conforming goods delivered and accepted by the State or for satisfactory, authorized services completed as of the termination date. In no event shall the State be liable to the Contractor for compensation for any goods neither requested nor accepted by the State or for any services neither requested by the State nor satisfactorily performed by the Contractor. In no event shall the State's exercise of its right to terminate this Contract for convenience relieve the Contractor of any liability to the State for any damages or claims arising under this Contract.
- D.6. Termination for Cause. If the Contractor fails to properly perform its obligations under this Contract in a timely or proper manner, or if the Contractor materially violates any terms of this Contract ("Breach Condition"), the State shall have the right to immediately terminate the Contract and withhold payments in excess of compensation for completed services or provided goods. Notwithstanding the above, the Contractor shall not be relieved of liability to the State for damages sustained by virtue of any Breach Condition and the State may seek other remedies allowed at law or in equity for breach of this Contract.
- D.7. Assignment and Subcontracting. The Contractor shall not assign this Contract or enter into a subcontract for any of the goods or services provided under this Contract without the prior written approval of the State. Notwithstanding any use of the approved subcontractors, the Contractor

shall be the prime contractor and responsible for compliance with all terms and conditions of this Contract. The State reserves the right to request additional information or impose additional terms and conditions before approving an assignment of this Contract in whole or in part or the use of subcontractors in fulfilling the Contractor's obligations under this Contract.

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

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

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

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

- a. The Contractor agrees that the Contractor shall not knowingly utilize the services of an illegal immigrant in the performance of this Contract and shall not knowingly utilize the services of any subcontractor who will utilize the services of an illegal immigrant in the performance of this Contract. The Contractor shall reaffirm this attestation, in writing, by submitting to the State a completed and signed copy of the document at Attachment A, semi-annually during the Term. If the Contractor is a party to more than one contract with the State, the Contractor may submit one attestation that applies to all contracts with the State. All Contractor attestations shall be maintained by the Contractor and made available to State officials upon request.
- b. Prior to the use of any subcontractor in the performance of this Contract, and semi-annually thereafter, during the Term, the Contractor shall obtain and retain a current, written attestation that the subcontractor shall not knowingly utilize the services of an illegal immigrant to perform work under this Contract and shall not knowingly utilize the services of any subcontractor who will utilize the services of an illegal immigrant to perform work under this Contract. Attestations obtained from subcontractors shall be maintained by the Contractor and made available to State officials upon request.
- c. The Contractor shall maintain records for all personnel used in the performance of this Contract. Contractor's records shall be subject to review and random inspection at any reasonable time upon reasonable notice by the State.
- d. The Contractor understands and agrees that failure to comply with this section will be subject to the sanctions of Tenn. Code Ann. § 12-3-309 for acts or omissions occurring after its effective date.
- e. For purposes of this Contract, "illegal immigrant" shall be defined as any person who is not: (i) a United States citizen; (ii) a Lawful Permanent Resident; (iii) a person whose physical presence in the United States is authorized; (iv) allowed by the federal Department of Homeland Security and who, under federal immigration laws or

regulations, is authorized to be employed in the U.S.; or (v) is otherwise authorized to provide services under the Contract.

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

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

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

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

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

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

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

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

- D.24. Force Majeure. “Force Majeure Event” means fire, flood, earthquake, elements of nature or acts of God, wars, riots, civil disorders, rebellions or revolutions, acts of terrorism or any other similar cause beyond the reasonable control of the Party except to the extent that the non-performing Party is at fault in failing to prevent or causing the default or delay, and provided that the default or delay cannot reasonably be circumvented by the non-performing Party through the use of alternate sources, workaround plans or other means. A strike, lockout or labor dispute shall not excuse either Party from its obligations under this Contract. Except as set forth in this Section, any failure or delay by a Party in the performance of its obligations under this Contract arising from a Force Majeure Event is not a default under this Contract or grounds for termination. The non-performing Party will be excused from performing those obligations directly affected by the Force Majeure Event, and only for as long as the Force Majeure Event continues, provided that the Party continues to use diligent, good faith efforts to resume performance without delay. The occurrence of a Force Majeure Event affecting Contractor’s representatives, suppliers, subcontractors, customers or business apart from this Contract is not a Force Majeure Event under this Contract. Contractor will promptly notify the State of any delay caused by a Force Majeure Event (to be confirmed in a written notice to the State within one (1) day of the inception of the delay) that a Force Majeure Event has occurred, and will describe in reasonable detail the nature of the Force Majeure Event. If any Force Majeure Event results in a delay in Contractor’s performance longer than forty-eight (48) hours, the State may, upon notice to Contractor: (a) cease payment of the fees for the affected obligations until Contractor resumes performance of the affected obligations; or (b) immediately terminate this Contract or any purchase order, in whole or in part, without further payment except for fees then due and payable. Contractor will not increase its charges under this Contract or charge the State any fees other than those provided for in this Contract as the result of a Force Majeure Event.
- D.25. State and Federal Compliance. The Contractor shall comply with all State and federal laws and regulations applicable to Contractor in the Contractor’s performance of this Contract.

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

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

Contractor shall provide the State a certificate of insurance ("COI") evidencing the coverages and amounts specified in this Section. The COI must be on a form approved by the TDCI (standard ACORD form preferred). The COI must list each insurer's National Association of Insurance Commissioners (NAIC) number and be signed by an authorized representative of the insurer. The COI must list the State of Tennessee – CPO Risk Manager, 312 Rosa L. Parks Ave., 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 copies of all required insurance policies, including endorsements required by these specifications, at any time.

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

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

a. Commercial General Liability ("CGL") Insurance

- 1) The Contractor shall maintain CGL, which shall be written on an ISO Form CG 00 01 occurrence form (or a substitute form providing equivalent coverage) and shall cover liability arising from property damage, premises and operations products and completed operations, bodily injury, personal and advertising injury, and liability assumed under an insured contract (including the tort liability of another assumed in a business contract).

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

b. Workers' Compensation and Employer Liability Insurance

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

c. Automobile Liability Insurance

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

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

- 1) The Contractor shall maintain technology professional liability (Errors & omissions)/cyber liability insurance appropriate to the Contractor's profession in an amount not less than 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.

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.

D.33. Major Procurement Contract Sales and Use Tax. Pursuant to Tenn. Code Ann. § 4-39-102 and to the extent applicable, the Contractor and the Contractor’s subcontractors shall remit sales and use taxes on the sales of goods or services that are made by the Contractor or the Contractor’s subcontractors and that are subject to tax.

D.34. Confidentiality of Records. Strict standards of confidentiality of records and information shall be maintained in accordance with applicable state and federal law. All material and information, regardless of form, medium or method of communication, provided to the Contractor by the State or acquired by the Contractor on behalf of the State that is regarded as confidential under state or federal law shall be regarded as “Confidential Information.” Nothing in this Section shall permit Contractor to disclose any Confidential Information, regardless of whether it has been disclosed or made available to the Contractor due to intentional or negligent actions or inactions of agents of the State or third parties. Confidential Information shall not be disclosed except as required or permitted under state or federal law. Contractor shall take all necessary steps to safeguard the confidentiality of such material or information in conformance with applicable state and federal law.

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

D.35. Boycott of Israel. The Contractor certifies that it is not currently engaged in, and covenants that it will not, for the duration of the Contract, engage in a Boycott of Israel, as that term is defined in Tenn. Code Ann. § 12-4-119.

D.36. Prohibited Contract Terms. The prohibited contract terms and conditions enumerated in Pub. Ch. 113, § 5, shall be a material provision of this Contract. The Contractor acknowledges, understands, and agrees that the inclusion of a term or condition prohibited by Pub. Ch. 113, § 5, shall be null and void and the Contract shall be enforceable as if the Contract did not contain such term or condition.

E. SPECIAL TERMS AND CONDITIONS:

- E.1. Conflicting Terms and Conditions. Should any of these special terms and conditions conflict with any other terms and conditions of this Contract, the special terms and conditions shall be subordinate to the Contract's other terms and conditions.
- E.2. Contractor Commitment to Diversity. The Contractor shall comply with and make reasonable business efforts to exceed the commitment to diversity represented by the Contractor's Response to 33701-72823 (RFP Attachment B-B.15.) and resulting in this Contract.

The Contractor shall assist the State in monitoring the Contractor's performance of this commitment by providing, as requested, a monthly report of participation in the performance of this Contract by small business enterprises and businesses owned by minorities, women, service-disabled veterans, and persons with disabilities. Such reports shall be provided to the State of Tennessee Governor's Office of Diversity Business Enterprise in the TN Diversity Software available online at:

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

- E.3. Intellectual Property Indemnity. The Contractor agrees to indemnify and hold harmless the State of Tennessee as well as its officers, agents, and employees from and against any and all claims or suits which may be brought against the State concerning or arising out of any claim of an alleged patent, copyright, trade secret or other intellectual property infringement by Contractor's deliverables hereunder. In any such claim or action brought against the State, the Contractor shall satisfy and indemnify the State for the amount of any settlement or final judgment, and the Contractor shall be responsible for all reasonable legal or other fees or expenses incurred by the State arising from any such claim. The State shall give the Contractor notice of any such claim or suit, however, the failure of the State to give such notice shall only relieve Contractor of its obligations under this Section to the extent Contractor can demonstrate actual prejudice arising from the State's failure to give notice. This Section shall not grant the Contractor, through its attorneys, the right to represent the State of Tennessee in any legal matter, as provided in Tenn. Code Ann. § 8-6-106.

In addition to the above indemnity, if the State's use of any deliverable, or any portion thereof, provided under this Contract, is or is likely to be enjoined by order of a court of competent jurisdiction as such an infringement or unauthorized use, the Contractor, at its expense, may: (x) procure for the State the continued use of such deliverable; (y) replace such deliverable with a non-infringing counterpart; or (z) modify such deliverable so it becomes non-infringing; provided that, if (y) or (z) is the option chosen by the Contractor, the replacement or modified deliverable must be capable of performing substantially the same function. Notwithstanding the foregoing, the State retains the right to terminate the Contract in accordance with Section D.6 hereunder in the event of such infringement or unauthorized use, and any such exercise of these allowable options by Contractor shall not relieve Contractor of its indemnity obligations under this Section.

The forgoing indemnity does not apply to the extent that the infringement arises from the State's: (i) use of the deliverable not in accordance with instructions, documentations, or specifications ("Misuse"); (ii) alteration, modification or revision of the deliverables not expressly authorized by the Contractor ("Alteration"); (iii) failure to use or implement corrections or Enhancements to the deliverables made available by the Contractor to the State at no additional cost to the State, except where such failure to use or implement corrections or Enhancements is a result of State's termination in accordance with the preceding paragraph; or (iv) combination of the deliverables with materials not provided, specified, or approved by the Contractor.

- E.4. Software License Warranty. Contractor grants a license to the State to use all software provided under this Contract in the course of the State's business and purposes. The Contractor acknowledges that Agency Partners are authorized users of all Solution Modules.
- E.5. Software Support and Maintenance Warranty. Contractor shall provide to the State all software upgrades, modifications, bug fixes, or other improvements in its software that it makes generally available to its customers that contract for goods and services identical to the goods and services offered by Contractor under this Contract.

E.6. Extraneous Terms and Conditions. Contractor shall fill all orders submitted by the State under this Contract. No purchase order, invoice, or other documents associated with any sales, orders, or supply of any good or service under this Contract shall contain any terms or conditions other than as set forth in the Contract. Any such extraneous terms and conditions shall be void, invalid and unenforceable against the State. Any refusal by Contractor to supply any goods or services under this Contract conditioned upon the State submitting to any extraneous terms and conditions shall be a material breach of the Contract and constitute an act of bad faith by Contractor.

E.7. **Information Technology Security Requirements (State Data, Audit, and Other Requirements).**

a. The Contractor shall protect State Data as follows:

(1) The Contractor shall ensure that all State Data is housed in the continental United States, inclusive of backup data. All State data must remain in the United States, regardless of whether the data is processed, stored, in-transit, or at rest. Access to State data shall be limited to US-based (onshore) resources only.

All system and application administration must be performed in the continental United States. Configuration or development of software and code is permitted outside of the United States. However, software applications designed, developed, manufactured, or supplied by persons owned or controlled by, or subject to the jurisdiction or direction of, a foreign adversary, which the U.S. Secretary of Commerce acting pursuant to 15 CFR 7 has defined to include the People's Republic of China, among others are prohibited. Any testing of code outside of the United States must use fake data. A copy of production data may not be transmitted or used outside the United States.

(2) The Contractor shall encrypt Confidential State Data at rest and in transit using the current version of Federal Information Processing Standard ("FIPS") 140-2 **or** 140-3 (or current applicable version) validated encryption technologies. The State shall control all access to encryption keys. The Contractor shall provide installation and maintenance support at no cost to the State.

(3) The Contractor and any Subcontractor used by the Contractor to host State data, including data center vendors, shall be subject to an annual engagement by a licensed 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") 2 Type 2 examination. The scope of the SOC 2 Type 2 examination engagement must include the Security, Availability, Confidentiality, and Processing Integrity Trust Services Criteria. In addition, the Contractor services that are part of this Contract, including any processing or storage services, must be included in the scope of the SOC 2 Type 2 examination engagement(s).

(4) The Contractor must annually review its SOC 2 Type 2 examination reports. Within 30 days of receipt of the examination report, or upon request from the State or the Comptroller of the Treasury, the Contractor must provide the State or the Comptroller of the Treasury a non-redacted copy of the Contractor's SOC 2 Type 2 examination report(s). The Contractor must review the annual SOC 2 Type 2 examination reports for each of its Subcontractors and must also assist the State or Comptroller of the Treasury with obtaining a non-redacted copy of any SOC examination reports for each of its Subcontractors, including data centers used by the Contractor to host or process State data.

If the Contractor's SOC 2 Type 2 examination report includes a modified opinion, meaning that the opinion is qualified, adverse, or disclaimed, the Contractor must share the SOC report and the Contractor's plan to address the modified opinion with the State or the Comptroller of the Treasury within 30 days of the Contractor's receipt of the SOC report or upon request from the State or the Comptroller of the Treasury. If any Subcontractor(s) SOC 2 Type 2 examination report includes a modified opinion, the Contractor must assist the State or Comptroller of the

Treasury with obtaining the Subcontractor(s) SOC report and the Subcontractor(s) plan to address the modified opinion.

The Contractor must have a process for correcting control deficiencies that were identified in the SOC 2 Type 2 examination, including follow-up documentation providing evidence of such corrections. Within 30 days of receipt of the examination report, or upon request from the State or the Comptroller of the Treasury, the Contractor must provide the State or the Comptroller of the Treasury with a corrective action plan and evidence of correcting the control deficiencies. The Contractor must require each of its Subcontractors, including data centers used by the Contractor to host State data, to have a process for correcting control deficiencies identified in their SOC examination reports and must assist the State or Comptroller of the Treasury with obtaining a corrective action plan and obtaining evidence of correcting control deficiencies identified in Subcontractor(s) SOC reports.

No additional funding shall be allocated for these examinations as they are included in the Maximum Liability of this Contract.

- (5) The Contractor must annually perform Penetration Tests and Vulnerability Assessments against its Processing Environment per the NIST 800-115 definition. "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. The Contractor shall provide a letter of attestation on its processing environment that penetration tests and vulnerability assessments has been performed on an annual basis and taken corrective action to evaluate and address any findings.

In the event of an unauthorized disclosure or unauthorized access to State data, the State Strategic Technology Solutions (STS) Security Incident Response Team (SIRT) must be notified and engaged by calling the State Customer Care Center (CCC) at 615-741-1001. Any such event must be reported by the Contractor within twenty-four (24) hours after the unauthorized disclosure has come to the attention of the Contractor.

- (6) If a breach has been confirmed a fully un-modified third-party forensics report must be supplied to the State and through the STS SIRT. This report must include indicators of compromise (IOCs) as well as plan of actions for remediation and restoration. Contractor shall take all necessary measures to halt any further Unauthorized Disclosures.
- (7) 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
- (8) Upon termination of this Contract and in consultation with the State, the Contractor shall destroy, and ensure all subcontractors 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 always fully compatible with current versions of the Operating System and Application to ensure that security vulnerabilities are not introduced.
- (4) In the event of drive/media failure, if the drive/media is replaced, it remains with the State and it is the State's responsibility to destroy the drive/media, or the Contractor shall provide written confirmation of the sanitization/destruction of data according to NIST 800-88.

c. 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.

120 MINUTES (2hrs)
 - 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:

90 MINUTES (1.5hrs)

The Contractor and the Subcontractor(s) shall maintain a documented Disaster Recovery plan and shall share this document with the State when requested. 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 Recovery Test that its Disaster Recovery Capabilities meet the RPO and RTO requirements.

E.8. Comptroller Audit Requirements.

When requested by the State or the Comptroller of the Treasury, the Contractor must provide the State or the Comptroller of the Treasury with a detailed written description of the Contractor's information technology control environment, including a description of general controls and application controls. The Contractor must also assist the State or the Comptroller of the Treasury with obtaining a detailed written description of the information technology control environment for any third or fourth parties, or Subcontractors, used by the Contractor to process State data and/or provide services under this Contract.

Contractor will maintain and cause its Subcontractors to maintain a complete audit trail of all transactions and activities in connection with this Contract, including all information technology logging and scanning conducted within the Contractor's and Subcontractor's information technology control environment. Upon reasonable notice and at any reasonable time, the Contractor grants the State or the Comptroller of the Treasury with the right to audit the Contractor's information technology control environment, including general controls and application controls. The audit may include testing the general and application controls within the Contractor's information technology control environment and may also include testing general and application controls for any third or fourth parties, or Subcontractors, used by the Contractor to process State data and/or provide services under this Contract. The audit may include the Contractor's and Subcontractor's compliance with the State's Enterprise Information Security Policy and all applicable requirements, laws, regulations, or policies.

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

The Contractor must have a process for correcting control deficiencies that were identified in the State's or Comptroller of the Treasury's information technology audit. For any audit issues identified, the Contractor and Subcontractor(s) shall submit a corrective action plan to the State or the Comptroller of the Treasury which addresses the actions taken, or to be taken, and the anticipated completion date in response to each of the audit issues and related recommendations of the State or the Comptroller of the Treasury. The corrective action plan shall be provided to the State or the Comptroller of the Treasury upon request from the State or Comptroller of the Treasury and within 30 days from the issuance of the audit report or communication of the audit issues and recommendations. Upon request from the State or Comptroller of the Treasury, the Contractor and Subcontractor(s) shall provide documentation and evidence that the audit issues were corrected.

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

- E.9. Personally Identifiable Information. While performing its obligations under this Contract, Contractor may have access to Personally Identifiable Information held by the State ("PII"). For the purposes of this Contract, "PII" includes "Nonpublic Personal Information" as that term is defined in Title V of the Gramm-Leach-Bliley Act of 1999 or any successor federal statute, and the rules and regulations thereunder, all as may be amended or supplemented from time to time ("GLBA") and personally identifiable information and other data protected under any other applicable federal or Tennessee laws, rules or regulations of relating to disclosure or use of personal information ("Privacy Laws") and Contractor shall have the opportunity to approve any amendment to this Contract prompted by any changes, revisions or supplements to such laws. Contractor agrees it shall not do or omit to do anything which would cause the State to be in breach of applicable State of Tennessee or federal Privacy Laws. Contractor shall, and shall cause its employees, agents and representatives to: (i) keep PII confidential and may use and disclose PII only as necessary to carry out those specific aspects of the purpose for which the PII was disclosed to Contractor and in accordance with this Contract, GLBA and applicable State of Tennessee Privacy Laws; and (ii) implement and maintain appropriate technical and organizational measures regarding information security to: (A) ensure the security and confidentiality of PII; (B) protect against any threats or hazards to the security or integrity of PII; and (C) prevent unauthorized access to or use of PII. Contractor shall immediately notify State: (1) of any disclosure or use of any PII by Contractor or any of its employees, agents and

representatives in breach of this Contract; and (2) of any disclosure of any PII to Contractor or its employees, agents and representatives where the purpose of such disclosure is not known to Contractor or its employees, agents and representatives. The State reserves the right to review Contractor's policies and procedures used to maintain the security and confidentiality of PII and Contractor shall, and cause its employees, agents and representatives to, comply with all reasonable requests or directions from the State to enable the State to verify or ensure that Contractor is in full compliance with its obligations under this Contract in relation to PII. Upon termination or expiration of the Contract or at the State's direction at any time in its sole discretion, whichever is earlier, Contractor shall immediately return to the State any and all PII which it has received under this Contract and shall destroy all records of such PII.

The Contractor shall report to the State any instances of unauthorized access to PII in the custody or control of Contractor ("Unauthorized Disclosure") that come to the Contractor's attention. Any such report shall be made by the Contractor within twenty-four (24) hours after the Unauthorized Disclosure has come to the attention of the Contractor. Contractor shall take all necessary measures to halt any further Unauthorized Disclosures. If applicable, the Contractor, at the sole discretion of the State, shall provide no cost credit monitoring services for individuals whose PII was affected by the Unauthorized Disclosure provided that the Unauthorized Disclosure is the result of Contractor's negligence. The Contractor shall bear the cost of notification to all individuals affected by the Unauthorized Disclosure, including individual letters and public notice provided that the Unauthorized Disclosure is the result of Contractor's negligence. Notwithstanding anything to the contrary within this Agreement, Contractor's maximum liability for the foregoing costs, including credit monitoring services and notices, shall not exceed \$5,000,000. The remedies set forth in this Section are not exclusive and are in addition to any claims or remedies available to this State under this Contract or otherwise available at law.

- E.10. Federal Funding Accountability and Transparency Act (FFATA). This Contract requires the Contractor to provide supplies or services that are funded in whole or in part by federal funds that are subject to FFATA. The Contractor is responsible for ensuring that all applicable requirements, including but not limited to those set forth herein, of FFATA are met and that the Contractor provides information to the State as required.

The Contractor shall comply with the following:

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

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

- (2) Total compensation means the cash and noncash dollar value earned by the executive during the Contractor's preceding fiscal year and includes the following (for more information see 17 C.F.R. § 229.402(c)(2)):
- i. Salary and bonus.
 - ii. Awards of stock, stock options, and stock appreciation rights. Use the dollar amount recognized for financial statement reporting purposes with respect to the fiscal year in accordance with the Statement of Financial Accounting Standards No. 123 (Revised 2004) (FAS 123R), Shared Based Payments.
 - iii. Earnings for services under non-equity incentive plans. This does not include group life, health, hospitalization or medical reimbursement plans that do not discriminate in favor of executives, and are available generally to all salaried employees.
 - iv. Change in pension value. This is the change in present value of defined benefit and actuarial pension plans.
 - v. Above-market earnings on deferred compensation which is not tax qualified.
 - vi. Other compensation, if the aggregate value of all such other compensation (e.g. severance, termination payments, value of life insurance paid on behalf of the employee, perquisites or property) for the executive exceeds \$10,000.
- b. The Contractor must report executive total compensation described above to the State by the end of the month during which this Contract is awarded.
- c. If this Contract is amended to extend the Term, the Contractor must submit an executive total compensation report to the State by the end of the month in which the term extension becomes effective.
- d. The Contractor will obtain a Unique Entity Identifier (UEI) number and maintain its UEI number for the term of this Contract. More information about obtaining a UEI Number can be found at: the System for Award Management (SAM.gov).

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

- E.12. Additional lines, items, or options. At its sole discretion, the State may make written requests to the Contractor to add lines, items, or options that are needed and within the Scope but were not included in the original Contract. Such lines, items, or options will be added to the Contract through a Memorandum of Understanding ("MOU"), not an amendment.
- a. After the Contractor receives a written request to add lines, items, or options, the Contractor shall have ten (10) business days to respond with a written proposal. The Contractor's written proposal shall include:
 - (1) The effect, if any, of adding the lines, items, or options on the other goods or services required under the Contract;
 - (2) Any pricing related to the new lines, items, or options;
 - (3) The expected effective date for the availability of the new lines, items, or options; and
 - (4) Any additional information requested by the State.

- b. The State may negotiate the terms of the Contractor's proposal by requesting revisions to the proposal.
- c. To indicate acceptance of a proposal, the State will sign it. The signed proposal shall constitute a MOU between the Parties, and the lines, items, or options shall be incorporated into the Contract as if set forth verbatim.
- d. Only after a MOU has been executed shall the Contractor perform or deliver the new lines, items, or options.

IN WITNESS WHEREOF,

CONTRACTOR LEGAL ENTITY NAME:

CONTRACTOR SIGNATURE

DATE

PRINTED NAME AND TITLE OF CONTRACTOR SIGNATORY (above)

TENNESSEE DEPARTMENT OF LABOR & WORKFORCE DEVELOPMENT:

DENIECE THOMAS, COMMISSIONER

DATE

ATTESTATION RE PERSONNEL USED IN CONTRACT PERFORMANCE

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

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

CONTRACTOR SIGNATURE

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

PRINTED NAME AND TITLE OF SIGNATORY

DATE OF ATTESTATION