



STATE OF TENNESSEE
DEPARTMENT OF GENERAL SERVICES

BILL HASLAM
GOVERNOR

ROBERT E. OGLESBY, AIA
COMMISSIONER

AGENDA

ADVISORY COUNCIL ON STATE PROCUREMENT MEETING #018
MONDAY, OCTOBER 27, 2014 – 10:00 A.M.
TN TOWER – 3rd FLOOR, NASHVILLE ROOM

AGENDA ITEM	PAGE #
I. Call to Order	--
II. Approve Minutes from August 4, 2014 Meeting..... (see attached documentation)	1
III. New Business Proposed revisions to the following Central Procurement Office documents (see attached documentation):	
(1) Fee for Goods or Services Contract (FA) Template.....	8
(2) Governmental Grant (GG) Template	106
(3) Delegated Grant Authority (DG) Template.....	173
(4) Grant Contract cover sheets	188
(5) Section 6.2.4, “Required Agency Documentation” of the <i>Procurement Procedures Manual of the Central Procurement Office</i> ...	190
(6) Section 10.8, “P-Card Purchases” of the <i>Procurement Procedures Manual of the Central Procurement Office</i>	195
(7) Addition of Section 6.7, “Purchase Order Exemptions” to the <i>Procurement Procedures Manual of the Central Procurement Office</i> ...	200
(8) Terms and conditions for purchase orders issued under an agency’s local purchase authority.....	202
IV. Other Business Appreciation to Kelly Smith, Melissa Kmiecik, Hugh Holt, Michelle Lane for their service on the Advisory Council	--
V. Adjournment	--

CENTRAL PROCUREMENT OFFICE

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**MINUTES OF AUGUST 4, 2014
MEETING**



STATE OF TENNESSEE
DEPARTMENT OF GENERAL SERVICES

BILL HASLAM
GOVERNOR

ROBERT E. OGLESBY, AIA
COMMISSIONER

MINUTES
ADVISORY COUNCIL ON STATE PROCUREMENT MEETING #017
MONDAY, AUGUST 4, 2014 – 3:00 P.M.
TN TOWER – 3rd FLOOR – NASHVILLE ROOM

Members in Attendance:

Mike Perry, Sondra Howe, Buddy Lea, Kelly Smith, Jason Mumpower, Rick Peppers, Terry Anderson, Michelle Lane, Scottie Domenico, Melissa Kmiecik

Members Joining by Phone:

Hugh Holt

Others in Attendance:

Paul Krivacka, Hannah Terry, Susan Mersh, Kevin Bartels, Melinda Parton, Bryan Chriske, Don Ivancic, Lauren Plunk, Sheila Ewing-Agnew, Shay Oliphant, Shannon Howell, Colleen Mallea, Toni Stuart, Charlotte McKinney

- I. **Call to Order:** Mike Perry, Chief Procurement Officer and Advisory Council on State Procurement Chairman, officially called the meeting to order and recognized that a quorum of members was present. Mr. Perry recognized that Hugh Holt joined the meeting via conference call.
- II. **Minutes from the April 30, 2014 Meeting:** Chief Procurement Officer Perry asked if there were any corrections or additions to the minutes from the April 30, 2014 meeting. Seeing none, a motion was made Kelly Smith, Assistant Commissioner, Department of General Services, to accept the minutes as presented. The motion was seconded by Jason Mumpower, Chief of Staff, Comptroller's Office. All members voted in favor – none opposed.
- III. **New Business:** Chief Procurement Officer Perry expressed his gratitude to the stakeholder representatives from the vendor community, State agencies, and local government who serve on the Central Procurement Office Policy Review Subcommittee ("Subcommittee") for their continued efforts in reviewing and contributing to the documents that were brought before the Advisory Council. Mr. Perry then turned the floor over to Paul Krivacka, Lead Attorney/Director of Category Management, Central

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Procurement Office, to discuss the New Business agenda items.

Mr. Krivacka stated that the common theme of the documents that were to be presented was an effort to make processes of the Edison and non-Edison worlds more homogeneous. Mr. Krivacka then reviewed the proposed revisions to:

(1) Respondent's Diversity Utilization Plan for Invitation to Bid (ITB) in Edison Configurator

Mr. Krivacka stated that at the May 15, 2014 Procurement Commission meeting, the diversity questions asked in the Request for Proposals ("RFP") and Request for Qualifications ("RFQ") templates were updated. Mr. Krivacka added that the new proposed document would update the diversity questions asked in the Invitation to Bid ("ITB") document, which was generated by the Edison Document Configurator.

Mr. Krivacka stated that the proposed document contained updated language and reduced the number of pages from four (4) down to two (2), by simplifying the background information and simplifying the requested response document. Mr. Krivacka stated that the proposed document had been reviewed by the Subcommittee and the Governor's Office of Diversity Business Enterprise.

Chief Procurement Officer Perry clarified that the terms "Edison and non-Edison worlds" referred to the fact that some procurement documents, like the RFP, are done outside of Edison but the resulting contracts are loaded into Edison. RFP language comes from the models and templates that are available on the Central Procurement Office website, whereas some other documents reside in the Edison configurator. Edison assembles contract documents for an ITB. A contract using the FA model or RFP or RFQ process would be considered the non-Edison world.

Mr. Perry asked if there were any additional comments or questions regarding the Respondent's Diversity Utilization Plan for Invitation to Bid (ITB) in Edison Configurator. Michelle Lane, Metropolitan Nashville Government, asked if these changes affected any of the recommendations made under the State's disparity study. Mr. Krivacka responded that the requested changes did not.

Seeing no additional questions, a motion was made by Mr. Mumpower to recommend the proposed changes to the Respondent's Diversity Utilization Plan for Invitation to Bid (ITB) in Edison Configurator as presented, to the Procurement Commission for approval. Buddy Lea, Assistant Commissioner, Department of Finance and Administration seconded the motion. All members voted in favor – none opposed.

(2) Contract Term, Renewal, or Extension Language

Mr. Krivacka stated that contracts in Edison were renewed and extended differently than contracts outside of Edison. There was a split between the standard contract language used in Edison generated documents and non-Edison generated documents.

The standard language outside of Edison required an amendment to extend a contract irrespective of whether additional funds were needed. The proposed Renewal or Extension language would separate renewals or extensions from true Contract Amendments. The proposed changes would simplify and facilitate the extension and renewal process and contain language for procurement professionals stating that if they are changing a contract in a material manner (other than an extension or renewal) then an amendment would be required.

Chief Procurement Officer Perry asked whether this new process would dictate whether or not a contract that is simply a renewal or extension would appear on the Consent Calendar for the Fiscal Review Committee (“FRC”), as opposed to formal amendments that actually add funds or modify terms and conditions or scope. Mr. Krivacka stated that FRC can review any contract it deemed necessary but it is anticipated that this proposed change would make the review of routine extensions or renewals unnecessary, which would place the focus on true amendments.

Mr. Lea added that this proposed change represented a significant improvement and allowed the focus to be on amendments that really needed a close review and analysis and it would also serve to clarify the process for state agencies.

Chief Procurement Officer Perry asked if there were any additional comments or questions regarding the proposed Contract Term, Renewal, or Extension Language. Seeing none, a motion was made by Mr. Mumpower to recommend the proposed Contract Term, Renewal, or Extension Language as presented, to the Procurement Commission for approval. Ms. Smith seconded the motion. All members voted in favor – none opposed.

(3) Renewal or Extension Request

Mr. Krivacka stated that a new Renewal or Extension Request document was created which resulted in two forms: an Amendment Request for true contract amendments to make material changes to a contract, and the new Renewal or Extension Request for contract renewals or extensions only. Mr. Krivacka stated that the Renewal or Extension Request was a much shorter document and simpler than the Amendment Request, which would expedite the approval process for renewals and extensions and place the focus on true amendments.

For the record, Mr. Mumpower asked for confirmation that the intent of the form was to extend a contract without changing the maximum liability of the contract and that if additional funds were required, an amendment to the contract would be required. Mr. Krivacka confirmed that was correct.

Chief Procurement Officer Perry thanked Mr. Mumpower for that clarification and asked if there were any additional comments or questions regarding the proposed Renewal or Extension Request. Seeing none, Mr. Mumpower made a motion to recommend the Renewal or Extension Request as presented, to the Procurement

Commission for approval. Mr. Lea seconded the motion. All members voted in favor – none opposed.

(4) Optional Non-Discrimination Clause

Mr. Krivacka stated that this was another area where the Edison and non-Edison worlds were different. On January 16, 2014 the optional non-discrimination clause language was approved for use in Grant Contracts. There have been occasions where fee-for-service agreements have been entered into between the State and religious organizations and the standard non-discrimination language created some first amendment issues for the religions organizations. In an effort to be consistent in all contract documents, the request was made to add this optional non-discrimination clause to FA contracts.

Chief Procurement Officer Perry asked if there were any additional comments or questions regarding the Optional Non-Discrimination Clause. Seeing none, a motion was made by Ms. Smith to recommend the proposed Optional Non-Discrimination Clause as presented, to the Procurement Commission for approval. Mr. Lea seconded the motion. All members voted in favor – none opposed.

At this point, Mr. Krivacka accidentally presented agenda item number seven (7) out of order. A motion was made by Mr. Mumpower to allow Section 11 of the *Procurement Procedures Manual of the Central Procurement Office* to be presented out of order. The motion was seconded by Ms. Smith. All members voted in favor – none opposed.

(5) Section 11 of the *Procurement Procedures Manual of the Central Procurement Office* [originally shown as agenda item number seven (7)]

Mr. Krivacka stated that Section 11 of the *Procurement Procedures Manual of the Central Procurement Office* incorporated by reference the documents listed on the Central Procurement Office intranet site. If approved, the webmaster would reorganize the available documents into a more logical grouping which would follow the chronological ordering of events in the procurement process. This request would also update the list of the documents available on the website and remove the Request for Proposals (RFP) Cost Only Model and Solicitation Model.

The Request for Proposals (RFP) Cost Only Model and Solicitation Model are no longer approved procurement methods in the Central Procurement Office's statutes, rules, policies or procedures and; therefore, should be removed from the CPO's website. The RFP Cost Only Model was previously issued for the purpose of awarding a fee-for-service contract based upon an evaluation of cost only. The benefits of this process are already covered by the ITB process and are; therefore, superfluous.

A motion was made by Mr. Mumpower to recommend the proposed revisions to Section 11 of the *Procurement Procedures Manual of the Central Procurement Office*

as presented, to the Procurement Commission for approval. The motion was seconded by Ms. Smith. All members voted in favor – none opposed.

(6) GG Template [originally shown as agenda item number five (5)]

Mr. Krivacka stated that the GG template was a grant template used between the State and other government entities. Some confusion has existed as to whether this was a template, which required a Rule Exception for changes, or a model which would not require a Rule Exception for changes. The proposed change would clarify that the document was a template and as such would require a Rule Exception for changes. Mr. Krivacka added that and it was now a more user-friendly document and was better aligned with the Delegated Grant Authority process.

Mr. Krivacka also added that as a general practice in the review of all documents, the Central Procurement Office has attempted to use less “legal-ese” in an effort to add more clarity.

Mr. Krivacka stated that State Audit recommended some additional changes to Section D.11, Public Accountability, of the GG Template that were not included in the document as distributed to the Advisory Council members prior to the meeting. The recommended changes clarified the citations, corrected some minor grammar, and added instructions related to the sign that Grantees must display.

A redline copy of the additional recommended changes was provided to all Advisory Council members at the meeting as follows:

- D.11. Public Accountability. If the Grantee is subject to Tenn. Code Ann. ~~§§§ 8-4-401—409, et seq.,~~ or if this Grant Contract involves the provision of services to citizens by the Grantee on behalf of the State, the Grantee agrees to establish a system through which recipients of services may present grievances about the operation of the service program, ~~and the~~ The Grantee shall also display in a prominent place, located near the passageway through which the public enters in order to receive Grant supported services, a sign at least eleven inches (11") in height and seventeen inches (17") in width stating:

NOTICE: THIS AGENCY IS A RECIPIENT OF TAXPAYER FUNDING. IF YOU OBSERVE AN AGENCY DIRECTOR OR EMPLOYEE ENGAGING IN ANY ACTIVITY WHICH YOU CONSIDER TO BE ILLEGAL, IMPROPER, OR WASTEFUL, PLEASE CALL THE STATE COMPTROLLER'S TOLL-FREE HOTLINE: 1-800-232-5454.

The sign shall be on the form prescribed by the Comptroller of the Treasury. Copies shall be provided to the Grantee by the Grantor State Agency.

A motion was made by Mr. Lea to recommend the proposed revisions to the GG Template as presented and as amended by the additional recommended changes noted above, to the Procurement Commission for approval. The motion was seconded by Mr. Mumpower. All members voted in favor – none opposed.

(7) Request for Proposals (RFP) Schedule of Events Template [originally shown as agenda item number six (6)]

Mr. Krivacka stated that this change was to clarify the timing of events after the RFP files were opened for public inspection. Previously the instructions advised to wait “8 **Business Days**”, after which files were opened until the Contract was sent to the Contractor for signature. Since an aggrieved respondent has seven (7) calendar days after becoming aware of the facts giving rise to a protest to file a written protest, the proposed change would align the protest procedures with the language in the RFP Schedule of Events. A few other minor changes were made to organize and make the document read better.

A motion was made by Mr. Lea to recommend the proposed Request for Proposals (RFP) Schedule of Events Template, as presented, to the Procurement Commission for approval. The motion was seconded by Ms. Smith. All members voted in favor – none opposed.

IV. Other Business: Chief Procurement Officer Perry asked for any other business that the Council needed to discuss. Seeing none, he took this opportunity to thank all the members of the Policy Review Subcommittee for their time and hard work in reviewing and providing input on Central Procurement Office templates, models, and policies and procedures.

V. Adjournment: Seeing no other business, a motion for adjournment was made by Ms. Smith and seconded by Mr. Lea. All members voted in favor – none opposed.

**FEE FOR GOODS OR SERVICES
CONTRACT (FA) TEMPLATE**

REDLINE VERSION

FA MODEL FEE FOR GOODS OR SERVICES CONTRACT TEMPLATE (FA)

This model template prescribes the format and content for a fee-for-service contract with contracts involving the purchase of goods or services from an individual, business, or non-profit, or a government entity of another state or country. This contract template requires the expenditure of State funds.

Documents of this type must Procurement professionals shall adhere to this model template with revisions only as instructions permit. Insignificant deviations from this model, while always subject to disapproval, will, typically, not require a specific rule exception unless an oversight examiner requires separate documentation in a particular instance. If a formal rule exception request is not required, oversight approval of the document will constitute selected rule exception(s) as may be necessary. Changes to this template require a Rule Exception as set forth in Tenn. Comp. R. & Regs. 0690-03-01-.17 and the Procurement Procedures Manual of the Central Procurement Office.

Procurement professionals shall complete text fields and follow, replace, or otherwise address red instructional text (e.g., State Agency Name, amount, will/will not) as indicated with appropriate font and color. The standard FA Template begins on the following page. Additional instructions, considerations, and options follow the standard FA Template.

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

Complete summary cover fields as indicated within the template and the following field descriptions.

<i>Agency Tracking #</i>	a unique number comprised of: 5 digit business unit # + unique, 5 digit # example: 31707-12345
<i>Funding</i>	amounts by fiscal year & funding source and with row & column totals; the sum of the TOTAL Contract Amount column (the grand total amount for all fiscal years & all sources of funding) MUST equal the contract maximum liability
<i>Ownership/Control</i>	African American if the contractor is ≥ 51% owned or controlled by descendants of the black peoples of Africa Asian if the contractor is ≥ 51% owned or controlled by descendants of the original peoples of the Far East, Asia, Southeast Asia, the subcontinent, or the Pacific Islands Government if the contractor is any governmental entity Hispanic if the contractor is ≥ 51% owned or controlled by persons of Cuban, Mexican, Puerto Rican, Central or South American, or other Spanish or Portuguese origin, culture, or descent, regardless of race, or having a Spanish surname Native American if the contractor is ≥ 51% owned or controlled by descendants of the peoples of the first nations of North America NOT Minority/Disadvantaged if the contractor is not ≥ 51% owned or controlled by minority or disadvantaged persons & is not a small business Other if the contractor is ≥ 51% owned or controlled by persons of a minority or disadvantaged ethnic background, national origin, etc. other than previously described Person w/Disability if the contractor is ≥ 51% owned or controlled by persons with a physical or mental impairment that substantially limits one or more major life activities (i.e., caring for oneself, writing, walking, seeing, hearing, speaking and breathing) Small Business if the contractor is independently owned and operated, has total gross receipts of ≤ \$2 million for the last federal tax year, and has ≤ 30 full-time employees

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

PREAMBLE

Add additional information only if necessary:

In a contract with an individual, delete the model preamble phrase, "Place of Incorporation or Organization: Location."

A. SCOPE OF SERVICES

Do NOT include payment terms in the scope of services.

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

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

B. TERM OF CONTRACT

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

Draft the contract with an appropriate, definitive, and complete contract period not to exceed the five (5) year maximum permitted by service contracting rules.

Rule exceptions permitting contract periods longer than 5 years to accommodate "transition periods" or to achieve a staggered schedule of contracts for a particular program have been routinely approved. However, the Fiscal Review Committee of the General Assembly and the Comptroller's staff have taken issue with contract periods longer than 5 years. Accordingly, contracting agencies should plan procurements and draft contracts such that contract periods and any necessary transition periods are completed within a 60 month period. If there are unique circumstances that recommend a different course (i.e., a rule exception for a contract period > 60 months), a clear justification citing those specific circumstances must be documented, and those requests will be scrutinized on a case-by-case basis.

Option: Term Renewal or Extension

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

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

B.#. Term Extension. It is understood and agreed that the State may extend the Term an additional period of time, not to exceed one hundred eighty (180) days beyond the expiration date of this Contract, under the same terms and conditions. In no event, however, shall the maximum Term, including all extensions or renewals, exceed a total of sixty (60) months.

C. PAYMENT TERMS AND CONDITIONS

Revise Payment Terms and Conditions sections only as provided in the instructions.

The reimbursement of actual costs in a fee-for-service contract is NOT recommended. If the contract includes payment terms providing for a reimbursement of actual costs (other than travel compensation in accordance with state rates) the payment terms MUST also include provisions that describe EXACTLY how the state will audit contractor expenditures to ensure that the state only pays for actual, reasonable, necessary and allowed costs and that such costs resulted from competitive procurements.

Payment Methodology

The default payment methodology used in the model provides for unit, milestone & temporal rate payments.

Requirement: Travel Time

If temporal payment rates are used (e.g., payment based the number of hours or "days" a particular service is delivered), add the following subsection C.3.c.

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

Requirement: Pro Rata Payments

If temporal payment rates effect payment for service periods greater than an hour (e.g., daily payment rates), add a new subsection (similar to the following example) that defines the payment period and provides for *pro rata* payments for completed periods of service less than the payment rate period.

d. A "day" shall be defined as a minimum of eight (8) hours of service. If the Contractor provides fewer than eight hours of service in a standard twenty-four hour day, the Contractor shall bill *pro rata* for only those portions of the day in which service was actually delivered. The Contractor shall not bill more than the daily rate even if the Contractor works more than eight hours in a day.

Option: Rate Escalation

Replace C.3.b. with the following if specific rate escalation during the contract term is appropriate.

b. The Contractor shall be compensated based upon the following payment rates:

(1) For service performed from Date, through Date, the following rates shall apply:

Service-Description	Amount (per-compensable increment)
Milestone	\$ Number
Service Unit	\$ Number each
Job Title /Activity	\$ Number per Hour /Day /etc.
Use & Repeat Rows Above as Necessary	

(2) For service performed from Date, through Date, the Contractor shall be compensated based upon the payment rates in Section Reference (e.g., C.3.b.(1)) above but adjusted by the percentage increase, if any, between the Consumer Price Index for All Urban Consumers (CPI-U): U.S. city average, All Items /Medical Care expenditure category, not seasonally adjusted, index base period: 1982-84=100) published by the United States Department of Labor, Bureau of Labor Statistics in Month & Year (just before prior period end month) and that figure published in the same month, 12 months prior, up to a maximum of Written Number percent (Number%).

Repeat Previous Subsection for Each Subsequent Contract Period

Option: Timely Invoice

Add the following payment rate contingency notation (as indicated) if timely invoice is required for full payment (increasing the days permitted as appropriate).

Service-Description	Amount (per-compensable increment) *
Milestone	\$ Number

* NOTICE: The amount(s) per compensable increment detailed above shall be contingent upon the State's receipt of an invoice (as required in section C.5., below) for said service(s) within thirty (30) days after the

end of the calendar month in which the service(s) were rendered. At the sole discretion of the State, the amount per compensable increment of any service for which the State receives an invoice later than prescribed herein shall be subject to a reduction in amount of up to 100%. In the case of an untimely invoice, before any payment will be considered by the State, the Contractor must submit a written request regarding the untimely invoice, which shall detail the reason the invoice is untimely as well as the Contractor's plan for submitting all future invoices no later than prescribed herein, and it must be signed by an individual empowered to bind the Contractor to this Contract.

Option: Payment Upon Completion

Replace sections in the model with the following sections, respectively, if one, lump sum payment after completion of all work under the contract is appropriate.

- C.1. ~~Maximum Liability.~~ In no event shall the maximum liability of the State under this Contract exceed Written Dollar Amount (\$Number). This amount shall constitute the entire compensation due the Contractor for all service and Contractor obligations hereunder regardless of the difficulty, hours worked, or materials or equipment required. ~~The Contract Amount includes, but is not limited to, all applicable taxes, fees, overhead, profit, and all other direct and indirect costs incurred or to be incurred by the Contractor.~~
- C.2. ~~Compensation Firm.~~ The maximum liability of the State under this Contract is firm for the duration of the Contract and is not subject to escalation for any reason unless amended.
- C.3. ~~Payment Methodology.~~ Upon completion of the work described in section A of this Contract, the Contractor shall be compensated Written Dollar Amount (\$Number).
- C.4. ~~Travel Compensation.~~ The Contractor shall not be compensated or reimbursed for travel, meals, or lodging.
- C.5. ~~Invoice Requirements.~~ The Contractor shall invoice the State only after completion of all work, described in section A of this Contract, and present said invoices no more often than monthly, with all necessary supporting documentation, to:

State Agency Billing Address

- a. Each invoice shall clearly and accurately detail all of the following required information (calculations must be extended and totaled correctly):
- (1) Invoice Number (assigned by the Contractor);
 - (2) Invoice Date;
 - (3) Contract Number (assigned by the State);
 - (4) Customer Account Name: State Agency & Division Name;
 - (5) Customer Account Number (assigned by the Contractor to the above-referenced State Agency);
 - (6) Contractor Name;
 - (7) Contractor Tennessee Edison Registration ID Number Referenced in Preamble of this Contract;
 - (8) Contractor Contact for Invoice Questions (name, phone, and/or fax);
 - (9) Contractor Remittance Address;
 - (10) Description of Delivered Service;
 - (11) Total Amount Due for delivered service (as stipulated in Section C.3. above).
- b. The Contractor understands and agrees that an invoice under this Contract shall:
- (1) include only charges for service described in Contract Section A and in accordance with payment terms and conditions set forth in Contract Section C;
 - (2) only be submitted for completed service and shall not include any charge for future work;

- (3) ~~not include sales tax or shipping charges; and~~
 (4) ~~initiate the timeframe for payment (and any discounts) only when the State is in receipt of the invoice; and the invoice meets the minimum requirements of this section C-5.~~

Travel Compensation

Replace the section with the following as appropriate (and revise the Maximum Liability section as indicated):

~~C.4. Travel Compensation. Compensation to the Contractor for travel, meals, or lodging shall be subject to amounts and limitations specified in the "State Comprehensive Travel Regulations," as they are amended from time to time. Additional Text Restricting Travel Compensation~~

~~The Contractor must include (in addition to other invoice requirements of this Contract) a complete itemization of travel compensation requested in accordance with and attaching to the invoice appropriate documentation and receipts as required by the above-referenced "State Comprehensive Travel Regulations."~~

AND replace the 2ND sentence of the Maximum Liability section with the following:

~~The payment rates in Section C-3 and the Travel Compensation provided in Section C-4 shall constitute the entire compensation due the Contractor for the Service and all of the Contractor's obligations hereunder regardless of the difficulty, materials or equipment required.~~

Invoice Requirements

Add clear, non-conflicting, invoice requirements to this section as appropriate.
 Revise the section to require or permit invoices more or less often than monthly.

Option: Retention Of Final Payment

Add the following or similar text only as appropriate:

~~C.#. Retention of Final Payment. The amount of Written Dollar Amount (\$Number) shall be withheld by the State until Written Number (Number) days after final completion of the services to be performed by the Contractor under this Contract.~~

D. STANDARD TERMS AND CONDITIONS

Termination for Convenience

Increase notice requirement days as appropriate:

Option: Bilateral Termination

Replace the section with the following bilateral termination provision only if the contracting agency can justify that the bilateral provision is in the best interest of the state.

~~D.3. Termination for Convenience. The Contract may be terminated by either party by giving written notice to the other, at least thirty (30) days before the effective date of termination. Should the State exercise this provision, the Contractor shall be entitled to compensation for all satisfactory and authorized services completed as of the termination date. Should the Contractor exercise this provision, the State shall have no liability to the Contractor except for those units of service which can be effectively used by the State. The final decision as to what these units of service are, shall be determined by the State. In the event of disagreement, the Contractor may file a claim with the~~

Tennessee Claims Commission to seek redress.

Termination for Cause

Replace the section with the following as appropriate and in the best interest of the state.

- D.4. ~~Termination for Cause. If the Contractor fails to properly perform its obligations under this Contract in a timely or proper manner, or if the Contractor violates any terms of this Contract, the State shall have the right to terminate the Contract and withhold payments in excess of fair compensation for completed services.~~
- a. ~~The State will provide notification of termination for cause in writing. This notice will: (1) specify in reasonable detail the nature of the breach; (2) provide the Contractor with an opportunity to cure, which must be requested in writing no less than 10 days from the date of the Termination Notice; and (3) shall specify the effective date of termination in the event the Contractor fails to correct the breach. The Contractor must present the State with a written request detailing the efforts it will take to resolve the problem and the time period for such resolution. This opportunity to "cure" shall not apply to circumstances in which the Contractor intentionally withholds its services or otherwise refuses to perform. The State will not consider a request to cure contract performance where there have been repeated problems with respect to identical or similar issues, or if a cure period would cause a delay that would impair the effectiveness of State operations. In circumstances where an opportunity to cure is not available, termination will be effective immediately.~~
- b. ~~Notwithstanding the foregoing, the Contractor shall not be relieved of liability to the State for damages sustained by virtue of any breach of this Contract by the Contractor.~~

Nondiscrimination

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

- D.7. ~~Nondiscrimination. The Contractor hereby agrees, warrants, and assures that no person shall be excluded from participation in, be denied benefits of, or be otherwise subjected to discrimination in the performance of this Contract or in the employment practices of the Contractor on the basis of any classification protected by Federal, Tennessee State constitutional, or statutory law. The Contractor shall, upon request, show proof of such nondiscrimination and shall post in conspicuous places, available to all employees and applicants, notices of nondiscrimination.~~

Prevailing Wage Rates

~~This section is drafted permissively and may remain in each contract even if it is not applicable. It may be omitted, EXCEPT in a contract involving construction and where the maximum liability is in excess of \$50,000.~~

E. SPECIAL TERMS AND CONDITIONS

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

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

Insurance

~~Add the following section and revise or delete subsections relating to coverage and minimum coverage amounts as appropriate.~~

- E.#. ~~Insurance. The Contractor shall carry adequate liability and other appropriate forms of insurance.~~
- a. ~~The Contractor shall maintain, at minimum, the following insurance coverage:~~

- (1) ~~Workers' Compensation/ Employers' Liability (including all states coverage) with a limit not less than the relevant statutory amount or one million dollars (\$1,000,000) per occurrence for employers' liability whichever is greater.~~
- (2) ~~Comprehensive Commercial General Liability (including personal injury & property damage, premises/operations, independent contractor, contractual liability and completed operations/products) with a bodily injury/property damage combined single limit not less than one million dollars (\$1,000,000) per occurrence and two million dollars (\$2,000,000) aggregate.~~
- (3) ~~Automobile Coverage (including owned, leased, hired, and non-owned vehicles) with a bodily injury/property damage combined single limit not less than one million dollars (\$1,000,000) per occurrence.~~
- (4) ~~Professional Malpractice Liability with a limit of not less than one million dollars (\$1,000,000) per claim and two million dollars (\$2,000,000) aggregate.~~
- b. ~~At any time State may require the Contractor to provide a valid Certificate of Insurance detailing Coverage Description; Insurance Company & Policy Number; Exceptions and Exclusions; Policy Effective Date; Policy Expiration Date; Limit(s) of Liability; and Name and Address of Insured. Failure to provide required evidence of insurance coverage shall be a material breach of this Contract.~~

Confidentiality of Records

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

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

~~The Contractor's obligations under this section do not apply to information in the public domain; entering the public domain but not from a breach by the Contractor of this Contract; previously possessed by the Contractor without written obligations to the State to protect it; acquired by the Contractor without written restrictions against disclosure from a third party which, to the Contractor's knowledge, is free to disclose the information; independently developed by the Contractor without the use of the State's information; or, disclosed by the State to others without restrictions against disclosure. Nothing in this paragraph shall permit Contractor to disclose any information that is confidential under federal or state law or regulations, regardless of whether it has been disclosed or made available to the Contractor due to intentional or negligent actions or inactions of agents of the State or third parties.~~

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

Annual Report and Audit

~~This provision is rarely appropriate in a fee-for-service contract.~~

Add the following **ONLY** if the contractor is a *subrecipient* (refer to F&A Accounts Policy 22).

E.#. ~~Annual Report and Audit.~~ The Contractor shall prepare and submit, within nine (9) months after the close of the reporting period, an annual report of its activities funded under this Contract to the commissioner or head of the contracting agency, the Tennessee Comptroller of the Treasury, and the Commissioner of Finance and Administration. The annual report for any Contractor that receives five hundred thousand dollars (\$500,000) or more in aggregate federal and state funding for all its programs shall include audited financial statements. All books of account and financial records shall be subject to annual audit by the Tennessee Comptroller of the Treasury or the Comptroller's duly appointed representative. When an audit is required, the Contractor may, with the prior approval of the Comptroller, engage a licensed independent public accountant to perform the audit. The audit contract between the Contractor and the licensed independent public accountant shall be on a contract form prescribed by the Tennessee Comptroller of the Treasury. Any such audit shall be performed in accordance with generally accepted government auditing standards, the provisions of OMB Circular A 133, if applicable, and the *Audit Manual for Governmental Units and Recipients of Grant Funds* published by the Tennessee Comptroller of the Treasury. The Contractor shall be responsible for reimbursement of the cost of the audit prepared by the Tennessee Comptroller of the Treasury, and payment of fees for the audit prepared by the licensed independent public accountant. Payment of the audit fees of the licensed independent public accountant by the Contractor shall be subject to the provisions relating to such fees contained in the prescribed contract form noted above. Copies of such audits shall be provided to the designated cognizant state agency, the State Contracting Department, the Tennessee Comptroller of the Treasury, and the Department of Finance and Administration and shall be made available to the public.

Printing Authorization

Add the following section as appropriate.

E.#. ~~Printing Authorization.~~ The Contractor agrees that no publication coming within the jurisdiction of *Tennessee Code Annotated*, Section 12-7-101, *et. seq.*, shall be printed pursuant to this contract unless a printing authorization number has been obtained and affixed as required by *Tennessee Code Annotated*, Section 12-7-103(d).

State Ownership of Work Products

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

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

a. ~~To the extent that the Contractor uses any of its pre-existing, proprietary or independently developed tools, materials or information ("Contractor Materials"), the Contractor shall retain all right, title and interest in and to such Contractor Materials, and the State shall acquire no right, title or interest in or to such Contractor Materials EXCEPT the Contractor grants to the State an unlimited, non-transferable license to use, copy and distribute internally, solely for the State's internal purposes, any Contractor Materials reasonably associated with any Work Product provided under the Contract.~~

b. ~~The Contractor shall furnish such information and data as the State may request, including but not limited to computer code, that is applicable, essential, fundamental, or intrinsic to any Work Product and Contractor Materials reasonably associated with any Work Product, in accordance with this Contract and applicable state law.~~

c. ~~Nothing in this Contract shall prohibit the Contractor's use for its own purposes of the~~

general knowledge, skills, experience, ideas, concepts, know-how, and techniques obtained and used during the course of providing the services requested under this Contract.

- d. Nothing in the Contract shall prohibit the Contractor from developing for itself, or for others, materials which are similar to and/or competitive with those that are produced under this Contract.

Ownership of Software & Work Products

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

E.#. Ownership of Software and Work Products.

a. Definitions:

- (1) "Contractor-Owned Software," which shall mean commercially available software the rights to which are owned by Contractor, including but not limited to commercial "off-the-shelf" software which is not developed using State's money or resources.
- (2) "Custom-Developed Application Software," which shall mean customized application software developed by Contractor solely for State.
- (3) "Rights Transfer Application Software," which shall mean any pre-existing application software owned by Contractor or a third party, provided to State and to which Contractor will grant and assign, or will facilitate the granting and assignment of, all rights, including the source code, to State.
- (4) "Third-Party Software," which shall mean software not owned by the State or the Contractor.
- (5) "Work Product," which shall mean all deliverables exclusive of hardware, such as software, software source code, documentation, planning, etc., that are created, designed, developed, or documented by the Contractor for the State during the course of the project using State's money or resources, including Custom-Developed Application Software. If the system solution includes Rights Transfer Application Software, the definition of Work Product shall also include such software.

b. Rights and Title to the Software

- (1) All right, title and interest in and to the Contractor-Owned Software shall at all times remain with Contractor, subject to any license granted herein.
- (2) All right, title and interest in and to the Work Product, and to modifications thereof made by State, including without limitation all copyrights, patents, trade secrets and other intellectual property and other proprietary rights embodied by and arising out of the Work Product, shall belong to State. To the extent such rights do not automatically belong to State, Contractor hereby assigns, transfers, and conveys all right, title and interest in and to the Work Product, including without limitation the copyrights, patents, trade secrets, and other intellectual property rights arising out of or embodied by the Work Product. Contractor shall execute any other documents that State or its counsel deem necessary or desirable to document this transfer and/or allow State to register its claims and rights to such intellectual property rights or enforce them against third parties, and Contractor shall cooperate fully in the foregoing endeavors.

(3) All right, title and interest in and to the Third-Party Software shall at all times remain with the third party, subject to any license granted thereby.

c. Nothing in this Contract shall prohibit the Contractor's use for its own purposes of the general knowledge, skills, experience, ideas, concepts, know-how, and techniques obtained and used during the course of providing the services requested under this Contract.

d. Nothing in the Contract shall prohibit the Contractor from developing for itself, or for others, materials which are similar to and/or competitive with those that are produced under this Contract.

Competitive Procurements

Add the following section if the contract payment terms provide for Contractor reimbursement for goods, materials, supplies, equipment, or contracted services.

E.#. ~~Competitive Procurements.~~ This Contract provides for reimbursement of the cost of goods, materials, supplies, equipment, or contracted services. Such procurements shall be made on a competitive basis, where practical. The Contractor shall maintain documentation for the basis of each procurement for which reimbursement is paid pursuant to this Contract. In each instance where it is determined that use of a competitive procurement method was not practical, said documentation shall include a written justification, approved by the State Agency Head's Title, for such decision and non-competitive procurement.

State-Furnished Property

Add the following section as appropriate.

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

Incorporation of Additional Documents

Add the following section as appropriate.

E.#. ~~Incorporation of Additional Documents.~~ Each of the following documents is included as a part of this Contract by reference. In the event of a discrepancy or ambiguity regarding the Contractor's duties, responsibilities, and performance under this Contract, these items shall govern in order of precedence below.

a. this Contract document with any attachments or exhibits (excluding the items listed at subsections b. through e., below);

b. any clarifications of or addenda to the Contractor's proposal seeking this Contract;

c. the State solicitation, as may be amended, requesting proposals in competition for this Contract;

d. any technical specifications provided to proposers during the procurement process to award this Contract;

e. the Contractor's proposal seeking this Contract.

Workpapers Subject to Review

Add the following section only if the contract requires the performance of audit, accounting or financial analysis services.

E.#. ~~Workpapers Subject to Review.~~ The Contractor shall make all audit, accounting, or financial analysis workpapers, notes, and other documentation available for review by the Comptroller of the Treasury or his representatives, upon request, during normal working hours either while the analysis is in progress or subsequent to the completion of this Contract.

Prohibited Advertising

Add the following section as appropriate.

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

Public Accountability

Add the following section as appropriate.

E.#. ~~Public Accountability.~~ If the Contractor is subject to *Tennessee Code Annotated*, Title 8, Chapter 4, Part 4 or if this Contract involves the provision of services to citizens by the Contractor on behalf of the State, the Contractor agrees to establish a system through which recipients of services may present grievances about the operation of the service program, and the Contractor shall display in a prominent place, located near the passageway through which the public enters in order to receive services pursuant to this Contract, a sign at least twelve inches (12") in height and eighteen inches (18") in width stating:

NOTICE: THIS AGENCY IS A RECIPIENT OF TAXPAYER FUNDING. IF YOU OBSERVE AN AGENCY DIRECTOR OR EMPLOYEE ENGAGING IN ANY ACTIVITY WHICH YOU CONSIDER TO BE ILLEGAL, IMPROPER, OR WASTEFUL, PLEASE CALL THE STATE COMPTROLLER'S TOLL-FREE HOTLINE: 1-800-232-5454

Environmental Tobacco Smoke

Add the following section as appropriate.

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

Lobbying

Add the following section as appropriate.

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

a. ~~No federally appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or~~

employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.

- b. If any funds other than federally appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this contract, grant, loan, or cooperative agreement, the Contractor shall complete and submit Standard Form LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
- c. The Contractor shall require that the language of this certification be included in the award documents for all sub-awards at all tiers (including subcontracts, sub-grants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

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

Contractor Commitment to Diversity

Add the following section as appropriate (typically in contracts resulting from a standard RFP).

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

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

Limitation of Liability

~~On the authority of the contracting agency head, contractor liability may be limited to an amount equal to two (2) or more times the maximum liability of the contract (F&A Rules, Chapter 0620-3-7).~~

Add the following section as appropriate.

E.#. ~~Limitation of Liability. The parties agree that the Contractor's liability under this Contract shall be limited to an amount equal to Written Number \geq 2 (Number) 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 intentional torts, criminal acts, or fraudulent conduct.~~

Performance Bond

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

~~involving contingent, incremental payments; a retention of final payment provision; liquidated damages; and not least, sound contract management).~~

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

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

~~a. the Contract term and all extensions thereof; or~~

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

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

Copyrights and Patents

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

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

Hold Harmless

~~Inclusion of this requirement should be carefully considered. The requirement is likely to chill interest in seeking the contract award, and so, it may reduce competition and increase cost (for a contractor to take on the additional risk).~~

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

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

enforce the obligations of the Contractor to the State.

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

Breach

Add the following or a similar section as appropriate if the contract maximum liability will exceed \$1 million, and if recommended by the contracting agency legal counsel.

E.#. ~~Breach~~. A party shall be deemed to have breached the Contract if any of the following occurs:

- ~~— failure to perform in accordance with any term or provision of the Contract;~~
- ~~— partial performance of any term or provision of the Contract;~~
- ~~— any act prohibited or restricted by the Contract, or~~
- ~~— violation of any warranty.~~

For purposes of this Contract, these items shall hereinafter be referred to as a "Breach."

a. ~~Contractor Breach~~— The State shall notify Contractor in writing of a Breach.

(1) ~~In event of a Breach by Contractor, the State shall have available the remedy of Actual Damages and any other remedy available at law or equity.~~

(2) ~~Liquidated Damages— In the event of a Breach, the State may assess Liquidated Damages. The State shall notify the Contractor of amounts to be assessed as Liquidated Damages. The parties agree that due to the complicated nature of the Contractor's obligations under this Contract it would be difficult to specifically designate a monetary amount for a Breach by Contractor as said amounts are likely to be uncertain and not easily proven. Contractor hereby represents and covenants it has carefully reviewed the Liquidated Damages contained in above referenced Attachment Reference and agree that said amounts represent a reasonable relationship between the amount and what might reasonably be expected in the event of Breach, and are a reasonable estimate of the damages that would occur from a Breach. It is hereby agreed between the parties that the Liquidated Damages represent solely the damages and injuries sustained by the State in losing the benefit of the bargain with Contractor and do not include any injury or damage sustained by a third party. The Contractor agrees that the liquidated damage amount is in addition to any amounts Contractor may owe the State pursuant to the indemnity provision or other section of this Contract.~~

~~The State may continue to withhold the Liquidated Damages or a portion thereof until the Contractor cures the Breach, the State exercises its option to declare a Partial Default, or the State terminates the Contract. The State is not obligated to assess Liquidated Damages before availing itself of any other remedy. The State may choose to discontinue Liquidated Damages and avail itself of any other remedy available under this Contract or at law or equity; provided, however, Contractor shall receive a credit for said Liquidated Damages previously withheld except in the event of a Partial Default.~~

(3) ~~Partial Default— In the event of a Breach, the State may declare a Partial Default. In which case, the State shall provide the Contractor written notice of: (1) the date which Contractor shall terminate providing the service associated with the Breach;~~

and (2) the date the State will begin to provide the service associated with the Breach. Notwithstanding the foregoing, the State may revise the time periods contained in the notice written to the Contractor.

In the event the State declares a Partial Default, the State may withhold, together with any other damages associated with the Breach, from the amounts due the Contractor the greater of: (1) amounts which would be paid the Contractor to provide the defaulted service; or (2) the cost to the State of providing the defaulted service, whether said service is provided by the State or a third party. To determine the amount the Contractor is being paid for any particular service, the Department shall be entitled to receive within five (5) days any requested material from Contractor. The State shall make the final and binding determination of said amount.

The State may assess Liquidated Damages against the Contractor for any failure to perform which ultimately results in a Partial Default with said Liquidated Damages to cease when said Partial Default is effective. Upon Partial Default, the Contractor shall have no right to recover from the State any actual, general, special, incidental, consequential, or any other damages whatsoever of any description or amount. Contractor agrees to cooperate fully with the State in the event a Partial Default is taken.

(4) ~~Contract Termination~~— In the event of a Breach, the State may terminate the Contract immediately or in stages. The Contractor shall be notified of the termination in writing by the State. Said notice shall hereinafter be referred to as Termination Notice. The Termination Notice may specify either that the termination is to be effective immediately, on a date certain in the future, or that the Contractor shall cease operations under this Contract in stages. In the event of a termination, the State may withhold any amounts which may be due Contractor without waiver of any other remedy or damages available to the State at law or at equity. The Contractor shall be liable to the State for any and all damages incurred by the State and any and all expenses incurred by the State which exceed the amount the State would have paid Contractor under this Contract. Contractor agrees to cooperate with the State in the event of a Contract Termination or Partial Takeover.

b. ~~State Breach~~— In the event of a Breach of Contract by the State, the Contractor shall notify the State in writing within 30 days of any Breach of Contract by the State. Said notice shall contain a description of the Breach. Failure by the Contractor to provide said written notice shall operate as an absolute waiver by the Contractor of the State's Breach. In no event shall any Breach on the part of the State excuse the Contractor from full performance under this Contract. In the event of Breach by the State, the Contractor may avail itself of any remedy at law in the forum with appropriate jurisdiction; provided, however, failure by the Contractor to give the State written notice and opportunity to cure as described herein operates as a waiver of the State's Breach. Failure by the Contractor to file a claim before the appropriate forum in Tennessee with jurisdiction to hear such claim within one (1) year of the written notice of Breach shall operate as a waiver of said claim in its entirety. It is agreed by the parties this provision establishes a contractual period of limitations for any claim brought by the Contractor.

Partial Takeover

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

E.#. ~~Partial Takeover~~. The State may, at its convenience and without cause, exercise a partial takeover of any service which the Contractor is obligated to perform under this Contract, including but not limited to any service which is the subject of a subcontract between Contractor and a third party,

although the Contractor is not in breach (hereinafter referred to as "Partial Takeover"). Said Partial Takeover shall not be deemed a Breach of Contract by the State. Contractor shall be given at least 30 days prior written notice of said Partial Takeover with said notice to specify the area(s) of service the State will assume and the date of said assumption. Any Partial Takeover by the State shall not alter in any way Contractor's other obligations under this Contract. The State may withhold from amounts due the Contractor the amount the Contractor would have been paid to deliver the service as determined by the State. The amounts shall be withheld effective as of the date the State assumes the service. Upon Partial Takeover, the Contractor shall have no right to recover from the State any actual, general, special, incidental, consequential, or any other damages whatsoever of any description or amount.

Unencumbered Personnel

Add the following section as appropriate.

E.#. ~~Unencumbered Personnel. All persons assigned by the Contractor to perform services for the State under this Contract, whether they are employees, agents, subcontractors, or principals of the Contractor, shall not be subject to any employment contract or restrictive covenant provisions which would preclude those persons from performing the same or similar services for the State after the termination of this Contract, either as a State employee, an independent contractor, or an employee, agent, subcontractor or principal of another contractor with the State. If the Contractor provides the State with the services of any person subject to a restrictive covenant or contractual provision in violation of this provision, any such restrictive covenant or contractual provision will be void and unenforceable, and the Contractor will pay the State and any person involved all of its expenses, including attorneys fees, caused by attempts to enforce such provisions.~~

Federal Economic Stimulus Funding

If the contract is funded in whole or part by the American Recovery and Reinvestment Act of 2009, add the following section:

E.#. ~~Federal Economic Stimulus Funding. This Contract requires the Contractor to provide products and/or services that are funded in whole or in part under the American Recovery and Reinvestment Act of 2009, Public Law 111-5, (Recovery Act). The Contractor is responsible for ensuring that all applicable requirements, including but not limited to those set forth herein, of the Recovery Act are met and that the Contractor provides information to the State as required.~~

The Contractor (and any subcontractor) shall comply with the following:

- a. ~~Federal Grant Award Documents, as applicable.~~
- b. ~~Executive Office of the President, Office of Management and Budget (OMB) Guidelines as posted at www.whitehouse.gov/omb/recovery_default/, as well as OMB Circulars, including but not limited to A-102 and A-133 as posted at www.whitehouse.gov/omb/financial_offm_circulars/.~~
- c. ~~Office of Tennessee Recovery Act Management Directives (posted on the Internet at www.tnrecovery.gov).~~
- d. ~~The Recovery Act, including but not limited to the following sections of that Act:~~
 - (1) ~~Section 1604 – Disallowable Use. No funds pursuant to this Contract may be used for any casino or other gambling establishment, aquarium, zoo, golf course, or swimming pool.~~
 - (2) ~~Section 1512 – Reporting and Registration Requirements. The Contractor must report on use of Recovery Act funds provided through this Contract. Information from these reports will be made available to the public.~~

- (3) ~~Section 1553—Recovery Act Whistleblower Protections.—An employee of any non-Federal employer receiving covered funds under the Recovery Act may not be discharged, demoted, or otherwise discriminated against as a reprisal for disclosing, including a disclosure made in the ordinary course of an employee's duties, to the Accountability and Transparency Board, an inspector general, the Comptroller General, a member of Congress, a State or Federal regulatory or law enforcement agency, a person with supervisory authority over the employee (or other person working for the employer who has the authority to investigate, discover or terminate misconduct), a court or grand jury, the head of a Federal agency, or their representatives, information that the employee believes is evidence of one or more of the following related to the implementation or use of covered funds:~~
- ~~i. gross mismanagement;~~
 - ~~ii. gross waste;~~
 - ~~iii. substantial and specific danger to public health or safety;~~
 - ~~iv. abuse of authority; or~~
 - ~~v. violation of law, rule, or regulation (including those pertaining to the competition for or negotiation of a Contract).~~

~~Non-enforceability of Certain Provisions Waiving Rights and Remedies or Requiring Arbitration.—Except as provided in a collective bargaining agreement, the rights and remedies provided to aggrieved employees by this section may not be waived by any agreement, policy, form, or condition of employment, including any predispute arbitration agreement. No predispute arbitration agreement shall be valid or enforceable if it requires arbitration of a dispute arising out of this section.~~

~~Requirement to Post Notice of Rights and Remedies:—The Contractor and any subcontractor shall post notice of the rights and remedies as required under Section 1553. (Refer to Section 1553 of the American Recovery and Reinvestment Act of 2009, Pub. L. 111-5 located at www.recovery.gov, for specific requirements of this section and prescribed language for the notices.)~~

- (4) ~~Section 902—Access Of Government Accountability Office.—The Contractor shall provide that the Comptroller General and his representatives are authorized:~~
- ~~i. to examine any records of the Contractor or any of its subcontractors, that directly pertain to, and involve transactions relating to, this Contract or a subcontract; and~~
 - ~~ii. to interview any officer or employee of the Contractor or any of its subcontractors regarding such transactions.~~
- (5) ~~Section 1514—Inspector General Reviews.—Any inspector general of a federal department or executive agency has the authority to review, as appropriate, any concerns raised by the public about specific investments using such funds made available in the Recovery Act. In addition, the findings of such reviews, along with any audits conducted by any inspector general of funds made available in the Recovery Act, shall be posted on the inspector general's website and linked to the website established by Recovery Act Section 1526, except that portions of reports may be redacted to the extent the portions would disclose information that is protected from public disclosure under sections 552 and 552a of title 5, United States Code.~~
- (6) ~~Section 1515—Access of Offices of Inspector General to Certain Records and Employers.—With respect to this Contract, any representative of an appropriate inspector general appointed under section 3 or 8G of the Inspector General Act of 1978 (5 U.S.C. App.), is authorized:~~
- ~~i. to examine any records, of the Contractor or any of its subcontractors, that~~

- pertain to and involve transactions relating or pursuant to this Contract;
and
- ii. to interview any officer or employee of the Contractor or any subcontractors regarding such transactions.

- (7) Section 1606 – Wage Rate Requirements. All laborers and mechanics employed by pursuant to this Contract shall be paid wages at rates not less than those prevailing on projects of a character similar in the locality as determined by the Secretary of Labor in accordance with subchapter IV of chapter 31 of title 40, United States Code. All rulings and interpretations of the Davis-Bacon Act and related acts contained in 29 CFR 1, 3, and 5 are herein incorporated by reference.

For purposes of this Contract, laborer or mechanic includes at least those workers whose duties are manual or physical in nature (including those workers who use tools or who are performing the work of a trade), as distinguished from mental or managerial. The term laborer or mechanic includes apprentices, trainees, helpers, and, in the case of contracts subject to the Contract Work Hours and Safety Standards Act, watchmen or guards.

- (8) Section 1605 – Buy American Requirements for Construction Material – Buy American, Use of American Iron, Steel, and Manufactured Goods. None of the funds provided by this Contract may be used for a project for the construction, alteration, maintenance, or repair of a public building or public work unless all of the iron, steel, and manufactured goods used in the project are produced in the United States.

- e. The Contractor agrees to comply with any modifications or additional requirements that may be imposed by law and future guidance and clarifications of Recovery Act requirements.
- f. If the Contractor enters into one or more subcontracts for any of the services performed under this Contract, each subcontract shall contain provisions specifically imposing on the subcontractor all requirements set forth in this Contract Section E.#., "Federal Economic Stimulus Funding."

If the contract also establishes a subrecipient relationship as defined by OMB Circular A-133, add the following as subsection E.#.d. (and re-letter all subsequent subsections accordingly):

- d. The subrecipient Contractor, if covered by the Single Audit Act Amendments of 1996 and OMB Circular A-133, agrees to specifically identify Recovery Act expenditures separately for Federal awards under the Recovery Act on the Schedule of Expenditures of Federal Awards (SEFA) and the Data Collection Form (SF-SAC) required by OMB Circular A-133.

If the contract also establishes a subrecipient relationship as defined by OMB Circular A-133, replace the newly designated section E.#.e.(2) with the following:

- (2) Section 1512 – Reporting and Registration Requirements.
- i. The Contractor must report on use of Recovery Act funds provided through this Contract. Information from these reports will be made available to the public.
- ii. The subrecipient Contractor must maintain current registrations in the Central Contractor Registration (www.eocr.gov) at all times during which they have an active Contract funded with Recovery Act funds.

Add the following section as appropriate.

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

~~Federal Funding Accountability and Transparency Act~~

~~Add the following section if the contract will be funded in whole or part by a federal grant or contract of \$25,000 or more (excluding grants subject to section 1512 of the American Recovery and Reinvestment Act of 2009)), and the contract will provide for the expenditure of \$25,000 or more in federal funds.~~

~~E.#. Federal Funding Accountability and Transparency Act (FFATA). This Contract requires the Contractor to provide supplies and/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. Security and Exchange Commission total compensation filings at <http://www.sec.gov/answers/execomp.htm>.)~~

~~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 CFR 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 its term, the Contractor must submit an executive total compensation report to the State by the end of the month in which the amendment to this Contract becomes effective.
- d. The Contractor will obtain a Data Universal Numbering System (DUNS) number and maintain its DUNS number for the term of this Contract. More information about obtaining a DUNS Number can be found at: <http://fedgov.dnb.com/webform/>

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.

Transfer of Contractor's Obligations

Add the following section as appropriate:

E.xx. TRANSFER OF CONTRACTOR'S OBLIGATIONS

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

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

- i. the date and terms of the merger, acquisition or sale, including specifically, but not limited to, adequate documentation of the financial solvency and adequate capitalization of the proposed New Entity
- ii. evidence of financial solvency and adequate capitalization of the proposed New Entity which may consist of:
 - (1) Debt;
 - (2) Assets;
 - (3) Liabilities;
 - (4) Cash flow
 - (5) Percentage of the total revenues of the company that are represented by this Contract;
 - (6) The most recent annual financial reports;

- (7) — The most recent annual financial reports filed with government agencies, if applicable.
- iii. — a complete description of the relationship of any New Entity to any parent company or subsidiary or division resulting from the merger, acquisition or sale of the original Contractor's business or the part of the original Contractor's business that provides services under this Contract or from assumption by, or sale to, another entity of the contract itself, including:
- (1) — the names and positions of corporate or company officers, project managers, other Contractor management staff with responsibilities under the Contract, and numbers and the type of technical or other personnel who will be responsible for fulfilling the obligations of the Contract, and any subcontracts that will be used to provide any personal or other services under the Contract by the New Entity and,
 - (2) — an organizational chart clearly describing the organizational structure of the New Entity, parent company, subsidiary, division or other unit of the entity or parent company with which it has merged or by which it, or the Contract, has been acquired.
- iv. — such additional evidence of financial solvency, adequate capitalization and information regarding corporate organizational and personnel assigned to the Contract as the State determines is necessary to evaluate the status of the proposed or consummated merger, acquisition or sale.

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

E.xx.d. — Notwithstanding any other provisions of this Contract to the contrary, the State may immediately terminate this Contract in whole or in stages in the event that it determines that the New Entity

- i. — has been debarred from State or Federal contracting in the past five years
- ii. — has had a contract terminated for cause by the State of Tennessee within the past five years.

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

E.xx.e. — The New Entity shall provide to the State within ten (10) business days of the State's request, a notarized statement signed by an individual authorized to bind the New Entity certifying that all liabilities and obligations incurred by the former Contractor are assumed by the New Entity.

E.xx.f. — If the New Entity owes money to the State of Tennessee, it acknowledges that Tennessee Code Annotated Section 9-4-604 requires repayment of these funds and will enter into a legally binding agreement for repayment.

SIGNATURES

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

~~By contract signature, the contracting agency head shall assure and affirm that:~~

- ~~1. there is a balance in the appropriation from which obligations under the agreement are required to be paid that is not already encumbered to pay other obligations;~~
- ~~2. the contracting agency maintains documentation of a fair and impartial contractor selection in full compliance with the approved procurement methodology as indicated by the summary cover; and,~~
- ~~3. the proposed scope of services is clear and correct, adequate for all legal and enforcement purposes, and sufficiently detailed to ensure contractor accountability and results.~~

**CONTRACT**(fee-for-service goods or services contract with an individual, business, non-profit, or governmental entity of another state)

Begin Date	End Date	Agency Tracking #	Edison Record ID		
Contractor Legal Entity Name			Edison Vendor ID		
Service <u>Goods or Services</u> Caption (one line only)					
Subrecipient <u>Sub-recipient</u> or Vendor <input type="checkbox"/> Subrecipient <u>Sub-recipient</u> <input type="checkbox"/> Vendor		CFDA #			
Funding —					
FY	State	Federal	Interdepartmental	Other	TOTAL Contract Amount
TOTAL:					
American Recovery and Reinvestment Act (ARRA) Funding: — YES — NO					
Ownership/Control					
African American		Asian		Hispanic	
Person w/Disability		Small Business		Government	
				Native American	
				Female	
NOT Minority/Disadvantaged					
Contractor Ownership Characteristics:					
<input type="checkbox"/> <u>Minority Business Enterprise (MBE): African American, Asian American, Hispanic American, Native American</u>					
<input type="checkbox"/> <u>Woman Business Enterprise (WBE)</u>					
<input type="checkbox"/> <u>Tennessee Service Disabled Veteran Enterprise (SDVBE)</u>					
<input type="checkbox"/> <u>Tennessee Small Business Enterprise (SBE): \$10,000,000.00 averaged over a three (3) year period or employs no more than ninety-nine (99) employees.</u>					
<input type="checkbox"/> Other:					
Selection Method & Process Summary (mark the correct response to confirm the associated summary)					
RFP		The procurement process was completed in accordance with the approved RFP document and associated regulations.			
<input type="checkbox"/> <u>Competitive Negotiation Selection</u>		The predefined, <u>Describe the competitive, impartial, negotiation selection</u> process was completed in accordance with the associated, approved procedures and evaluation criteria <u>used</u>			
Alternative Competitive Method		The predefined, competitive, impartial, procurement process was completed in accordance with the associated, approved procedures and evaluation criteria.			
Non-Competitive Negotiation		The non-competitive contractor selection was completed as approved, and the procurement process included a negotiation of best possible terms & price.			
<input type="checkbox"/> Other		The contractor selection was directed by law, court order, settlement agreement, or resulted from the state making the same agreement with <u>all</u> interested parties or <u>all</u> parties in <u>Describe the selection process used and submit a predetermined "class."</u> <u>Special Contract Request</u>			
Budget Officer Confirmation: There is a balance in the appropriation from which obligations hereunder are required to be paid that is not already encumbered to pay other			OGR USE — FA		

obligations.		
Speed Chart (optional)	Account Code (optional)	

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

This Contract, by and between the State of Tennessee, State Agency Name, hereinafter referred to as the ("State") and Contractor Legal Entity Name, hereinafter referred to as the ("Contractor"), is for the provision of Scope of Service Goods or Services Caption, as further defined in the "SCOPE OF SERVICES." State and Contractor may be referred to individually as a "Party" or collectively as the "Parties" to this Contract.

The Contractor is a/an Individual, For-Profit Corporation, Non-Profit Corporation, Special Purpose Corporation Or Association, Partnership, Joint Venture, Or Limited Liability Company.
Contractor Place of Incorporation or Organization: Location
Contractor Edison Registration ID # Number

A. SCOPE OF SERVICES:

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

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

A.#. Warranty. Contractor represents and warrants that throughout the Term of this Contract ("Warranty Period"), the goods or services provided under this Contract shall conform to the terms and conditions of this Contract. 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 all goods or services provided under this Contract shall be provided in a timely and professional manner, by qualified and skilled individuals, 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.

A.#. Inspection and Acceptance. The State shall have the right to inspect all goods or services provided by Contractor under this Contract. If, upon inspection, the State determines that the goods or services are Defective, the State shall notify Contractor, and Contractor shall re-deliver the goods or provide the services at no additional cost to the State. If after a period of thirty (30) days following delivery of goods or performance of services the State does not provide a notice of any Defects, the goods or services shall be deemed to have been accepted by the State.

B. TERM OF CONTRACT:

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

C. PAYMENT TERMS AND CONDITIONS:

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 rates in section C.3 methodology in Section C.3. of this Contract shall constitute the entire compensation due the Contractor for all service and Contractor obligations hereunder goods or services provided under this Contract regardless of the difficulty, materials or equipment required. The payment rates include, but are not limited to, methodology includes all applicable taxes, fees, overhead overhead, and all other direct and indirect costs incurred or to be incurred by the Contractor.~~

~~The Contractor is not entitled to be paid the maximum liability for any period under the Contract or any extensions of the Contract for work not requested by the State. The maximum liability represents available funds for payment to the Contractor and does not guarantee payment of any such funds to the Contractor under this Contract unless the State requests work and the Contractor performs said work. In which case, the Contractor shall be paid in accordance with the payment rates detailed in section C.3. The State is under no obligation to request work from the Contractor in any specific dollar amounts or to request any work at all from the Contractor during any period of this Contract.~~

C.2. ~~Compensation Firm.~~ ~~The payment rates and the maximum liability of the State under this Contract are firm for the duration of the Contract and are not subject to escalation for any reason unless amended.~~

C.3. Payment Methodology. ~~The Contractor shall be compensated based on the payment rates herein for units of service methodology for goods or services authorized by the State in a total amount not to exceed the Contract Maximum Liability established in section C.1. as set forth in Section C.1.~~

a. ~~The Contractor’s compensation shall be contingent upon the satisfactory completion of units, milestones, or increments of service defined in section provision of goods or services as set forth in Section A.~~

b. ~~The Contractor shall be compensated for said units, milestones, or increments of service based upon the following payment rates methodology:~~

<u>Service Goods or Services Description</u>	Amount (per compensable increment)
Milestone	\$ Number
Service-Unit	\$ Number each
Job Title /Activity	\$ Number per Hour /Day /etc.
Use & Repeat Rows Above as Necessary	

Add Contingently Required Subsections as Appropriate (refer to instructions for details)

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 completed increments of service and for the amount goods delivered and accepted by the State or services satisfactorily provided at the amounts stipulated in section Section C.3,3., above, and present said. Contractor~~

shall submit invoices no more often than monthly, with all and necessary supporting documentation, to 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:

State Agency Billing Address

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

- (1) ~~(1) Invoice Number~~ number (assigned by the Contractor);
- (2) ~~(2) Invoice Date~~ date;
- (3) ~~(3) Contract Number~~ number (assigned by the State);
- (4) ~~(4) Customer Account Name~~ account name: State Agency & Division Name;
- (5) ~~(5) Customer Account Number~~ account number (assigned by the Contractor to the above-referenced Customer);
- (6) ~~(6) Contractor Name~~ name;
- (7) ~~(7) Contractor Tennessee Edison Registration ID Number Referenced in Preamble of this Contract~~ registration ID number;
- (8) ~~(8) Contractor Contact~~ contact for Invoice Questions invoice questions (name, phone, and/or fax email);
- (9) ~~(9) Contractor Remittance Address~~ remittance address;
- (10) ~~(10) Description of Delivered Service~~
- (11) ~~(11) Complete Itemization of Charges, which shall detail the following: i.~~
~~Service or Milestone Description (delivered goods or services provided and invoiced, including name & title identifying information as applicable) of each service invoiced;~~
- (12) ~~ii. Number of Completed Units, Increments, Hours, or Days~~ Number of delivered or completed units, increments, hours, or days as applicable, of each good or service invoiced;
- (13) ~~iii. Applicable Payment Rate~~ payment methodology (as stipulated in Section C.3.) of each good or service invoiced;
- (14) ~~iv. Amount Due by Service~~
- (15) Amount due for each compensable unit of good or service; and
- (16) v. Total Amount Due amount due for the invoice period.

b. b. — The Contractor understands and agrees that an invoice under this Contract's invoices shall:

- (1) ~~(1) only include only charges for service~~ goods delivered or services provided as described in Contract Section A and in accordance with payment terms and conditions set forth in Contract Section C;
- (2) ~~(2) only be submitted for goods delivered or services completed service and shall not include any charge for future work~~ goods to be delivered or services to be performed;
- (3) ~~(3) not include sales tax or shipping charges~~ 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.

(4) — initiate the c. The timeframe for payment (and/or any discounts) begins only when the State is in receipt of the an invoice, and the invoice that meets the minimum requirements of this section 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 in relation thereto. A payment by the State shall not be construed as acceptance of goods delivered, any part of the work or 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 theretofore made which are that is determined by the State, on the basis of

audits conducted in accordance with the terms of this Contract, ~~to not to constitute proper remuneration for compensable~~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, which 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 properly completed.~~
- a. The Contractor shall complete, sign, and present to the State an "Authorization Agreement for Automatic Deposit (~~ACH Credits~~) Form" provided by the State. By doing so, the Contractor acknowledges and agrees that, once said ~~this~~ form is received by the State, all payments to the Contractor, under this or any other contract the Contractor has with the State of Tennessee, shall be made by Automated Clearing House (ACH) ~~automated clearing house.~~
 - b. The Contractor shall complete, sign, and present to the State a "Substitute W-9 Form" provided by the State. The taxpayer identification number ~~detailed by said form in the Substitute W-9 Form~~ must agree with be the same as the Contractor's Federal Employer Identification Number or Tennessee Edison Registration ID ~~referenced in this Contract.~~

D. STANDARD MANDATORY TERMS AND CONDITIONS:

- D.1. Required Approvals. The State is not bound by this Contract until it is signed ~~and~~ duly approved by the ~~contract parties~~ Parties and approved by ~~all~~ appropriate State officials in accordance with applicable Tennessee laws and regulations ~~(depending on the specifics of this contract, said officials Contract, this may include, but are not limited to, approvals by the Commissioner of Finance and Administration, the Commissioner of Human Resources, and the Comptroller of the Treasury),~~ and the Chief Procurement Officer. Approvals shall be evidenced by a signature or electronic approval.
- D.2. Communications and Contacts. All instructions, notices, consents, demands, or other communications required or contemplated by this Contract shall be in writing and shall be made by certified, first class mail, return receipt requested and postage prepaid, by overnight courier service with an asset tracking system, or by email or facsimile transmission with recipient confirmation. 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:

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

The Contractor:

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

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

- D.2.3. Modification and Amendment. This Contract may be modified only by a written amendment signed by all parties hereto ~~Parties~~ and approved by both the officials who approved the base contract and, depending upon the specifics of the contract as amended, any additional officials required by Tennessee laws and regulations (said officials may include, but are not limited to, the Commissioner of Finance and Administration, the Commissioner of Human Resources, and the Comptroller of the Treasury) 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.3.5. Termination for Convenience. The State may terminate this Contract for convenience without cause and for any reason. Said termination shall not be deemed a breach of contract by the State. The State shall give the Contractor at least thirty (30) days written notice before the effective termination date. 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, but in no event shall the State be liable to the Contractor for compensation for any service which has not been rendered. Upon such termination, the Contractor shall have no right to any actual general, special, incidental, consequential, or any other damages whatsoever of any description or amount 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.4.6. 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 fair 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 by the Contractor.
- D.5.7. Assignment and Subcontracting. The Contractor shall not assign this Contract or enter into a subcontract for any of the goods or services performed provided under this Contract without obtaining the prior written approval of the State. If such subcontracts are approved by the State, each shall contain, at a minimum, sections of this Contract below pertaining to "Conflicts of Interest," "Nondiscrimination," and "Records" (as identified by the section headings). Notwithstanding any use of the approved subcontractors, the Contractor shall be the prime contractor and shall be responsible for all work performed 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.6.8. Conflicts of Interest. The Contractor warrants that no part of the total Contract Amount 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 relative to under this Contract.

The Contractor acknowledges, understands, and agrees that this Contract shall be null and void if the Contractor is, or within the past six (6) months has been, an employee of the State of 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.7.9. 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, ~~Tennessee State constitutional, or statutory~~ federal or state law. The Contractor shall, upon request, show proof of such nondiscrimination and shall post in conspicuous places, available to all employees and applicants, notices of nondiscrimination.
- D.8.10. Prohibition of Illegal Immigrants. The requirements of ~~Tennessee Tenn. Code Annotated, Section 12-4-124, et seq., Ann. § 12-3-309~~ addressing the use of illegal immigrants in the performance of any ~~Contract~~ contract to supply goods or services to the state of Tennessee, shall be a material provision of this Contract, a breach of which shall be grounds for monetary and other penalties, up to and including termination of this Contract.
- a. The Contractor hereby ~~attests, certifies, warrants, and assures~~ agrees that the Contractor shall not knowingly utilize the services of an illegal immigrant in the performance of this Contract and shall not knowingly utilize the services of any subcontractor who will utilize the services of an illegal immigrant in the performance of this Contract. The Contractor shall reaffirm this attestation, in writing, by submitting to the State a completed and signed copy of the document at Attachment Reference, ~~hereto, semi-annually during the period of this Contract. Such 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 ~~State~~ officials upon request.
 - b. Prior to the use of any subcontractor in the performance of this Contract, and semi-annually thereafter, during the ~~period of this Contract Term~~, the Contractor shall obtain and retain a current, written attestation that the subcontractor shall not knowingly utilize the services of an illegal immigrant to perform work ~~relative to~~ under this Contract and shall not knowingly utilize the services of any subcontractor who will utilize the services of an illegal immigrant to perform work ~~relative to~~ under this Contract. Attestations obtained from such subcontractors shall be maintained by the Contractor and made available to ~~state~~ State officials upon request.
 - c. The Contractor shall maintain records for all personnel used in the performance of this Contract. ~~Said Contractor's~~ records shall be subject to review and random inspection at any reasonable time upon reasonable notice by the State.
 - d. The Contractor understands and agrees that failure to comply with this section will be subject to the sanctions of ~~Tennessee Tenn. Code Annotated, Section 12-4-124, et seq. Ann. § 12-3-309~~ for acts or omissions occurring after its effective date. ~~This law requires the Commissioner of Finance and Administration to prohibit a contractor from contracting with, or submitting an offer, proposal, or bid to contract with the State of Tennessee to supply goods or services for a period of one year after a contractor is discovered to have knowingly used the services of illegal immigrants during the performance of this Contract.~~
 - e. For purposes of this Contract, "illegal immigrant" shall be defined as any person who is not either: (i) a United States citizen; (ii) a Lawful Permanent Resident; ~~or;~~ (iii) a person whose physical presence in the United States is authorized ~~or;~~ (iv) allowed by the federal Department of Homeland Security and who, under federal immigration laws and/or regulations, is authorized to be employed in the U.S.; or (v) is otherwise authorized to provide services under the Contract.

- ~~D.9-11. Records.~~ The Contractor shall maintain documentation for all charges under this Contract. The books, records, and documents of the Contractor, ~~insofar as they relate to~~ work performed or money received under this Contract, shall be maintained for a period of ~~three~~five (35) 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.10. Prevailing Wage Rates.~~ All contracts for construction, erection, or demolition or to install goods or materials that involve the expenditure of any funds derived from the State require compliance with the prevailing wage laws as provided in *Tennessee Code Annotated, Section 12-4-401, et seq.*D.11-12. 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.12-13. Progress Reports.~~ The Contractor shall submit brief, periodic, progress reports to the State as requested.
- ~~D.13-14. Strict Performance.~~ Failure by any ~~party~~Party to this Contract to ~~insist~~require, in any one or more cases upon, the strict performance of any of the terms, covenants, conditions, or provisions of this Contract shall not be construed as a waiver or relinquishment of any ~~such~~ term, covenant, condition, or provision. No term or condition of this Contract shall be held to be waived, modified, or deleted except by a written amendment signed by the ~~parties hereto~~Parties.
- ~~D.14-15. Independent Contractor.~~ The ~~parties hereto~~, in the performance of this Contract, ~~Parties~~ shall not act as employees, partners, joint venturers, or associates of one another. It is expressly ~~acknowledged by the parties hereto that such parties~~The Parties are independent contracting entities and that ~~nothing~~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 shall not be deemed or construed to be the~~Party are not employees or agents of the other ~~party for any purpose whatsoever~~.
- The Contractor, being an independent contractor and not an employee of the State, agrees to carry adequate public liability and other appropriate forms of insurance, including adequate public liability and other appropriate forms of insurance on the Contractor's employees, and to pay all applicable taxes incident to this ContractParty.
- D.16 Patient Protection and Affordable Care Act. The Contractor agrees that it will be responsible for compliance with the Patient Protection and Affordable Care Act ("PPACA") with respect to itself and its employees, including any obligation to report health insurance coverage, provide health insurance coverage, or pay any financial assessment, tax, or penalty for not providing health insurance. The Contractor shall indemnify the State and hold it harmless for any costs to the State arising from Contractor's failure to fulfill its PPACA responsibilities for itself or its employees.
- ~~D.15-17. Limitation of State's Liability.~~ The State shall have no liability except as specifically provided in this Contract. In no event will the State be liable to the Contractor or any other party for any lost revenues, lost profits, loss of business, decrease in the value of any securities or cash position, time, money, goodwill, or any indirect, special, incidental, punitive, exemplary or consequential damages of any nature, whether based on warranty, contract, statute, regulation, tort (including but not limited to negligence), or any other legal theory that may arise under this Contract or otherwise. The State's total liability under this Contract (including any exhibits, schedules, amendments or other attachments to the Contract) or otherwise shall under no circumstances exceed the Maximum Liability. This limitation of liability is cumulative and not per incident.
- D.18. Limitation of Contractor's Liability. In accordance with Tenn. Code Ann. § 12-3-701, the Contractor's liability for all claims arising under this Contract shall be limited to an amount equal to two (2) times the Maximum Liability amount detailed in Section C.1. and as may be amended,

PROVIDED THAT in no event shall this Section limit the liability of the Contractor for intentional torts, criminal acts, fraudulent conduct, or omissions that result in personal injuries or death.

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

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

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

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

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

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

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

- D.16. Force Majeure. The obligations of the parties to this Contract are subject to prevention by causes beyond the parties' control that could not be avoided by the exercise of due care including, but not limited to, natural disasters, riots, wars, epidemics, or any other similar cause. 24. Force Majeure. "Force Majeure Event" means fire, flood, earthquake, elements of nature or acts of God, wars, riots, civil disorders, rebellions or revolutions, acts of terrorism or any other similar cause beyond the reasonable control of the Party except to the extent that the non-performing Party is at fault in failing to prevent or causing the default or delay, and provided that the default or delay cannot reasonably be circumvented by the non-performing Party through the use of alternate sources, workaround plans or other means. A strike, lockout or labor dispute shall not excuse either Party from its obligations under this Contract. Except as set forth in this Section, any failure or delay by a Party in the performance of its obligations under this Contract arising from a Force Majeure Event is not a default under this Contract or grounds for termination. The non-performing Party will be excused from performing those obligations directly affected by the Force Majeure Event, and only for as long as the Force Majeure Event continues, provided that the Party continues to use diligent, good faith efforts to resume performance without delay. The occurrence of a Force Majeure Event affecting Contractor's representatives, suppliers, subcontractors, customers or business apart from this Contract is not a Force Majeure Event under this Contract. Contractor will promptly notify the State of any delay caused by a Force Majeure Event (to be confirmed in a written notice to the State within one (1) day of the inception of the delay) that a Force Majeure Event has occurred, and will describe in reasonable detail the nature of the Force Majeure Event. If any Force Majeure Event results in a delay in Contractor's performance longer than forty-eight (48) hours, the State may, upon notice to Contractor: (a) cease payment of the fees until Contractor resumes performance of the affected obligations; or (b) immediately terminate this Contract or any purchase order, in whole or in part, without further payment except for fees then due and payable. Contractor will not increase its charges under this Contract or charge the State any fees other than those provided for in this Contract as the result of a Force Majeure Event.

- D.17-25. State and Federal Compliance. The Contractor shall comply with all applicable Statestate and Federalfederal laws and regulations in the performance of this Contract.

~~D.18-26. Governing Law. This Contract shall be governed by and construed in accordance with the laws of the State of Tennessee. The Contractor agrees that it will be subject to the exclusive jurisdiction of the courts of the State of Tennessee in actions that may arise 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 of claims, or remedies under the State of Tennessee or its employees hereunder, and any remedies arising therefrom, under this Contract shall be subject to and limited to those rights and remedies, if any, available under Tennessee Tenn. Code Annotated, Sections Ann. §§ 9-8-101 through 9-8-407.~~

~~D.19. Completeness Entire Agreement. This Contract is complete and contains the entire understanding between the parties Parties relating to the its subject matter contained herein, including all the terms and conditions of the parties Parties' agreement. This Contract supersedes any and all prior understandings, representations, negotiations, and agreements between the parties relating hereto Parties, whether written or oral.~~

~~D.20-28. 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 hereof of this Contract shall not be affected thereby and shall remain in full force and effect. To this end, the The terms and conditions of this Contract are declared severable.~~

~~D.24-29. Headings. Section headings of this Contract are for reference purposes only and shall not be construed as part of this Contract.~~

~~D. 22. 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"). 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. 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 such information without entering into a business associate agreement or signing another such document.~~

~~d. The Contractor will indemnify the State and hold it harmless for any violation by the Contractor or its subcontractors of the Privacy Rules. This includes the costs of responding to a breach of protected health information, the costs of responding to a government enforcement action related to the breach, and any fines, penalties, or damages paid by the State because of the violation.~~

~~a. any amendment to this Contract, with the latter in time controlling over any earlier amendments;~~

~~b. this Contract with any attachments or exhibits (excluding the items listed at subsections c. through f., below);~~

~~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.

E. SPECIAL TERMS AND CONDITIONS:

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

~~E.2. Communications and Contacts.~~ All instructions, notices, consents, demands, or other communications required or contemplated by this Contract shall be in writing and shall be made by certified, first class mail, return receipt requested and postage prepaid, by overnight courier service with an asset tracking system, or by EMAIL or facsimile transmission with recipient confirmation. Any such communications, regardless of method of transmission, shall be addressed to the respective party at the appropriate mailing address, facsimile number, or EMAIL address as set forth below or to that of such other party or address, as may be hereafter specified by written notice.

The State:

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

The Contractor:

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

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

~~E.3. Subject to Funds Availability.~~ The Contract is subject to the appropriation and availability of State and/or Federal funds. In the event that the funds are not appropriated or are otherwise unavailable, the State reserves the right to terminate the Contract upon written notice to the Contractor. Said termination shall not be deemed a breach of Contract by the State. Upon receipt of the written notice, the Contractor shall cease all work associated with the Contract. Should such an event occur, the Contractor shall be entitled to compensation for all satisfactory and authorized services completed as of the termination date. Upon such termination, the Contractor shall have no right to recover from the State any actual, general, special, incidental, consequential, or any other damages whatsoever of any description or amount.

~~E.4. Tennessee Consolidated Retirement System.~~ The Contractor acknowledges and understands that, subject to statutory exceptions contained in *Tennessee Code Annotated*, Section 8-36-801, *et. seq.*, the law governing the Tennessee Consolidated Retirement System (TCRS), provides that if a retired member of TCRS, or of any superseded system administered by TCRS, or of any local retirement fund established pursuant to *Tennessee Code Annotated*, Title 8, Chapter 35, Part 3 accepts state employment, the member's retirement allowance is suspended during the period of the employment. Accordingly and notwithstanding any provision of this Contract to the contrary, the Contractor agrees that if it is later determined that the true nature of the working relationship

~~between the Contractor and the 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 period of this Contract.~~

~~E.5 Tennessee Department of Revenue Registration. The Contractor shall be registered with the Department of Revenue for the collection of Tennessee sales and use tax. This registration requirement is a material requirement of this Contract.~~

~~E.6. Debarment and Suspension. The Contractor certifies, to the best of its knowledge and belief, that it, its current and future principals, its current and future subcontractors and their principals:~~

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

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

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

IN WITNESS WHEREOF,

CONTRACTOR LEGAL ENTITY NAME:

CONTRACTOR SIGNATURE

DATE

PRINTED NAME AND TITLE OF CONTRACTOR SIGNATORY (above)

STATE AGENCY NAME:

NAME & TITLE

DATE

ATTACHMENT REFERENCE

ATTESTATION RE PERSONNEL USED IN CONTRACT PERFORMANCE

<p><u>If the attestation applies to more than one contract, modify this row accordingly.</u></p> <p>SUBJECT CONTRACT NUMBER:</p>	
<p>CONTRACTOR LEGAL ENTITY NAME:</p>	
<p>FEDERAL EMPLOYER IDENTIFICATION NUMBER: (or Social Security Number)</p>	

If the attestation applies to more than one contract, modify the following paragraph accordingly.

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

CONTRACTOR SIGNATURE

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

FA TEMPLATE INSTRUCTIONS, CONSIDERATIONS, and OPTIONS

The following pages contain additional instructions, considerations, and options. Replace or modify the Standard FA Template by including the following content as appropriate. Content included with a box around it is intended to be inserted into the standard FA Template, as appropriate.

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

SUMMARY COVER SHEET

A summary cover sheet properly completed and in accordance with the Template is required for every copy of the contracting document. Complete summary cover sheet fields as indicated within the Template and the following field descriptions.

<u>Agency Tracking #</u>	a unique number comprised of: 5-digit business unit # + unique, 5-digit # example: 31707-12345
<u>Funding</u>	amounts by fiscal year & funding source and with row & column totals; the sum of the TOTAL Contract Amount column (the grand total amount for all fiscal years & all sources of funding) MUST equal the contract maximum liability
<u>Contractor Ownership Characteristics</u>	<p><u>Minority Business Enterprise (MBE):</u> select if a minority-owned business, which means a continuing, independent, for profit business that performs a commercially useful function, and is at least fifty-one percent (51%) owned and controlled by one (1) or more minority individuals who are impeded from normal entry into the economic mainstream because of past practices of discrimination based on race or ethnic background.</p> <p><u>Identify the applicable Minority if known. Minority means a person who is a citizen or lawful permanent resident of the United States and who is:</u></p> <ul style="list-style-type: none"> (A) <u>African American, a person having origins in any of the black racial groups of Africa;</u> (B) <u>Asian American, a person having origins in any of the original peoples of the Far East, Southeast Asia, the Indian subcontinent, or the Pacific Islands;</u> (C) <u>Hispanic American, a person of Mexican, Puerto Rican, Cuban, Central or South American, or other Spanish culture or origin, regardless of race;</u> (D) <u>Native American, a person having origins in any of the original peoples of North America;</u> <p><u>Woman Business Enterprise (WBE):</u> select if a woman-owned business, which means a woman-owned business that is a continuing, independent, for profit business that performs a commercially useful function, and is at least fifty-one percent (51%) owned and controlled by one or more women; or, in the case of any publicly owned business, at least fifty-one-percent (51%) of the stock of which is owned and controlled by one (1) or more women and whose management and daily business operations are under the control of one (1) or more women.</p> <p><u>Tennessee Service Disabled Veteran Enterprise (SDVBE):</u> select if a Tennessee service-disabled veteran-owned business, which means a service-disabled veteran-owned business that is a continuing, independent, for profit business located in this state that performs a commercially useful function and:</p> <ul style="list-style-type: none"> (A) <u>is at least fifty-one percent (51%) owned and controlled by one (1) or more service-disabled veterans;</u> (B) <u>In the case of a business solely owned by one (1) service-disabled veteran and such person's spouse, is at least fifty percent (50%) owned and controlled by the service-disabled veteran; or</u> (C) <u>In the case of any publicly owned business, at least fifty-one percent (51%) of the stock of which is owned and controlled by one (1) or more service-disabled veterans and whose management and daily business operations are under the control of one (1) or more service-disabled veteran.</u>

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

Other: select if none of the above options. There is an option to provide additional details here, e.g., type governmental entity in the space provided if the Contractor is a governmental entity. For additional guidance, please visit: http://www.tn.gov/businessopp/program_elig.html.

PREAMBLE

Add additional information only if necessary.

In a contract with an individual, delete the Template preamble phrase, "Place of Incorporation or Organization: Location."

A. SCOPE OF SERVICES OR SPECIFICATIONS OF GOODS ("Scope")

Do NOT include payment terms in the Scope. Define any Contractor milestones without reference to payment. Section C should address payment at milestones.

Draft the Scope to clearly, specifically, and definitively detail contractor duties, responsibilities, and associated performance requirements and describe, in detail, the Scope and deliverable requirements and all related specifications. Include a definition section, key performance indicators, or any other specifications as needed.

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

Option: Acceptable Alternative to Change Orders.

The RFP Contract Amendment section does not preclude the State from "locking in" payment rates for any additional work per potential contract amendments. Therefore, if deemed appropriate, add the following sections to the *pro forma* contract Scope:

#. Correction of Deficiencies. Any corrections of deficiencies relating to the Contract Scope of Services requirements or deliverables and any investigation necessary to determine the source of such deficiencies shall be completed by the Contractor at no cost to the State.

AND...

#. Additional Work. The State may request, at its sole discretion, additional work involving the enhancement or modification of a deliverable under the Contract Scope, provided that this Contract is amended, pursuant to section #. Remuneration for any such additional work shall be based on the applicable "contingent" payment rate(s) detailed in Section C.3 of this Contract.

AND...

#. Contingent Rates— In accordance with section REFERENCE of this Contract, The State may request and the Contractor may agree to perform additional work involving the enhancement or

modification of deliverables under the Contract Scope of Services, provided that this Contract is amended to require such work.

- i. Remuneration for any such additional work shall be based on the applicable contingent, payment rate(s) detailed below and as approved by the State.

<u>SERVICE</u>	<u>AMOUNT PER HOUR</u>
<u>SERVICE DESCRIPTION</u>	<u>\$ AMOUNT</u>

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

Option: Change Orders.

The incorporation of *pro forma* contract language permitting Change Orders will be stringently considered and may require oversight authority executive-level approval prior to a solicitation being approved for release.

Propose a Change Order process within a draft document only as appropriate, and provide clear justification as to why it is deemed necessary. At minimum, draft the solicitation document to include: (1) appropriate RFP text permitting Change Orders within specified parameters; (2) a clear, comprehensive change order process in the *pro forma* contract's scope; and (3) clear, non-conflicting payment provisions in the *pro forma* contract's payment methodology section.

- (1) Add the following to the solicitation document after RFP Section 4.11:

Notwithstanding the above, *pro forma* Contract section REFERENCE provides for limited service "change orders" without a formal Contract Amendment upon the documented mutual agreement by the Parties.

- (2) Add the following to the *pro forma* contract's scope:

A.#. The State may, at its sole discretion and with written notice to the Contractor, request changes in the Scope that are necessary but were inadvertently unspecified in this Contract.

- a. Change Order Creation— After receipt of a written request for additional services from the State, the Contractor shall respond to the State, within a maximum of ten (10) business days, with a written proposal for completing the service. Contractor's proposal must specify:

- (1) the effect, if any, of implementing the requested change(s) on all other services required under this Contract;
- (2) the specific effort involved in completing the change(s);
- (3) the expected schedule for completing the change(s);
- (4) the maximum number of person hours required for the change(s); and
- (5) the maximum cost for the change(s)— this maximum cost shall in no instance exceed the product of the person hours required multiplied by the appropriate payment rate proposed for such work.

The Contractor shall not perform any additional service until the State has approved the proposal.

If approved, the State will sign the proposal, and it shall constitute a Change Order between the Contract Parties pertaining to the specified change(s) and shall be incorporated, hereby, as a part of this Contract.

- b. Change Order Performance— Subsequent to creation of a Change Order, the Contractor shall complete the required services. The State will be the sole judge of the acceptable completion of work and, upon such determination, shall provide the Contractor written approval.
- c. Change Order Remuneration— The State will remunerate the Contractor only for acceptable work. All acceptable work performed pursuant to an approved Change Order, without a formal amendment of this Contract, shall be remunerated in accordance with and further limited by Contract Section C.3.c., PROVIDED THAT, the State shall be liable to the Contractor only for the cost of the actual goods or services provided to complete the necessary work, not to exceed the maximum cost for the change detailed in the Change Order. In no instance shall the State be liable to the Contractor for any amount exceeding the maximum cost specified by the Change Order authorizing the goods or services. Upon State approval of the work, the Contractor shall invoice the State in accordance with the relevant provisions of this Contract.

(3) Add the following to the *pro forma* contract's payment methodology section:

[C.3.]x. The Contractor shall be compensated for changes requested and performed pursuant to Contract Section Reference, without a formal amendment of this Contract based upon the payment rates detailed in the schedule below and as agreed pursuant to Section Reference, PROVIDED THAT compensation to the Contractor for such "change order" work shall not exceed NUMBER NOT TO EXCEED SEVEN PERCENT (Number %) of the sum of milestone payment rates detailed in Section C.3.b., above (which is the total cost for the milestones and associated deliverables set forth in Contract Sections A.3., through A.7.). If, at any point during the Term, the State determines that the cost of necessary "change order" work would exceed the maximum amount, the State may amend this Contract to address the need.

<u>Service Description</u>	<u>Amount</u> (per compensable increment)
	\$ Amount per hour
NOTE: The Contractor shall not be compensated for travel time to the primary location of service provision.	

B. TERM OF CONTRACT

Procurement professionals should obtain the Contractor's signature first before submitting the Contract for state signatures or approvals. Procurement professionals shall obtain all required approvals prior to the Effective Date written in the Contract and submit it for Central Procurement Office approval no less than thirty (30) days before the Effective Date.

If a signed contract is not submitted to the Central Procurement Office at least thirty (30) days prior to the Effective Date, then the CPO may request that the Contract be resubmitted with a new Effective Date or request that the procurement professional provide a written explanation as to why the Contract was submitted less than thirty (30) days before the Effective Date. In no event shall the Contractor deliver goods or perform services prior to the Effective Date.

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

Option: Renewal or Extension Term

To reserve the right to renew or extend the Term, change the section designation under B. to B.1., and add either or both of the following sections.

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

B.#. Term Extension. The State may extend the Term an additional period of time, not to exceed one hundred-eighty (180) days beyond the expiration date of this Contract, under the same terms and conditions, at the State's sole option. In no event, however, shall the maximum Term, including all renewals or extensions, exceed a total of sixty (60) months.

C. PAYMENT TERMS AND CONDITIONS

Revise Payment Terms and Conditions sections only as instructed.

Option: Statewide Contract Estimated Liability.

For statewide contracts with no Maximum Liability, replace C.1. with the following:

C.1. Estimated Liability. The total purchases of any goods or services under the Contract are not known. The State estimates the purchases during the Term shall be DOLLAR AMOUNT (\$NUMBER) ("Estimated 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.

Option: Price Changes Authorized for Equitable Adjustment

C.2. Price Changes. Prices listed in awarded published catalog, price lists or price schedule shall remain firm for Number (#) days ("Firm Price Period").

- a. Price Decreases. After the Firm Price Period, prices shall be equitably adjusted to reflect a decrease in Contractor's costs.
- b. Price Increases. After the Firm Price Period, Contractor may request price increases. The request shall include copies of the new price lists or catalog that reflect a change in the Contractor's cost, not constitute an increase in profit, and apply to all of the Contractor's customers.
- c. Approval of Price Changes. The State may at its sole option: (1) grant the Contractor's request; (2) cancel the Contract and award it to the next apparent best evaluated

Respondent; (3) cancel the Contract and reissue the solicitation; or (4) deny the Contractor's request. If approved, any price changes of less than seven percent (7%) will become effective upon the State's approval in writing. Price changes exceeding seven percent (7%) shall require a Contract amendment. The Contractor shall honor all purchase orders dated prior to the approved price change. Upon request from the State, the Contractor shall furnish the approved catalog, price schedule or price list as applicable to the State at no charge.

Option: Contracts That Detail Payment Methodology in an Appendix

Reference any appendix with line items as applicable.

C.3. Payment Methodology. The Contractor shall be compensated based on the payment rates for goods or services contained in Contract Appendix # and as authorized by the State in a total amount as set forth in Section C.1. The Contractor's compensation shall be contingent upon the satisfactory provision of goods or services as set forth in Section A.

The reimbursement of actual costs in a fee-for-service contract is NOT recommended. If the Contract includes payment terms providing for a reimbursement of actual costs (other than travel compensation in accordance with state rates), the payment terms MUST also include provisions that describe EXACTLY how the State will audit Contractor expenditures to ensure that the State pays for actual, reasonable, necessary and allowed costs only and that such costs resulted from competitive procurements.

Payment Methodology

The default payment methodology used in the Template provides for unit, milestone and temporal rate payments.

Requirement: Pro Rata Payments

If temporal payment rates effect payment for service periods greater than an hour (e.g., daily payment rates), add a new subsection (similar to the following example) that defines the payment period and provides for *pro rata* payments for completed periods of service less than the payment rate period.

c. A "day" shall be defined as a minimum of eight (8) hours of service. If the Contractor provides fewer than eight hours of service in a standard twenty-four hour day, the Contractor shall bill *pro rata* for only those portions of the day in which service was actually delivered. The Contractor shall not bill more than the daily rate even if the Contractor works more than eight hours in a day.

Option: Rate Escalation

Replace paragraph C.3.b. with the following if specific rate escalation during the Term is appropriate.

b. The Contractor shall be compensated based upon the following payment rates:

(1) For service performed from Date, through Date, the following rates shall apply:

<u>Service Description</u>	<u>Amount</u> (per compensable increment)
----------------------------	--

Milestone	\$ Number
Service Unit	\$ Number each
Job Title /Activity	\$ Number per Hour /Day /etc.
Use & Repeat Rows Above as Necessary	

(2) For service performed from Date, through Date, the Contractor shall be compensated based upon the payment rates in Section Reference (e.g., C.3.b.(1)) above but adjusted by the percentage increase, if any, between the Consumer Price Index for All Urban Consumers (CPI-U), U.S. city average, All Items /Medical Care expenditure category, not seasonally adjusted, index base period: 1982-84=100) published by the United States Department of Labor, Bureau of Labor Statistics in Month & Year (just before prior period end month) and that figure published in the same month, 12-months prior, up to a maximum of Written Number percent (Number%).

Repeat Previous Subsection for Each Subsequent Term

Option: Payment Upon Completion

Replace sections in the **Template with the following** sections if the Contract specifies one, lump sum payment after completion of all work.

C.3. Payment Methodology. Upon Contractor's satisfactory provision of goods or services set forth in Section A, the Contractor shall be compensated Written Dollar Amount (\$Number).

C.4. Travel Compensation. The Contractor shall not be compensated or reimbursed for travel, meals, or lodging.

C.5. Invoice Requirements. The Contractor shall invoice the State only after completion of all work, described in Section A of this Contract, and present invoices no more often than monthly, with all necessary supporting documentation, to:

State Agency Billing Address

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: State Agency & Division Name;
- (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; and
- (11) Total amount due for delivered goods or services provided (as stipulated in Section C.3. above).

- b. The Contractor understands and agrees that an invoice under this Contract 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 Contract 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) begin the timeframe for payment (and any discounts) only when the State is in receipt of the invoice, and the invoice meets the minimum requirements of this Section C.5.

Travel Compensation

Replace the Section with the following as appropriate (and revise the Compensation Firm Section as indicated).

C.4. Travel Compensation. Compensation to the Contractor for travel, meals, or lodging shall be subject to amounts and limitations specified in the current "State Comprehensive Travel Regulations." Insert any additional text restricting travel compensation.

The Contractor must include (in addition to other invoice requirements of this Contract) a complete itemization of requested travel compensation and appropriate documentation and receipts as required by the "State Comprehensive Travel Regulations."

AND replace the second sentence of the Compensation Firm Section with the following:

The payment methodology in Section C.3 and the Travel Compensation provided in Section C.4 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 or indirect costs incurred or to be incurred by the Contractor.

Invoice Requirements

Add clear, non-conflicting, invoice requirements to this Section as appropriate.

Revise the Section to require or permit invoices more or less often than monthly.

Option: Retention of Final Payment

Add the following Section as appropriate. If unsure whether the Section is applicable, consult the CPO legal team.

C.#. Retention of Final Payment. The amount of Written Dollar Amount (\$Number) shall be withheld by the State until Written Number (Number) days after final provision of goods or services under this Contract.

D. STANDARD TERMS AND CONDITIONS**Modification and Amendment**

Add the following section if the Contract includes a Renewal Option or Term Extension provision.

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. The State's exercise of a valid Renewal Option or Term Extension does not constitute an amendment so long as there are no other changes to the Contract's terms and conditions.

Option: Revise Termination for Convenience Time Period

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

D.5. Termination for Convenience. The State may terminate this Contract for convenience without cause for any reason. The State's election to terminate this Contract for convenience shall be effective upon the date specified and shall not be deemed a breach of contract by the State. 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 good or service that has not been provided, nor shall the Contractor be relieved of any liability to the State for any damages or claims arising under this Contract.

Option: Bilateral Termination

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

D.5. Termination for Convenience. Either Party may terminate this Contract without cause for any reason. A party's exercise of its right to terminate this Contract for convenience shall not be deemed a breach of contract by either Party. The terminating Party shall give the other Party 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, but in no event shall the State be liable to the Contractor for compensation for any good or service that has not been provided, nor shall the Contractor be relieved of any liability to the State for any damages or claims arising under this Contract.

Termination for Cause**Option: Termination for Cause Providing for Notice of Breach and an Opportunity to Cure**

Replace the Section with either of the following as appropriate. The first option requires the State to give notice of breach and provide Contractor an opportunity to cure the condition prior to termination. The second option allows the Contractor as well as the State to declare the other Party in breach while requiring a cure period prior to termination.

D.6. Termination for Cause. If the Contractor fails to properly perform its obligations under this Contract, or if the Contractor materially violates any terms of this Contract ("Breach Condition"), the

State shall provide written notice to Contractor specifying the Breach Condition. If within thirty (30) days of notice, the Contractor has not cured the Breach Condition, the State may 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 of this Contract by the Contractor and the State may seek other remedies allowed at law or in equity for breach of this Contract.

D.6. Termination for Cause. If a Party ("Breaching Party") fails to properly perform its obligations under this Contract, or if a Party materially violates any terms of this Contract ("Breach Condition"), the other Party ("Non-breaching Party") may provide written notice to the Breaching Party specifying the Breach Condition. If within thirty (30) days of notice, the Breaching Party has not cured the Breach Condition, the Non-breaching Party may terminate the Contract. In the event the Non-breaching Party is the State, the State may withhold payments in excess of compensation for completed services or provided goods. The Breaching Party shall not be relieved of liability to the Non-breaching Party for damages sustained by virtue of any breach of this Contract, and the Non-breaching Party may seek other remedies allowed at law or in equity for breach of this Contract.

Nondiscrimination

Replace the standard nondiscrimination provision with the following ONLY if contracting with a RELIGIOUS ORGANIZATION.

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

Prevailing Wage Rates

Add the following section if the Contractor will be performing work on a State highway construction project.

D.#. Prevailing Wage Rates. All State contracts for highway construction projects, which are for the purpose of building, rebuilding, locating, relocating or repairing any streets, highways or bridges, require compliance with the prevailing wage laws as provided in Tenn. Code Ann. §§ 12-4-401 – 12-4-415.

Limitation of Liability

If the Contractor's Limitation of Liability will vary from Tenn. Code Ann. § 12-3-701, an approved Limitation of Liability Request is required.

D.18. Limitation of Contractor's Liability. The Contractor's liability for all claims arising under this Contract shall be limited to an amount equal to NUMBER (#), PROVIDED THAT in no event shall this Section limit the liability of the Contractor for intentional torts, criminal acts, fraudulent conduct or acts or omissions that result in personal injuries or death.

Option: Statewide Contracts Estimated Liability

For statewide contracts with no Maximum Liability, replace D.17. and D.18. with the following:

D.17. Limitation of State's Liability. The State shall have no liability except as specifically provided in this Contract. In no event will the State be liable to the Contractor or any other party for any lost revenues, lost profits, loss of business, decrease in the value of any securities or cash position, time, money, goodwill, or any indirect, special, incidental, punitive, exemplary or consequential damages of any nature, whether based on warranty, contract, statute, regulation, tort (including but not limited to negligence), or any other legal theory that may arise under this Contract or otherwise. Notwithstanding anything else herein, the State's total liability under this Contract (including without limitation any exhibits, schedules, amendments or other attachments to the Contract) or otherwise shall under no circumstances exceed the Estimated 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 Estimated 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 intentional torts, criminal acts, fraudulent conduct, or omissions that result in personal injuries or death.

Annual and Final Reports

The following Section is rarely appropriate in a fee-for-service contract. Add the following ONLY if the Contractor is a subrecipient (refer to Central Procurement Office Policy # 2013-007, Grant and Subrecipient Monitoring).

D.#. Annual and Final Reports. The Contractor shall submit, within three (3) months of the conclusion of each year of the Term, an annual report. For contracts with a term of less than one (1) year, the Contractor shall submit a final report within three (3) months of the conclusion of the Term. For contracts with multiyear terms, the final report will take the place of the annual report for the final year of the term. The Contractor shall submit annual and final reports to the contracting state agency and the Department of Finance and Administration. Electronic copies of annual and final reports may be submitted to the Department of Finance and Administration at faudit@tn.gov. At minimum, annual and final reports shall include: (a) the Contractor's name; (b) the Contract's Edison identification number, Term, and Maximum Liability; (c) a narrative section that describes the program's goals, outcomes, successes and setbacks, whether the Contractor used benchmarks or indicators to determine progress, and whether any proposed activities were not completed; and (d) other relevant details requested by the contracting state agency. Annual and final report documents to be completed by the Contractor shall appear on the contracting state agency's website or as an attachment to this Contract.

Audit Report

Add the following Section as appropriate. If unsure whether the Section is applicable, consult the CPO legal team.

D.#. Audit Report. When the Contractor has received seven hundred fifty thousand dollars (\$750,000.00) or more in aggregate federal and state funding for all of its programs within the Contractor's fiscal year, the Contractor shall provide audited financial statement to the Tennessee Comptroller of the Treasury. The Contractor may, with the prior approval of the Comptroller of the Treasury, engage a licensed independent public accountant to perform the audit. The audit contract between the Contractor and the licensed independent public accountant shall be on a contract form prescribed by the Tennessee Comptroller of the Treasury. When an audit is required under this section, the audit shall be performed in accordance with U.S. Office of Management and Budget's Uniform Administration Requirements, Audit Requirements, and Cost Principles.

The Contractor shall be responsible for reimbursing the Tennessee Comptroller of the Treasury for any costs of an audit prepared by the Tennessee Comptroller of the Treasury.

The Contractor shall be responsible for payment of fees for an audit prepared by a licensed independent public accountant. Payment of the audit fees for the licensed independent public accountant by the Contractor shall be subject to the provision relating to such fees contained within this Contract. Copies of such audit reports shall be provided to the designated cognizant state agency, the state contracting agency, the Tennessee Comptroller of the Treasury, and the Department of Finance and Administration.

Audit reports shall be made available to the public.

E. SPECIAL TERMS AND CONDITIONS

Add the following sections as appropriate and in the order below. An approved Rule Exception Request is required to add any Section E terms that are not among the options below. Should any of these special terms and conditions conflict with the mandatory terms and conditions in Section D of this Contract, the mandatory terms and conditions shall control.

Insurance

Add the following Section as appropriate. If unsure whether Section is applicable, consult the CPO legal team.

E.#. Insurance. The Contractor shall carry adequate liability and other appropriate forms of insurance.

a. The Contractor shall maintain, at minimum, the following insurance coverage:

- (1) Workers' Compensation/ Employers' Liability (including all states coverage) with a limit not less than the relevant statutory amount or one million dollars (\$1,000,000) per occurrence for employers' liability whichever is greater.
- (2) Comprehensive Commercial General Liability (including personal injury & property damage, premises/operations, independent contractor, contractual liability and completed operations/products) with a bodily injury/property damage combined single limit not less than one million dollars (\$1,000,000) per occurrence and two million dollars (\$2,000,000) aggregate.
- (3) Automobile Coverage (including owned, leased, hired, and non-owned vehicles) with a bodily injury/property damage combined single limit not less than one million dollars (\$1,000,000) per occurrence.
- (4) Errors and Omission Coverage with a limit of not less than one million dollars (\$1,000,000) per claim and two million dollars (\$2,000,000) aggregate.

b. The Contractor shall provide a valid Certificate of Insurance naming the State as an

additional insured and detailing Coverage Description; Insurance Company & Policy Number; Exceptions and Exclusions; Policy Effective Date; Policy Expiration Date; Limit(s) of Liability; and Name and Address of Insured. Contractor shall obtain from Contractor's insurance carrier(s) and will deliver to the State waivers of the subrogation rights under the respective policies. Failure to provide required evidence of insurance coverage shall be a material breach of this Contract.

Confidentiality of Records

Add the following Section as appropriate. If unsure whether the Section is applicable, consult the CPO legal team.

E.#. Confidentiality of Records. Strict standards of confidentiality of records and information shall be maintained in accordance with applicable state and federal law. All material and information, regardless of form, medium or method of communication, provided to the Contractor by the State or acquired by the Contractor on behalf of the State 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.

Printing Authorization

Add the following Section as appropriate.

E.#. Printing Authorization. The Contractor agrees that no publication coming within the jurisdiction of Tenn. Code Ann. §§ 12-7-101, et. seq., shall be printed pursuant to this Contract unless a printing authorization number has been obtained and affixed as required by Tenn. Code Ann. § 12-7-103 (d).

State Ownership of Goods

Add the following Section as appropriate.

E.#. State Ownership of Goods. The State shall have ownership, right, title, and interest in all goods provided by Contractor under this Contract including full rights to use the goods and transfer title in the goods to any third parties.

Ownership of Software & Work Products

Add the following Section as appropriate. If escrow language is contemplated, contact the CPO legal team for assistance. The terms of any license Contractor grants the State should be included in Section A.

E.#. Ownership of Software and Work Products.

a. Definitions.

(1) "Contractor-Owned Software," shall mean commercially available software the rights to which are owned by Contractor, including but not limited to commercial "off-the-shelf" software which is not developed using State's money or resources.

- (2) "Custom-Developed Application Software," shall mean customized application software developed by Contractor solely for State.
- (3) "Rights Transfer Application Software," shall mean any pre-existing application software owned by Contractor or a third party, provided to State and to which Contractor will grant and assign, or will facilitate the granting and assignment of, all rights, including the source code, to State.
- (4) "Third-Party Software," shall mean software not owned by the State or the Contractor.
- (5) "Work Product," shall mean all deliverables exclusive of hardware, such as software, software source code, documentation, planning, etc., that are created, designed, developed, or documented by the Contractor exclusively for the State during the course of the project using State's money or resources, including Custom-Developed Application Software. If the deliverables under this Contract include Rights Transfer Application Software, the definition of Work Product shall also include such software. Work Product shall not include Contractor-Owned Software or Third-Party Software.

b. Rights and Title to the Software

- (1) All right, title and interest in and to the Contractor-Owned Software shall at all times remain with Contractor, subject to any license granted under this Contract.
- (2) All right, title and interest in and to the Work Product, and to modifications thereof made by State, including without limitation all copyrights, patents, trade secrets and other intellectual property and other proprietary rights embodied by and arising out of the Work Product, shall belong to State. To the extent such rights do not automatically belong to State, Contractor hereby assigns, transfers, and conveys all right, title and interest in and to the Work Product, including without limitation the copyrights, patents, trade secrets, and other intellectual property rights arising out of or embodied by the Work Product. Contractor and its employees, agents, contractors or representatives shall execute any other documents that State or its counsel deem necessary or desirable to document this transfer or allow State to register its claims and rights to such intellectual property rights or enforce them against third parties.
- (3) All right, title and interest in and to the Third-Party Software shall at all times remain with the third party, subject to any license granted under this Contract.

c. The Contractor may use for its own purposes the general knowledge, skills, experience, ideas, concepts, know-how, and techniques obtained and used during the course of performing under this Contract. The Contractor may develop for itself, or for others, materials which are similar to or competitive with those that are produced under this Contract.

Reimbursement

Add the following section if the contract payment terms provide for Contractor reimbursement for goods, materials, supplies, equipment, or contracted services.

E.#. Reimbursement. This Contract provides for reimbursement of the cost of goods, materials, supplies, equipment, or contracted services. Any goods, materials, supplies, equipment or contracted services procured by Contractor under this Contract shall be procured on a competitive basis when practicable. The Contractor shall maintain documentation supporting Contractor's request for reimbursement. In each instance where it is determined that use of a competitive procurement method was not practicable, Contractor shall seek approval of the State Agency Head's Title to procure by non-competitive procurement as a condition for reimbursement.

State Furnished Property

Add the following Section as appropriate.

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

Work Papers Subject to Review

Add the following Section only if the contract requires the performance of audit, accounting or financial analysis services.

E.#. Work Papers Subject to Review. The Contractor shall make all audit, accounting, or financial analysis work papers, notes, and other documentation available for review by the Comptroller of the Treasury or his representatives, upon request, during normal working hours either while the analysis is in progress or subsequent to the completion of this Contract.

Prohibited Advertising or Marketing

Add the following Section as appropriate.

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

Public Accountability

Add the following Section as appropriate.

E.#. Public Accountability. If the Contractor is subject to Tenn. Code Ann. §§ 8-4-401, et seq., or if this Contract involves the provision of services to citizens by the Contractor on behalf of the State, the Contractor agrees to establish a system through which recipients of services may present grievances about Contractor's operation of the service program. The Contractor shall also display in a prominent place, located near the passageway through which the public enters in order to receive contract-supported services, a sign at least eleven inches (11") in height and seventeen inches (17") in width stating the following:

NOTICE: THIS AGENCY IS A RECIPIENT OF TAXPAYER FUNDING. IF YOU OBSERVE AN AGENCY DIRECTOR OR EMPLOYEE ENGAGING IN ANY ACTIVITY THAT YOU CONSIDER TO BE ILLEGAL, IMPROPER, OR WASTEFUL, PLEASE CALL THE STATE COMPTROLLER'S TOLL-FREE HOTLINE: 1-800-232-5454

The sign shall be of the form prescribed by the Comptroller of the Treasury. The contracting state agency shall request copies of the sign from the Comptroller of the Treasury and provide signs to contractors.

Environmental Tobacco Smoke

Add the following Section as appropriate.

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

Lobbying

Add the following Section if the contract will be funded in whole or in part by federal funds.

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

- a. No federally appropriated funds have been paid or will be paid, by or on behalf of the Contractor, to any person for influencing or attempting to influence an officer or employee of an agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.
- b. If any funds other than federally appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with any contract, grant, loan, or cooperative agreement, the Contractor shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
- c. The Contractor shall require that the language of this certification be included in the award documents for all sub-awards at all tiers (including subcontracts, sub-grants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

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

Contractor Commitment to Diversity

Add the following Section as appropriate (typically in contracts resulting from a standard RFP).

E.#. Contractor Commitment to Diversity. The Contractor shall comply with and make reasonable business efforts to exceed the commitment to diversity represented by the Contractor's Response to Solicitation Number (Attachment Reference) and resulting in this Contract.

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

Performance Bond

Tenn. Code Ann. § 12-4-201 requires a labor and materials bond for all public works projects in excess of one hundred thousand dollars (\$100,000).

For contracts that do not involve public works projects, a performance bond should be required only when necessary to protect against contract risk to the State. Choose one of the two options. If unsure whether a performance bond is appropriate or which option is best, contact the CPO Risk Manager.

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

Failure to provide to the State the performance bond(s) as required under this Contract may result in this Contract being terminated by the State. The performance bond required under this Contract shall not be reduced during the Term without the written approval of the State.

E.#. Performance Bond. The Contractor shall provide to the State a performance bond guaranteeing full and faithful performance of all undertakings and obligations under this Contract and in the amount equal to Written Dollar Amount (\$Number). The Contractor shall submit the bond no later than the day immediately preceding the Contract start date and in the manner and form prescribed by the State (at Attachment Reference hereto). The bond shall be issued through a company licensed to issue such a bond in the state of Tennessee. The performance bond shall guarantee full and faithful performance of all undertakings and obligations under this Contract for the first, calendar year of the Contract (ending December 31st following the Contract start date) in the amount of Written Dollar Amount (\$Number) and, thereafter, a new performance bond in the amount of Written Dollar Amount (\$Number) covering each subsequent calendar year of the Term. The Contractor shall provide performance bonds to the State prior to the Effective Date and thirty (30) days prior to the beginning of each renewal or extended Term.

Failure to provide to the State the performance bond(s) as required under this Contract may result in this Contract being terminated by the State. The performance bond required under this Contract shall not be reduced during the Term without the written approval of the State.

Intellectual Property

Add the following Section as appropriate. If unsure whether the Section is applicable, consult the CPO legal team.

E.#. Intellectual Property. The Contractor agrees to indemnify and hold harmless the State of Tennessee as well as its officers, agents, and employees from and against any and all claims or suits which may be brought against the State concerning or arising out of any claim of an alleged patent, copyright, trade secret or other intellectual property infringement. In any such claim or action brought against the State, the Contractor shall satisfy and indemnify the State for the amount of any settlement or final judgment, and the Contractor shall be responsible for all legal or other fees or expenses incurred by the State arising from any such claim. The State shall give the Contractor notice of any such claim or suit and full right and opportunity to conduct the Contractor's own defense thereof, 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.

Option: Liquidated Damages

Add the following Section as appropriate. If unsure whether the Section is applicable, consult the CPO legal team.

E.#. Liquidated Damages. If <insert description of event giving rise to liquidated damages> occurs, ("Liquidated Damages Event"), the State may assess damages on Contractor ("Liquidated Damages"). The State shall notify the Contractor of amounts to be assessed as Liquidated Damages. The Parties agree that due to the complicated nature of the Contractor's obligations under this Contract it would be difficult to specifically designate a monetary amount for Contractor's failure to fulfill its obligations regarding the Liquidated Damages Event as these amounts are likely to be uncertain and not easily proven. Contractor has carefully reviewed the Liquidated Damages contained in Attachment Reference and agrees that these amounts represent a reasonable relationship between the amount and what might reasonably be expected in the event of a Liquidated Damages Event, and are a reasonable estimate of the damages that would occur from a Liquidated Damages Event. The Parties agree that the Liquidated Damages represent solely the damages and injuries sustained by the State in losing the benefit of the bargain with Contractor and do not include any injury or damage sustained by a third party. The Contractor agrees that the Liquidated Damages are in addition to any amounts Contractor may owe the State pursuant to the indemnity provision or any other sections of this Contract.

The State is not obligated to assess Liquidated Damages before availing itself of any other remedy. The State may choose to discontinue Liquidated Damages and avail itself of any other remedy available under this Contract or at law or equity.

Partial Takeover

Add the following Section as appropriate. If unsure whether the Section is applicable, consult the CPO legal team.

E.#. Partial Takeover of Contract. The State may, at its convenience and without cause, exercise a partial takeover of any service that the Contractor is obligated to perform under this Contract, including any service which is the subject of a subcontract between Contractor and a third party (a "Partial Takeover"). A Partial Takeover of this Contract by the State shall not be deemed a breach of contract. The Contractor shall be given at least thirty (30) days prior written notice of a Partial

Takeover. The notice shall specify the areas of service the State will assume and the date the State will be assuming. The State's exercise of a Partial Takeover shall not alter the Contractor's other duties and responsibilities under this Contract. The State reserves the right to withhold from the Contractor any amounts the Contractor would have been paid but for the State's exercise of a Partial Takeover. The amounts shall be withheld effective as of the date the State exercises its right to a Partial Takeover. The State's exercise of its right to a Partial Takeover of this Contract shall not entitle the Contractor to any actual, general, special, incidental, consequential, or any other damages irrespective of any description or amount.

Unencumbered Personnel

Add the following Section as appropriate. If unsure whether the Section is applicable, consult the CPO legal team.

E.#. Unencumbered Personnel. The Contractor shall not restrict its employees, agents, subcontractors or principals who perform services for the State under this Contract from performing the same or similar services for the State after the termination of this Contract, either as a State employee, an independent contractor, or an employee, agent, subcontractor or principal of another contractor with the State.

Disclosure of Personally Identifiable Information

Add the following Section as appropriate. If unsure whether the Section is applicable, consult the CPO legal team.

E.#. Personally Identifiable Information. While performing its obligations under this Contract, Contractor may have access to Personally Identifiable Information held by the State ("PII"). For the purposes of this Contract, "PII" includes "Nonpublic Personal Information" as that term is defined in Title V of the Gramm-Leach-Bliley Act of 1999 or any successor federal statute, and the rules and regulations thereunder, all as may be amended or supplemented from time to time ("GLBA") and personally identifiable information and other data protected under any other applicable laws, rule or regulation of any jurisdiction relating to disclosure or use of personal information ("Privacy Laws"). Contractor agrees it shall not do or omit to do anything which would cause the State to be in breach of any Privacy Laws. Contractor shall, and shall cause its employees, agents and representatives to: (i) keep PII confidential and may use and disclose PII only as necessary to carry out those specific aspects of the purpose for which the PII was disclosed to Contractor and in accordance with this Contract, GLBA and Privacy Laws; and (ii) implement and maintain appropriate technical and organizational measures regarding information security to: (A) ensure the security and confidentiality of PII; (B) protect against any threats or hazards to the security or integrity of PII; and (C) prevent unauthorized access to or use of PII. Contractor shall immediately notify State: (1) of any disclosure or use of any PII by Contractor or any of its employees, agents and representatives in breach of this Contract; and (2) of any disclosure of any PII to Contractor or its employees, agents and representatives where the purpose of such disclosure is not known to Contractor or its employees, agents and representatives. The State reserves the right to review Contractor's policies and procedures used to maintain the security and confidentiality of PII and Contractor shall, and cause its employees, agents and representatives to, comply with all reasonable requests or directions from the State to enable the State to verify and/or procure that Contractor is in full compliance with its obligations under this Contract in relation to PII. Upon termination or expiration of the Contract or at the State's direction at any time in its sole discretion, whichever is earlier, Contractor shall immediately return to the State any and all PII which it has received under this Contract and shall destroy all records of such PII.

The Contractor shall report to the State any instances of unauthorized access to or potential

disclosure of PII in the custody or control of Contractor ("Unauthorized Disclosure") that come to the Contractor's attention. Any such report shall be made by the Contractor within twenty-four (24) hours after the Unauthorized Disclosure has come to the attention of the Contractor. Contractor shall take all necessary measures to halt any further Unauthorized Disclosures. The Contractor, at the sole discretion of the State, shall provide no cost credit monitoring services for individuals whose PII was affected by the Unauthorized Disclosure. The Contractor shall bear the cost of notification to all individuals affected by the Unauthorized Disclosure, including individual letters and public notice. The remedies set forth in this Section are not exclusive and are in addition to any claims or remedies available to this State under this Contract or otherwise available at law.

Federal Funding Accountability and Transparency Act

Add the following Section if the contract will be funded in whole or part by a federal grant or contract of \$25,000 or more and the contract will provide for the expenditure of \$25,000 or more in federal funds.

E.#. 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. Security 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 Data Universal Numbering System (DUNS) number and maintain its DUNS number for the term of this Contract. More information about obtaining a DUNS Number can be found at: <http://fedgov.dnb.com/webform/>

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.

Safeguarding Federal Tax Information

In the event Contractor may have access to Federal Tax Information as defined in IRS Publication 1075, contact your agency attorney and the CPO legal team.

Survival

Add one of the two survival options as appropriate. If unsure whether a survival provision is appropriate, consult the CPO legal team.

Survival – Option 1

E.# Survival. The terms, provisions, representations, and warranties contained in this Contract which by their sense and context are intended to survive the performance and termination of this Contract, shall so survive the completion of performance and termination of this Contract.

Survival – Option 2

E.# Survival. The terms, provisions, representations, and warranties contained in Sections <list numbered Sections> of this Contract shall survive the completion of performance, termination or expiration of this Contract.

SIGNATURES

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

By contract signature, the contracting agency head shall assure and affirm that:

1. if there is a Maximum Liability included in the Contract, then there is a balance in the appropriation from which obligations under the Contract are required to be paid that is not already encumbered to pay other obligations;
2. the contracting agency maintains documentation of a fair and impartial contractor selection in full compliance with the approved procurement methodology as indicated by the summary cover sheet; and,
3. the proposed Scope is clear and correct, adequate for all legal and enforcement purposes, and sufficiently detailed to ensure Contractor accountability and results.

Document comparison by Workshare Compare on Wednesday, October 15, 2014
3:50:10 PM

Input:	
Document 1 ID	file://C:\Users\BA10408\Desktop\FAModel_approved 08.21.14.doc
Description	FAModel_approved 08.21.14
Document 2 ID	file://M:\C.Mallea's documents\Policy subcommittee\Ready for AC review\10.27.14 Meeting\FA Template_clean.docx
Description	FA Template_clean
Rendering set	Standard

Legend:	
<u>Insertion</u>	
Deletion	
Moved from	
<u>Moved to</u>	
Style change	
Format change	
Moved-deletion	
Inserted cell	
Deleted cell	
Moved cell	
Split/Merged cell	
Padding cell	

Statistics:	
	Count
Insertions	597
Deletions	598
Moved from	112
Moved to	112
Style change	0
Format changed	0
Total changes	1419

**FEE FOR GOODS OR SERVICES
CONTRACT (FA) TEMPLATE**

CLEAN VERSION

FEE FOR GOODS OR SERVICES CONTRACT TEMPLATE (FA)

This template prescribes the format and content for contracts involving the purchase of goods or services from an individual, business, or non-profit. This contract template requires the expenditure of State funds.

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

Procurement professionals shall complete text fields and follow, replace, or otherwise address red instructional text (*e.g.*, State Agency Name, amount, will/will not) as indicated with appropriate font and color. The standard FA Template begins on the following page. Additional instructions, considerations, and options follow the standard FA Template.



CONTRACT

(fee-for-goods or services contract with an individual, business, non-profit, or governmental entity of another state)

Begin Date	End Date	Agency Tracking #	Edison Record ID		
Contractor Legal Entity Name			Edison Vendor ID		
Goods or Services Caption (one line only)					
Sub-recipient or Vendor <input type="checkbox"/> Sub-recipient <input type="checkbox"/> Vendor		CFDA #			
Funding —					
FY	State	Federal	Interdepartmental	Other	TOTAL Contract Amount
TOTAL:					
Contractor Ownership Characteristics: <input type="checkbox"/> Minority Business Enterprise (MBE): African American, Asian American, Hispanic American, Native American <input type="checkbox"/> Woman Business Enterprise (WBE) <input type="checkbox"/> Tennessee Service Disabled Veteran Enterprise (SDVBE) <input type="checkbox"/> Tennessee Small Business Enterprise (SBE): \$10,000,000.00 averaged over a three (3) year period or employs no more than ninety-nine (99) employees. <input type="checkbox"/> Other:					
Selection Method & Process Summary (mark the correct response to confirm the associated summary)					
<input type="checkbox"/> Competitive Selection		Describe the competitive selection process used			
<input type="checkbox"/> Other		Describe the selection process used and submit a Special Contract Request			
Budget Officer Confirmation: There is a balance in the appropriation from which obligations hereunder are required to be paid that is not already encumbered to pay other obligations.					
Speed Chart (optional)		Account Code (optional)			

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

This Contract, by and between the State of Tennessee, State Agency Name ("State") and Contractor Legal Entity Name ("Contractor"), is for the provision of Scope of Goods or Services Caption, as further defined in the "SCOPE." State and Contractor may be referred to individually as a "Party" or collectively as the "Parties" to this Contract.

The Contractor is a/an Individual, For-Profit Corporation, Non-Profit Corporation, Special Purpose Corporation Or Association, Partnership, Joint Venture, Or Limited Liability Company.
Contractor Place of Incorporation or Organization: Location
Contractor Edison Registration ID # Number

A. SCOPE:

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

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

A.#. Warranty. Contractor represents and warrants that throughout the Term of this Contract ("Warranty Period"), the goods or services provided under this Contract shall conform to the terms and conditions of this Contract. 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 all goods or services provided under this Contract shall be provided in a timely and professional manner, by qualified and skilled individuals, 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.

A.#. Inspection and Acceptance. The State shall have the right to inspect all goods or services provided by Contractor under this Contract. If, upon inspection, the State determines that the goods or services are Defective, the State shall notify Contractor, and Contractor shall re-deliver the goods or provide the services at no additional cost to the State. If after a period of thirty (30) days following delivery of goods or performance of services the State does not provide a notice of any Defects, the goods or services shall be deemed to have been accepted by the State.

B. TERM OF CONTRACT:

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

C. PAYMENT TERMS AND CONDITIONS:

- 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)
Milestone	\$ Number
Unit	\$ Number each
Job Title /Activity	\$ Number per Hour /Day /etc.
Use & Repeat Rows Above as Necessary	

Add Contingently Required Subsections as Appropriate (refer to instructions for details)

- 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:

State Agency Billing Address

- 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: State Agency & Division Name;
 - (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 an "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, all payments to the Contractor, under this or any other contract the Contractor has with the State of Tennessee, shall be made by automated clearing house.
- b. The Contractor shall complete, sign, and present to the State a "Substitute W-9 Form" provided by the State. The taxpayer identification number in the Substitute W-9 Form must be the same as the Contractor's Federal Employer Identification Number or Tennessee Edison Registration ID.

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:

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

The Contractor:

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

All instructions, notices, consents, demands, or other communications shall be considered 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 Reference, semi-annually during the Term. If the Contractor is a party to more than one contract with the State, the Contractor may submit one attestation that applies to all contracts with the State. All Contractor attestations shall be maintained by the Contractor and made available to State officials upon request.
 - b. Prior to the use of any subcontractor in the performance of this Contract, and semi-annually thereafter, during the Term, the Contractor shall obtain and retain a current, written attestation that the subcontractor shall not knowingly utilize the services of an illegal immigrant to perform work under this Contract and shall not knowingly utilize the services of any subcontractor who will utilize the services of an illegal immigrant to perform work under this Contract. Attestations obtained from subcontractors shall be maintained by the Contractor and made available to State officials upon request.
 - c. The Contractor shall maintain records for all personnel used in the performance of this Contract. Contractor's records shall be subject to review and random inspection at any reasonable time upon reasonable notice by the State.

- d. The Contractor understands and agrees that failure to comply with this section will be subject to the sanctions of Tenn. Code Ann. § 12-3-309 for acts or omissions occurring after its effective date.
 - e. For purposes of this Contract, "illegal immigrant" shall be defined as any person who is not: (i) a United States citizen; (ii) a Lawful Permanent Resident; (iii) a person whose physical presence in the United States is authorized; (iv) allowed by the federal Department of Homeland Security and who, under federal immigration laws or regulations, is authorized to be employed in the U.S.; or (v) is otherwise authorized to provide services under the Contract.
- D.11. Records. The Contractor shall maintain documentation for all charges under this Contract. The books, records, and documents of the Contractor, for work performed or money received under this Contract, shall be maintained for a period of five (5) full years from the date of the final payment and shall be subject to audit at any reasonable time and upon reasonable notice by the State, the Comptroller of the Treasury, or their duly appointed representatives. The financial statements shall be prepared in accordance with generally accepted accounting principles.
- D.12. Monitoring. The Contractor's activities conducted and records maintained pursuant to this Contract shall be subject to monitoring and evaluation by the State, the Comptroller of the Treasury, or their duly appointed representatives.
- D.13. Progress Reports. The Contractor shall submit brief, periodic, progress reports to the State as requested.
- D.14. Strict Performance. Failure by any Party to this Contract to require, in any one or more cases, the strict performance of any of the terms, covenants, conditions, or provisions of this Contract shall not be construed as a waiver or relinquishment of any term, covenant, condition, or provision. No term or condition of this Contract shall be held to be waived, modified, or deleted except by a written amendment signed by the Parties.
- D.15. Independent Contractor. The Parties shall not act as employees, partners, joint venturers, or associates of one another. The Parties are independent contracting entities. Nothing in this Contract shall be construed to create an employer/employee relationship or to allow either Party to exercise control or direction over the manner or method by which the other transacts its business affairs or provides its usual services. The employees or agents of one Party are not employees or agents of the other Party.
- D.16. Patient Protection and Affordable Care Act. The Contractor agrees that it will be responsible for compliance with the Patient Protection and Affordable Care Act ("PPACA") with respect to itself and its employees, including any obligation to report health insurance coverage, provide health insurance coverage, or pay any financial assessment, tax, or penalty for not providing health insurance. The Contractor shall indemnify the State and hold it harmless for any costs to the State arising from Contractor's failure to fulfill its PPACA responsibilities for itself or its employees.
- D.17. Limitation of State's Liability. The State shall have no liability except as specifically provided in this Contract. In no event will the State be liable to the Contractor or any other party for any lost revenues, lost profits, loss of business, decrease in the value of any securities or cash position, time, money, goodwill, or any indirect, special, incidental, punitive, exemplary or consequential damages of any nature, whether based on warranty, contract, statute, regulation, tort (including but not limited to negligence), or any other legal theory that may arise under this Contract or otherwise. The State's total liability under this Contract (including any exhibits, schedules, amendments or other attachments to the Contract) or otherwise shall under no circumstances exceed the Maximum Liability. This limitation of liability is cumulative and not per incident.
- D.18. Limitation of Contractor's Liability. In accordance with Tenn. Code Ann. § 12-3-701, the Contractor's liability for all claims arising under this Contract shall be limited to an amount equal

to two (2) times the Maximum Liability amount detailed in Section C.1. and as may be amended, PROVIDED THAT in no event shall this Section limit the liability of the Contractor for intentional torts, criminal acts, fraudulent conduct, or omissions that result in personal injuries or death.

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

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

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

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

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

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

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

- D.24. Force Majeure. "Force Majeure Event" means fire, flood, earthquake, elements of nature or acts of God, wars, riots, civil disorders, rebellions or revolutions, acts of terrorism or any other similar cause beyond the reasonable control of the Party except to the extent that the non-performing Party is at fault in failing to prevent or causing the default or delay, and provided that the default or delay cannot reasonably be circumvented by the non-performing Party through the use of alternate sources, workaround plans or other means. A strike, lockout or labor dispute shall not excuse either Party from its obligations under this Contract. Except as set forth in this Section, any failure or delay by a Party in the performance of its obligations under this Contract arising from a Force Majeure Event is not a default under this Contract or grounds for termination. The non-performing Party will be excused from performing those obligations directly affected by the Force Majeure Event, and only for as long as the Force Majeure Event continues, provided that the Party continues to use diligent, good faith efforts to resume performance without delay. The occurrence of a Force Majeure Event affecting Contractor's representatives, suppliers, subcontractors, customers or business apart from this Contract is not a Force Majeure Event under this Contract. Contractor will promptly notify the State of any delay caused by a Force Majeure Event (to be confirmed in a written notice to the State within one (1) day of the inception of the delay) that a Force Majeure Event has occurred, and will describe in reasonable detail the nature of the Force Majeure Event. If any Force Majeure Event results in a delay in Contractor's performance longer than forty-eight (48) hours, the State may, upon notice to Contractor: (a) cease payment of the fees until Contractor resumes performance of the affected obligations; or (b) immediately terminate this Contract or any purchase order, in whole or in part, without further payment except for fees then due and payable. Contractor will not increase its charges under this Contract or charge the State any fees other than those provided for in this Contract as the result of a Force Majeure Event.
- D.25. State and Federal Compliance. The Contractor shall comply with all applicable state and federal laws and regulations in the performance of this Contract.
- D.26. Governing Law. This Contract shall be governed by and construed in accordance with the laws of the State of Tennessee. The Tennessee Claims Commission or the state or federal courts in

Tennessee shall be the venue for all claims, disputes, or disagreements arising under this Contract. The Contractor acknowledges and agrees that any rights, claims, or remedies against the State of Tennessee or its employees arising under this Contract shall be subject to and limited to those rights and remedies available under Tenn. Code Ann. §§ 9-8-101 - 407.

- D.27. Entire Agreement. This Contract is complete and contains the entire understanding between the Parties relating to its subject matter, including all the terms and conditions of the Parties' agreement. This Contract supersedes any and all prior understandings, representations, negotiations, and agreements between the Parties, whether written or oral.
- D.28. Severability. If any terms and conditions of this Contract are held to be invalid or unenforceable as a matter of law, the other terms and conditions of this Contract shall not be affected and shall remain in full force and effect. The terms and conditions of this Contract are severable.
- D.29. Headings. Section headings of this Contract are for reference purposes only and shall not be construed as part of this Contract.
- D.30. Incorporation of Additional Documents. Each of the following documents is included as a part of this Contract by reference. In the event of a discrepancy or ambiguity regarding the Contractor's duties, responsibilities, and performance under this Contract, these items shall govern in order of precedence below:
 - a. any amendment to this Contract, with the latter in time controlling over any earlier amendments;
 - b. this Contract with any attachments or exhibits (excluding the items listed at subsections c. through f., below);
 - 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.

E. SPECIAL TERMS AND CONDITIONS:

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

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

IN WITNESS WHEREOF,

CONTRACTOR LEGAL ENTITY NAME:

CONTRACTOR SIGNATURE **DATE**

PRINTED NAME AND TITLE OF CONTRACTOR SIGNATORY (above)

STATE AGENCY NAME:

NAME & TITLE

DATE

ATTACHMENT REFERENCE

ATTESTATION RE PERSONNEL USED IN CONTRACT PERFORMANCE

<p>If the attestation applies to more than one contract, modify this row accordingly.</p> <p>SUBJECT CONTRACT NUMBER:</p>	
<p>CONTRACTOR LEGAL ENTITY NAME:</p>	
<p>FEDERAL EMPLOYER IDENTIFICATION NUMBER: (or Social Security Number)</p>	

If the attestation applies to more than one contract, modify the following paragraph accordingly.

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

FA TEMPLATE INSTRUCTIONS, CONSIDERATIONS, and OPTIONS

The following pages contain additional instructions, considerations, and options. Replace or modify the Standard FA Template by including the following content as appropriate. Content included with a box around it is intended to be inserted into the standard FA Template, as appropriate.

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

SUMMARY COVER SHEET

A summary cover sheet properly completed and in accordance with the Template is required for every copy of the contracting document. Complete summary cover sheet fields as indicated within the Template and the following field descriptions.

- | | |
|---|--|
| <i>Agency Tracking #</i> | a unique number comprised of: 5-digit business unit # + unique, 5-digit #
example: 31707-12345 |
| <i>Funding</i> | amounts by fiscal year & funding source and with row & column totals;
the sum of the TOTAL Contract Amount column (the grand total amount for all fiscal years & all sources of funding) MUST equal the contract maximum liability |
| <i>Contractor Ownership Characteristics</i> | <p>Minority Business Enterprise (MBE): select if a minority-owned business, which means a continuing, independent, for profit business that performs a commercially useful function, and is at least fifty-one percent (51%) owned and controlled by one (1) or more minority individuals who are impeded from normal entry into the economic mainstream because of past practices of discrimination based on race or ethnic background.</p> <p>Identify the applicable Minority if known. Minority means a person who is a citizen or lawful permanent resident of the United States and who is:</p> <ul style="list-style-type: none"> (A) African American, a person having origins in any of the black racial groups of Africa; (B) Asian American, a person having origins in any of the original peoples of the Far East, Southeast Asia, the Indian subcontinent, or the Pacific Islands; (C) Hispanic American, a person of Mexican, Puerto Rican, Cuban, Central or South American, or other Spanish culture or origin, regardless of race; (D) Native American, a person having origins in any of the original peoples of North America. <p>Woman Business Enterprise (WBE): select if a woman-owned business, which means a woman-owned business that is a continuing, independent, for profit business that performs a commercially useful function, and is at least fifty-one percent (51%) owned and controlled by one or more women; or, in the case of any publicly owned business, at least fifty-one-percent (51%) of the stock of which is owned and controlled by one (1) or more women and whose management and daily business operations are under the control of one (1) or more women.</p> <p>Tennessee Service Disabled Veteran Enterprise (SDVBE): select if a Tennessee service-disabled veteran-owned business, which means a service-disabled veteran-owned business that is a continuing, independent, for profit business located in this state that performs a commercially useful function and:</p> <ul style="list-style-type: none"> (A) Is at least fifty-one percent (51%) owned and controlled by one (1) or more service-disabled veterans; (B) In the case of a business solely owned by one (1) service-disabled veteran and such person's spouse, is at least fifty percent (50%) owned and controlled by the service-disabled veteran; or |

- (C) In the case of any publicly owned business, at least fifty-one percent (51%) of the stock of which is owned and controlled by one (1) or more service-disabled veterans and whose management and daily business operations are under the control of one (1) or more service-disabled veteran.

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

Other: select if none of the above options. There is an option to provide additional details here, e.g., type governmental entity in the space provided if the Contractor is a governmental entity. For additional guidance, please visit: http://www.tn.gov/businessopp/program_elig.html.

PREAMBLE

Add additional information only if necessary.

In a contract with an individual, delete the Template preamble phrase, "Place of Incorporation or Organization: Location."

A. SCOPE OF SERVICES OR SPECIFICATIONS OF GOODS ("Scope")

Do NOT include payment terms in the Scope. Define any Contractor milestones without reference to payment. Section C should address payment at milestones.

Draft the Scope to clearly, specifically, and definitively detail contractor duties, responsibilities, and associated performance requirements and describe, in detail, the Scope and deliverable requirements and all related specifications. Include a definition section, key performance indicators, or any other specifications as needed.

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

Option: Acceptable Alternative to *Change Orders*.

The RFP Contract Amendment section does not preclude the State from "locking in" payment rates for any additional work per potential contract amendments. Therefore, if deemed appropriate, add the following sections to the *pro forma* contract Scope:

- | | |
|----|--|
| #. | <u>Correction of Deficiencies</u> . Any corrections of deficiencies relating to the Contract Scope of Services requirements or deliverables and any investigation necessary to determine the source of such deficiencies shall be completed by the Contractor at no cost to the State. |
|----|--|

AND...

- | | |
|----|--|
| #. | <u>Additional Work</u> . The State may request, at its sole discretion, additional work involving the enhancement or modification of a deliverable under the Contract Scope, provided that this Contract is amended, pursuant to section #. Remuneration for any such additional work shall be based on the applicable "contingent," payment rate(s) detailed in Section C.3 of this Contract. |
|----|--|

AND...

#. Contingent Rates— In accordance with section REFERENCE of this Contract, The State may request and the Contractor may agree to perform additional work involving the enhancement or modification of deliverables under the Contract Scope of Services, provided that this Contract is amended to require such work.

- i. Remuneration for any such additional work shall be based on the applicable contingent, payment rate(s) detailed below and as approved by the State.

<u>SERVICE</u>	<u>AMOUNT PER HOUR</u>
SERVICE DESCRIPTION	\$ AMOUNT

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

Option: Change Orders.

The incorporation of *pro forma* contract language permitting Change Orders will be stringently considered and may require oversight authority executive-level approval prior to a solicitation being approved for release.

Propose a Change Order process within a draft document only as appropriate, and provide clear justification as to why it is deemed necessary. **At minimum, draft the solicitation document to include: (1) appropriate RFP text permitting Change Orders within specified parameters; (2) a clear, comprehensive change order process in the *pro forma* contract's scope; and (3) clear, non-conflicting payment provisions in the *pro forma* contract's payment methodology section.**

(1) Add the following to the solicitation document after RFP Section 4.11:

Notwithstanding the above, *pro forma* Contract section REFERENCE provides for limited service "change orders" without a formal Contract Amendment upon the documented mutual agreement by the Parties.

(2) Add the following to the *pro forma* contract's scope:

A.#. The State may, at its sole discretion and with written notice to the Contractor, request changes in the Scope that are necessary but were inadvertently unspecified in this Contract.

- a. Change Order Creation— After receipt of a written request for additional services from the State, the Contractor shall respond to the State, within a maximum of ten (10) business days, with a written proposal for completing the service. Contractor's proposal must specify:
- (1) the effect, if any, of implementing the requested change(s) on all other services required under this Contract;
 - (2) the specific effort involved in completing the change(s);
 - (3) the expected schedule for completing the change(s);
 - (4) the maximum number of person hours required for the change(s); and
 - (5) the maximum cost for the change(s)— this maximum cost shall in no instance

exceed the product of the person hours required multiplied by the appropriate payment rate proposed for such work.

The Contractor shall not perform any additional service until the State has approved the proposal. If approved, the State will sign the proposal, and it shall constitute a Change Order between the Contract Parties pertaining to the specified change(s) and shall be incorporated, hereby, as a part of this Contract.

- b. Change Order Performance— Subsequent to creation of a Change Order, the Contractor shall complete the required services. The State will be the sole judge of the acceptable completion of work and, upon such determination, shall provide the Contractor written approval.
- c. Change Order Remuneration— The State will remunerate the Contractor only for acceptable work. All acceptable work performed pursuant to an approved Change Order, without a formal amendment of this Contract, shall be remunerated in accordance with and further limited by Contract Section C.3.c., PROVIDED THAT, the State shall be liable to the Contractor only for the cost of the actual goods or services provided to complete the necessary work, not to exceed the maximum cost for the change detailed in the Change Order. In no instance shall the State be liable to the Contractor for any amount exceeding the maximum cost specified by the Change Order authorizing the goods or services. Upon State approval of the work, the Contractor shall invoice the State in accordance with the relevant provisions of this Contract.

(3) Add the following to the *pro forma* contract's payment methodology section:

[C.3.]x. The Contractor shall be compensated for changes requested and performed pursuant to Contract Section Reference, without a formal amendment of this Contract based upon the payment rates detailed in the schedule below and as agreed pursuant to Section Reference, PROVIDED THAT compensation to the Contractor for such "change order" work shall not exceed NUMBER NOT TO EXCEED SEVEN PERCENT (Number %) of the sum of milestone payment rates detailed in Section C.3.b., above (which is the total cost for the milestones and associated deliverables set forth in Contract Sections A.3., through A.7.). If, at any point during the Term, the State determines that the cost of necessary "change order" work would exceed the maximum amount, the State may amend this Contract to address the need.

Service Description	Amount (per compensable increment)
	\$ Amount per hour
NOTE: The Contractor shall not be compensated for travel time to the primary location of service provision.	

B. TERM OF CONTRACT

Procurement professionals should obtain the Contractor's signature first before submitting the Contract for state signatures or approvals. Procurement professionals shall obtain all required approvals prior to the Effective Date written in the Contract and submit it for Central Procurement Office approval no less than thirty (30) days before the Effective Date.

If a signed contract is not submitted to the Central Procurement Office at least thirty (30) days prior to the Effective Date, then the CPO may request that the Contract be resubmitted with a new Effective Date or request that the procurement professional provide a written explanation as to why the Contract was submitted less than thirty (30) days before the Effective Date. In no event shall the Contractor deliver goods or perform services prior to the Effective Date.

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

Option: Renewal or Extension Term

To reserve the right to renew or extend the Term, change the section designation under B. to B.1., and add either or both of the following sections.

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

B.#. Term Extension. The State may extend the Term an additional period of time, not to exceed one hundred-eighty (180) days beyond the expiration date of this Contract, under the same terms and conditions, at the State's sole option. In no event, however, shall the maximum Term, including all renewals or extensions, exceed a total of sixty (60) months.

C. PAYMENT TERMS AND CONDITIONS

Revise Payment Terms and Conditions sections only as instructed.

Option: Statewide Contract Estimated Liability.

For statewide contracts with no Maximum Liability, replace C.1. with the following:

C.1. Estimated Liability. The total purchases of any goods or services under the Contract are not known. The State estimates the purchases during the Term shall be DOLLAR AMOUNT (\$NUMBER) ("Estimated 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.

Option: Price Changes Authorized for Equitable Adjustment

C.2. Price Changes. Prices listed in awarded published catalog, price lists or price schedule shall remain firm for Number (#) days ("Firm Price Period").

a. **Price Decreases.** After the Firm Price Period, prices shall be equitably adjusted to reflect a decrease in Contractor's costs.

b. **Price Increases.** After the Firm Price Period, Contractor may request price increases. The request shall: include copies of the new price lists or catalog that reflect a change in

the Contractor's cost; not constitute an increase in profit; and apply to all of the Contractor's customers.

- c. **Approval of Price Changes.** The State may at its sole option: (1) grant the Contractor's request; (2) cancel the Contract and award it to the next apparent best evaluated Respondent; (3) cancel the Contract and reissue the solicitation; or (4) deny the Contractor's request. If approved, any price changes of less than seven percent (7%) will become effective upon the State's approval in writing. Price changes exceeding seven percent (7%) shall require a Contract amendment. The Contractor shall honor all purchase orders dated prior to the approved price change. Upon request from the State, the Contractor shall furnish the approved catalog, price schedule or price list as applicable to the State at no charge.

Option: Contracts That Detail Payment Methodology in an Appendix
Reference any appendix with line items as applicable.

- C.3. **Payment Methodology.** The Contractor shall be compensated based on the payment rates for goods or services contained in Contract Appendix # and as authorized by the State in a total amount as set forth in Section C.1. The Contractor's compensation shall be contingent upon the satisfactory provision of goods or services as set forth in Section A.

The reimbursement of actual costs in a fee-for-service contract is NOT recommended. If the Contract includes payment terms providing for a reimbursement of actual costs (other than travel compensation in accordance with state rates), the payment terms MUST also include provisions that describe EXACTLY how the State will audit Contractor expenditures to ensure that the State pays for actual, reasonable, necessary and allowed costs only and that such costs resulted from competitive procurements.

Payment Methodology

The default payment methodology used in the Template provides for unit, milestone and temporal rate payments.

Requirement: Pro Rata Payments

If temporal payment rates effect payment for service periods greater than an hour (*e.g.*, daily payment rates), add a new subsection (similar to the following example) that defines the payment period and provides for *pro rata* payments for completed periods of service less than the payment rate period.

- c. A "day" shall be defined as a minimum of eight (8) hours of service. If the Contractor provides fewer than eight hours of service in a standard twenty-four hour day, the Contractor shall bill *pro rata* for only those portions of the day in which service was actually delivered. The Contractor shall not bill more than the daily rate even if the Contractor works more than eight hours in a day.

Option: Rate Escalation

Replace paragraph C.3.b. with the following if specific rate escalation during the Term is appropriate.

- b. The Contractor shall be compensated based upon the following payment rates:

- (1) For service performed from Date, through Date, the following rates shall apply:

Service Description	Amount (per compensable increment)
Milestone	\$ Number
Service Unit	\$ Number each
Job Title /Activity	\$ Number per Hour /Day /etc.
Use & Repeat Rows Above as Necessary	

- (2) For service performed from Date, through Date, the Contractor shall be compensated based upon the payment rates in Section Reference (e.g., C.3.b.(1)) above but adjusted by the percentage increase, if any, between the Consumer Price Index for All Urban Consumers (CPI-U): U.S. city average, All Items /Medical Care expenditure category, not seasonally adjusted, index base period: 1982-84=100) published by the United States Department of Labor, Bureau of Labor Statistics in Month & Year (just before prior period end month) and that figure published in the same month, 12-months prior, up to a maximum of Written Number percent (Number%).

Repeat Previous Subsection for Each Subsequent Term

Option: Payment Upon Completion

Replace sections in the Template with the following sections if the Contract specifies one, lump sum payment after completion of all work.

- C.3. Payment Methodology. Upon Contractor's satisfactory provision of goods or services set forth in Section A, the Contractor shall be compensated Written Dollar Amount (\$Number).
- C.4. Travel Compensation. The Contractor shall not be compensated or reimbursed for travel, meals, or lodging.
- C.5. Invoice Requirements. The Contractor shall invoice the State only after completion of all work, described in Section A of this Contract, and present invoices no more often than monthly, with all necessary supporting documentation, to:

State Agency Billing Address

- 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: State Agency & Division Name;
 - (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; and
- (11) Total amount due for delivered goods or services provided (as stipulated in Section C.3. above).

b. The Contractor understands and agrees that an invoice under this Contract 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 Contract 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) begin the timeframe for payment (and any discounts) only when the State is in receipt of the invoice, and the invoice meets the minimum requirements of this Section C.5.

Travel Compensation

Replace the Section with the following as appropriate (and revise the Compensation Firm Section as indicated).

C.4. Travel Compensation. Compensation to the Contractor for travel, meals, or lodging shall be subject to amounts and limitations specified in the current "State Comprehensive Travel Regulations." Insert any additional text restricting travel compensation.

The Contractor must include (in addition to other invoice requirements of this Contract) a complete itemization of requested travel compensation and appropriate documentation and receipts as required by the "State Comprehensive Travel Regulations."

AND replace the second sentence of the Compensation Firm Section with the following:

The payment methodology in Section C.3 and the Travel Compensation provided in Section C.4 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 or indirect costs incurred or to be incurred by the Contractor.

Invoice Requirements

Add clear, non-conflicting, invoice requirements to this Section as appropriate.

Revise the Section to require or permit invoices more or less often than monthly.

Option: Retention of Final Payment

Add the following Section as appropriate. If unsure whether the Section is applicable, consult the CPO legal team.

C.#. Retention of Final Payment. The amount of Written Dollar Amount (\$Number) shall be withheld by the State until Written Number (Number) days after final provision of goods or services under this Contract.

D. STANDARD TERMS AND CONDITIONS

Modification and Amendment

Add the following section if the Contract includes a Renewal Option or Term Extension provision.

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. The State's exercise of a valid Renewal Option or Term Extension does not constitute an amendment so long as there are no other changes to the Contract's terms and conditions.

Option: Revise Termination for Convenience Time Period

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

D.5. Termination for Convenience. The State may terminate this Contract for convenience without cause for any reason. The State's election to terminate this Contract for convenience shall be effective upon the date specified and shall not be deemed a breach of contract by the State. 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 good or service that has not been provided, nor shall the Contractor be relieved of any liability to the State for any damages or claims arising under this Contract.

Option: Bilateral Termination

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

D.5. Termination for Convenience. Either Party may terminate this Contract without cause for any reason. A party's exercise of its right to terminate this Contract for convenience shall not be deemed a breach of contract by either Party. The terminating Party shall give the other Party 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, but in no event shall the State be liable to the Contractor for compensation for any good or service that has not been provided, nor shall the Contractor be relieved of any liability to the State for any damages or claims arising under this Contract.

Termination for Cause

Option: Termination for Cause Providing for Notice of Breach and an Opportunity to Cure

Replace the Section with either of the following as appropriate. The first option requires the State to give notice of breach and provide Contractor an opportunity to cure the condition prior to termination. The second option allows the Contractor as well as the State to declare the other Party in breach while requiring a cure period prior to termination.

D.6. Termination for Cause. If the Contractor fails to properly perform its obligations under this Contract, or if the Contractor materially violates any terms of this Contract ("Breach Condition"), the State shall provide written notice to Contractor specifying the Breach Condition. If within thirty (30) days of notice, the Contractor has not cured the Breach Condition, the State may 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 of this Contract by the Contractor and the State may seek other remedies allowed at law or in equity for breach of this Contract.

D.6. Termination for Cause. If a Party ("Breaching Party") fails to properly perform its obligations under this Contract, or if a Party materially violates any terms of this Contract ("Breach Condition"), the other Party ("Non-breaching Party") may provide written notice to the Breaching Party specifying the Breach Condition. If within thirty (30) days of notice, the Breaching Party has not cured the Breach Condition, the Non-breaching Party may terminate the Contract. In the event the Non-breaching Party is the State, the State may withhold payments in excess of compensation for completed services or provided goods. The Breaching Party shall not be relieved of liability to the Non-breaching Party for damages sustained by virtue of any breach of this Contract, and the Non-breaching Party may seek other remedies allowed at law or in equity for breach of this Contract.

Nondiscrimination

Replace the standard nondiscrimination provision with the following ONLY if contracting with a RELIGIOUS ORGANIZATION.

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

Prevailing Wage Rates

Add the following section if the Contractor will be performing work on a State highway construction project.

D.#. Prevailing Wage Rates. All State contracts for highway construction projects, which are for the purpose of building, rebuilding, locating, relocating or repairing any streets, highways or bridges, require compliance with the prevailing wage laws as provided in Tenn. Code Ann. §§ 12-4-401 – 12-4-415.

Limitation of Liability

If the Contractor's Limitation of Liability will vary from Tenn. Code Ann. § 12-3-701, an approved Limitation of Liability Request is required.

D.18. Limitation of Contractor's Liability. The Contractor's liability for all claims arising under this Contract shall be limited to an amount equal to NUMBER (#), PROVIDED THAT in no event shall this Section limit the liability of the Contractor for intentional torts, criminal acts, fraudulent conduct or acts or omissions that result in personal injuries or death.

Option: Statewide Contracts Estimated Liability

For statewide contracts with no Maximum Liability, replace D.17. and D.18. with the following:

D.17. Limitation of State's Liability. The State shall have no liability except as specifically provided in this Contract. In no event will the State be liable to the Contractor or any other party for any lost revenues, lost profits, loss of business, decrease in the value of any securities or cash position, time, money, goodwill, or any indirect, special, incidental, punitive, exemplary or consequential damages of any nature, whether based on warranty, contract, statute, regulation, tort (including but not limited to negligence), or any other legal theory that may arise under this Contract or otherwise. Notwithstanding anything else herein, the State's total liability under this Contract (including without limitation any exhibits, schedules, amendments or other attachments to the Contract) or otherwise shall under no circumstances exceed the Estimated 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 Estimated 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 intentional torts, criminal acts, fraudulent conduct, or omissions that result in personal injuries or death.

Annual and Final Reports

The following Section is rarely appropriate in a fee-for-service contract. Add the following **ONLY** if the Contractor is a *subrecipient* (refer to Central Procurement Office Policy # 2013-007, Grant and Subrecipient Monitoring).

D.#. Annual and Final Reports. The Contractor shall submit, within three (3) months of the conclusion of each year of the Term, an annual report. For contracts with a term of less than one (1) year, the Contractor shall submit a final report within three (3) months of the conclusion of the Term. For contracts with multiyear terms, the final report will take the place of the annual report for the final year of the term. The Contractor shall submit annual and final reports to the contracting state agency and the Department of Finance and Administration. Electronic copies of annual and final reports may be submitted to the Department of Finance and Administration at faaudit@tn.gov. At minimum, annual and final reports shall include: (a) the Contractor's name; (b) the Contract's Edison identification number, Term, and Maximum Liability; (c) a narrative section that describes the program's goals, outcomes, successes and setbacks, whether the Contractor used benchmarks or indicators to determine progress, and whether any proposed activities were not completed; and (d) other relevant details requested by the contracting state agency. Annual and final report documents to be completed by the Contractor shall appear on the contracting state agency's website or as an attachment to this Contract.

Audit Report

Add the following Section as appropriate. If unsure whether the Section is applicable, consult the CPO legal team.

D.#. Audit Report. When the Contractor has received seven hundred fifty thousand dollars (\$750,000.00) or more in aggregate federal and state funding for all of its programs within the Contractor's fiscal year, the Contractor shall provide audited financial statement to the Tennessee Comptroller of the Treasury. The Contractor may, with the prior approval of the Comptroller of the Treasury, engage a licensed independent public accountant to perform the audit. The audit contract between the Contractor and the licensed independent public accountant shall be on a contract form prescribed by the Tennessee Comptroller of the Treasury. When an audit is required under this section, the audit shall be performed in accordance with U.S. Office of Management and Budget's Uniform Administration Requirements, Audit Requirements, and Cost Principles.

The Contractor shall be responsible for reimbursing the Tennessee Comptroller of the Treasury for any costs of an audit prepared by the Tennessee Comptroller of the Treasury.

The Contractor shall be responsible for payment of fees for an audit prepared by a licensed independent public accountant. Payment of the audit fees for the licensed independent public accountant by the Contractor shall be subject to the provision relating to such fees contained within this Contract. Copies of such audit reports shall be provided to the designated cognizant state agency, the state contracting agency, the Tennessee Comptroller of the Treasury, and the Department of Finance and Administration.

Audit reports shall be made available to the public.

E. SPECIAL TERMS AND CONDITIONS

Add the following sections as appropriate and in the order below. An approved Rule Exception Request is required to add any Section E terms that are not among the options below. Should any of these special terms and conditions conflict with the mandatory terms and conditions in Section D of this Contract, the mandatory terms and conditions shall control.

Insurance

Add the following Section as appropriate. If unsure whether Section is applicable, consult the CPO legal team.

E.#. Insurance. The Contractor shall carry adequate liability and other appropriate forms of insurance.

- a. The Contractor shall maintain, at minimum, the following insurance coverage:
- (1) Workers' Compensation/ Employers' Liability (including all states coverage) with a limit not less than the relevant statutory amount or one million dollars (\$1,000,000) per occurrence for employers' liability whichever is greater.
 - (2) Comprehensive Commercial General Liability (including personal injury & property damage, premises/operations, independent contractor, contractual liability and completed operations/products) with a bodily injury/property damage combined single limit not less than one million dollars (\$1,000,000) per occurrence and two million dollars (\$2,000,000) aggregate.
 - (3) Automobile Coverage (including owned, leased, hired, and non-owned vehicles) with a bodily injury/property damage combined single limit not less than one million dollars (\$1,000,000) per occurrence.
 - (4) Errors and Omission Coverage with a limit of not less than one million dollars (\$1,000,000) per claim and two million dollars (\$2,000,000) aggregate.

- b. The Contractor shall provide a valid Certificate of Insurance naming the State as an additional insured and detailing Coverage Description; Insurance Company & Policy Number; Exceptions and Exclusions; Policy Effective Date; Policy Expiration Date; Limit(s) of Liability; and Name and Address of Insured. Contractor shall obtain from Contractor's insurance carrier(s) and will deliver to the State waivers of the subrogation rights under the respective policies. Failure to provide required evidence of insurance coverage shall be a material breach of this Contract.

Confidentiality of Records

Add the following Section as appropriate. If unsure whether the Section is applicable, consult the CPO legal team.

- E.#. Confidentiality of Records. Strict standards of confidentiality of records and information shall be maintained in accordance with applicable state and federal law. All material and information, regardless of form, medium or method of communication, provided to the Contractor by the State or acquired by the Contractor on behalf of the State 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.

Printing Authorization

Add the following Section as appropriate.

- E.#. Printing Authorization. The Contractor agrees that no publication coming within the jurisdiction of Tenn. Code Ann. §§ 12-7-101, *et. seq.*, shall be printed pursuant to this Contract unless a printing authorization number has been obtained and affixed as required by Tenn. Code Ann. § 12-7-103 (d).

State Ownership of Goods

Add the following Section as appropriate.

- E.#. State Ownership of Goods. The State shall have ownership, right, title, and interest in all goods provided by Contractor under this Contract including full rights to use the goods and transfer title in the goods to any third parties.

Ownership of Software & Work Products

Add the following Section as appropriate. If escrow language is contemplated, contact the CPO legal team for assistance. The terms of any license Contractor grants the State should be included in Section A.

- E.#. Ownership of Software and Work Products.
- a. Definitions.
- (1) "Contractor-Owned Software," shall mean commercially available software the

rights to which are owned by Contractor, including but not limited to commercial "off-the-shelf" software which is not developed using State's money or resources.

- (2) "Custom-Developed Application Software," shall mean customized application software developed by Contractor solely for State.
- (3) "Rights Transfer Application Software," shall mean any pre-existing application software owned by Contractor or a third party, provided to State and to which Contractor will grant and assign, or will facilitate the granting and assignment of, all rights, including the source code, to State.
- (4) "Third-Party Software," shall mean software not owned by the State or the Contractor.
- (5) "Work Product," shall mean all deliverables exclusive of hardware, such as software, software source code, documentation, planning, etc., that are created, designed, developed, or documented by the Contractor exclusively for the State during the course of the project using State's money or resources, including Custom-Developed Application Software. If the deliverables under this Contract include Rights Transfer Application Software, the definition of Work Product shall also include such software. Work Product shall not include Contractor-Owned Software or Third-Party Software.

b. Rights and Title to the Software

- (1) All right, title and interest in and to the Contractor-Owned Software shall at all times remain with Contractor, subject to any license granted under this Contract.
- (2) All right, title and interest in and to the Work Product, and to modifications thereof made by State, including without limitation all copyrights, patents, trade secrets and other intellectual property and other proprietary rights embodied by and arising out of the Work Product, shall belong to State. To the extent such rights do not automatically belong to State, Contractor hereby assigns, transfers, and conveys all right, title and interest in and to the Work Product, including without limitation the copyrights, patents, trade secrets, and other intellectual property rights arising out of or embodied by the Work Product. Contractor and its employees, agents, contractors or representatives shall execute any other documents that State or its counsel deem necessary or desirable to document this transfer or allow State to register its claims and rights to such intellectual property rights or enforce them against third parties.
- (3) All right, title and interest in and to the Third-Party Software shall at all times remain with the third party, subject to any license granted under this Contract.

- c. The Contractor may use for its own purposes the general knowledge, skills, experience, ideas, concepts, know-how, and techniques obtained and used during the course of performing under this Contract. The Contractor may develop for itself, or for others, materials which are similar to or competitive with those that are produced under this Contract.

Reimbursement

Add the following section if the contract payment terms provide for Contractor reimbursement for goods, materials, supplies, equipment, or contracted services.

- E.#. **Reimbursement.** This Contract provides for reimbursement of the cost of goods, materials, supplies, equipment, or contracted services. Any goods, materials, supplies, equipment or contracted services procured by Contractor under this Contract shall be procured on a competitive basis when practicable. The Contractor shall maintain documentation supporting Contractor's request for reimbursement. In each instance where it is determined that use of a competitive procurement method was not practicable, Contractor shall seek approval of the State Agency Head's Title to procure by non-competitive procurement as a condition for reimbursement.

State Furnished Property

Add the following Section as appropriate.

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

Work Papers Subject to Review

Add the following Section only if the contract requires the performance of audit, accounting or financial analysis services.

- E.#. **Work Papers Subject to Review.** The Contractor shall make all audit, accounting, or financial analysis work papers, notes, and other documentation available for review by the Comptroller of the Treasury or his representatives, upon request, during normal working hours either while the analysis is in progress or subsequent to the completion of this Contract.

Prohibited Advertising or Marketing

Add the following Section as appropriate.

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

Public Accountability

Add the following Section as appropriate.

- E.#. **Public Accountability.** If the Contractor is subject to Tenn. Code Ann. §§ 8-4-401, *et seq.*, or if this Contract involves the provision of services to citizens by the Contractor on behalf of the State, the Contractor agrees to establish a system through which recipients of services may present grievances about Contractor's operation of the service program. The Contractor shall also display in a prominent place, located near the passageway through which the public enters in order to receive contract-supported services, a sign at least eleven inches (11") in height and seventeen inches (17") in width stating the following:

NOTICE: THIS AGENCY IS A RECIPIENT OF TAXPAYER FUNDING. IF YOU OBSERVE AN AGENCY DIRECTOR OR EMPLOYEE ENGAGING IN ANY ACTIVITY THAT YOU CONSIDER TO BE ILLEGAL, IMPROPER, OR WASTEFUL, PLEASE CALL THE STATE COMPTROLLER'S TOLL-FREE HOTLINE: 1-800-232-5454

The sign shall be of the form prescribed by the Comptroller of the Treasury. The contracting state agency shall request copies of the sign from the Comptroller of the Treasury and provide signs to contractors.

Environmental Tobacco Smoke

Add the following Section as appropriate.

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

Lobbying

Add the following Section if the contract will be funded in whole or in part by federal funds.

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

- a. No federally appropriated funds have been paid or will be paid, by or on behalf of the Contractor, to any person for influencing or attempting to influence an officer or employee of an agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.
- b. If any funds other than federally appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with any contract, grant, loan, or cooperative agreement, the Contractor shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
- c. The Contractor shall require that the language of this certification be included in the award documents for all sub-awards at all tiers (including subcontracts, sub-grants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

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

Contractor Commitment to Diversity

Add the following Section as appropriate (typically in contracts resulting from a standard RFP).

E.#. Contractor Commitment to Diversity. The Contractor shall comply with and make reasonable business efforts to exceed the commitment to diversity represented by the Contractor's Response to Solicitation Number (Attachment Reference) and resulting in this Contract.

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

Performance Bond

Tenn. Code Ann. § 12-4-201 requires a labor and materials bond for all public works projects in excess of one hundred thousand dollars (\$100,000).

For contracts that do not involve public works projects, a performance bond should be required only when necessary to protect against contract risk to the State. Choose one of the two options. If unsure whether a performance bond is appropriate or which option is best, contact the CPO Risk Manager.

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

Failure to provide to the State the performance bond(s) as required under this Contract may result in this Contract being terminated by the State. The performance bond required under this Contract shall not be reduced during the Term without the written approval of the State.

E. #. Performance Bond. The Contractor shall provide to the State a performance bond guaranteeing full and faithful performance of all undertakings and obligations under this Contract and in the amount equal to Written Dollar Amount (\$Number). The Contractor shall submit the bond no later than the day immediately preceding the Contract start date and in the manner and form prescribed by the State (at Attachment Reference hereto). The bond shall be issued through a company licensed to issue such a bond in the state of Tennessee. The performance bond shall guarantee full and faithful performance of all undertakings and obligations under this Contract for the first, calendar year of the Contract (ending December 31st following the Contract start date) in the amount of Written Dollar Amount (\$Number) and, thereafter, a new performance bond in the amount of Written Dollar Amount (\$Number) covering each subsequent calendar year of the Term. The Contractor shall provide performance bonds to the State prior to the Effective Date and thirty (30) days prior to the beginning of each renewal or extended Term.

Failure to provide to the State the performance bond(s) as required under this Contract may result in this Contract being terminated by the State. The performance bond required under this Contract shall not be reduced during the Term without the written approval of the State.

Intellectual Property

Add the following Section as appropriate. If unsure whether the Section is applicable, consult the CPO legal team.

E.#. Intellectual Property. The Contractor agrees to indemnify and hold harmless the State of Tennessee as well as its officers, agents, and employees from and against any and all claims or suits which may be brought against the State concerning or arising out of any claim of an alleged patent, copyright, trade secret or other intellectual property infringement. In any such claim or action brought against the State, the Contractor shall satisfy and indemnify the State for the amount of any settlement or final judgment, and the Contractor shall be responsible for all legal or other fees or expenses incurred by the State arising from any such claim. The State shall give the Contractor notice of any such claim or suit and full right and opportunity to conduct the Contractor's own defense thereof, 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.

Option: Liquidated Damages

Add the following Section as appropriate. If unsure whether the Section is applicable, consult the CPO legal team.

E.#. Liquidated Damages. If <insert description of event giving rise to liquidated damages> occurs, ("Liquidated Damages Event"), the State may assess damages on Contractor ("Liquidated Damages"). The State shall notify the Contractor of amounts to be assessed as Liquidated Damages. The Parties agree that due to the complicated nature of the Contractor's obligations under this Contract it would be difficult to specifically designate a monetary amount for Contractor's failure to fulfill its obligations regarding the Liquidated Damages Event as these amounts are likely to be uncertain and not easily proven. Contractor has carefully reviewed the Liquidated Damages contained in Attachment Reference and agrees that these amounts represent a reasonable relationship between the amount and what might reasonably be expected in the event of a Liquidated Damages Event, and are a reasonable estimate of the damages that would occur from a Liquidated Damages Event. The Parties agree that the Liquidated Damages represent solely the damages and injuries sustained by the State in losing the benefit of the bargain with Contractor and do not include any injury or damage sustained by a third party. The Contractor agrees that the Liquidated Damages are in addition to any amounts Contractor may owe the State pursuant to the indemnity provision or any other sections of this Contract.

The State is not obligated to assess Liquidated Damages before availing itself of any other remedy. The State may choose to discontinue Liquidated Damages and avail itself of any other remedy available under this Contract or at law or equity.

Partial Takeover

Add the following Section as appropriate. If unsure whether the Section is applicable, consult the CPO legal team.

E.#. Partial Takeover of Contract. The State may, at its convenience and without cause, exercise a partial takeover of any service that the Contractor is obligated to perform under this Contract,

including any service which is the subject of a subcontract between Contractor and a third party (a "Partial Takeover"). A Partial Takeover of this Contract by the State shall not be deemed a breach of contract. The Contractor shall be given at least thirty (30) days prior written notice of a Partial Takeover. The notice shall specify the areas of service the State will assume and the date the State will be assuming. The State's exercise of a Partial Takeover shall not alter the Contractor's other duties and responsibilities under this Contract. The State reserves the right to withhold from the Contractor any amounts the Contractor would have been paid but for the State's exercise of a Partial Takeover. The amounts shall be withheld effective as of the date the State exercises its right to a Partial Takeover. The State's exercise of its right to a Partial Takeover of this Contract shall not entitle the Contractor to any actual, general, special, incidental, consequential, or any other damages irrespective of any description or amount.

Unencumbered Personnel

Add the following Section as appropriate. If unsure whether the Section is applicable, consult the CPO legal team.

E.#. Unencumbered Personnel. The Contractor shall not restrict its employees, agents, subcontractors or principals who perform services for the State under this Contract from performing the same or similar services for the State after the termination of this Contract, either as a State employee, an independent contractor, or an employee, agent, subcontractor or principal of another contractor with the State.

Disclosure of Personally Identifiable Information

Add the following Section as appropriate. If unsure whether the Section is applicable, consult the CPO legal team.

E# Personally Identifiable Information. While performing its obligations under this Contract, Contractor may have access to Personally Identifiable Information held by the State ("PII"). For the purposes of this Contract, "PII" includes "Nonpublic Personal Information" as that term is defined in Title V of the Gramm-Leach-Bliley Act of 1999 or any successor federal statute, and the rules and regulations thereunder, all as may be amended or supplemented from time to time ("GLBA") and personally identifiable information and other data protected under any other applicable laws, rule or regulation of any jurisdiction relating to disclosure or use of personal information ("Privacy Laws"). Contractor agrees it shall not do or omit to do anything which would cause the State to be in breach of any Privacy Laws. Contractor shall, and shall cause its employees, agents and representatives to: (i) keep PII confidential and may use and disclose PII only as necessary to carry out those specific aspects of the purpose for which the PII was disclosed to Contractor and in accordance with this Contract, GLBA and Privacy Laws; and (ii) implement and maintain appropriate technical and organizational measures regarding information security to: (A) ensure the security and confidentiality of PII; (B) protect against any threats or hazards to the security or integrity of PII; and (C) prevent unauthorized access to or use of PII. Contractor shall immediately notify State: (1) of any disclosure or use of any PII by Contractor or any of its employees, agents and representatives in breach of this Contract; and (2) of any disclosure of any PII to Contractor or its employees, agents and representatives where the purpose of such disclosure is not known to Contractor or its employees, agents and representatives. The State reserves the right to review Contractor's policies and procedures used to maintain the security and confidentiality of PII and Contractor shall, and cause its employees, agents and representatives to, comply with all reasonable requests or directions from the State to enable the State to verify and/or procure that Contractor is in full compliance with its obligations under this Contract in relation to PII. Upon termination or expiration of the Contract or at the State's direction at any time in its sole discretion, whichever is earlier, Contractor shall

immediately return to the State any and all PII which it has received under this Contract and shall destroy all records of such PII.

The Contractor shall report to the State any instances of unauthorized access to or potential disclosure of PII in the custody or control of Contractor ("Unauthorized Disclosure") that come to the Contractor's attention. Any such report shall be made by the Contractor within twenty-four (24) hours after the Unauthorized Disclosure has come to the attention of the Contractor. Contractor shall take all necessary measures to halt any further Unauthorized Disclosures. The Contractor, at the sole discretion of the State, shall provide no cost credit monitoring services for individuals whose PII was affected by the Unauthorized Disclosure. The Contractor shall bear the cost of notification to all individuals affected by the Unauthorized Disclosure, including individual letters and public notice. The remedies set forth in this Section are not exclusive and are in addition to any claims or remedies available to this State under this Contract or otherwise available at law.

Federal Funding Accountability and Transparency Act

Add the following Section if the contract will be funded in whole or part by a federal grant or contract of \$25,000 or more and the contract will provide for the expenditure of \$25,000 or more in federal funds.

E.#. 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. Security 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 Data Universal Numbering System (DUNS) number and maintain its DUNS number for the term of this Contract. More information about obtaining a DUNS Number can be found at: <http://fedgov.dnb.com/webform/>

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.

Safeguarding Federal Tax Information

In the event Contractor may have access to Federal Tax Information as defined in IRS Publication 1075, contact your agency attorney and the CPO legal team.

Survival

Add one of the two survival options as appropriate. If unsure whether a survival provision is appropriate, consult the CPO legal team.

Survival – Option 1

E.# Survival. The terms, provisions, representations, and warranties contained in this Contract which by their sense and context are intended to survive the performance and termination of this Contract, shall so survive the completion of performance and termination of this Contract.

Survival – Option 2

E.#	<u>Survival</u> . The terms, provisions, representations, and warranties contained in Sections <list numbered Sections> of this Contract shall survive the completion of performance, termination or expiration of this Contract.
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SIGNATURES

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

By contract signature, the contracting agency head shall assure and affirm that:

1. if there is a Maximum Liability included in the Contract, then there is a balance in the appropriation from which obligations under the Contract are required to be paid that is not already encumbered to pay other obligations;
2. the contracting agency maintains documentation of a fair and impartial contractor selection in full compliance with the approved procurement methodology as indicated by the summary cover sheet; and,
3. the proposed Scope is clear and correct, adequate for all legal and enforcement purposes, and sufficiently detailed to ensure Contractor accountability and results.

**GOVERNMENTAL GRANT (GG)
TEMPLATE**

REDLINE VERSION

GOVERNMENTAL GRANT (GG) TEMPLATE

This template prescribes the format and content for a cost-reimbursement grant contract with a federal or Tennessee local governmental entities and their agents or instrumentalities.

~~Documents of this type must~~ Procurement professionals shall adhere to this template with revisions only as instructions permit. ~~Unless the deviation is immaterial, deviations from~~ Changes to this template shall require an approved Rule Exception Request as set forth in Tenn. Comp. R. & Regs. 0690-03-01-.17 and the *Procurement Procedures Manual of the Central Procurement Office.*

Procurement professionals should complete text fields and follow, replace, or otherwise address red instructional text (e.g., State Agency Name, amount, will/will not) as indicated with appropriate font and color. The standard GG Template begins on the following page. Additional GG instructions, considerations, and options follow the standard GG Template.



GOVERNMENTAL GRANT CONTRACT

(cost reimbursement grant contract with a federal or Tennessee local governmental entity or their agents and instrumentalities)

Begin Date	End Date	Agency Tracking #	Edison ID		
Grantee Legal Entity Name			Edison Vendor ID		
Subrecipient or Contractor <input type="checkbox"/> Subrecipient <input type="checkbox"/> Contractor		CFDA # _____ <u>Grantee's fiscal year end</u>			
Service Caption (one line only)					
Funding _____					
FY	State	Federal	Interdepartmental	Other	TOTAL Grant Contract Amount
TOTAL:					
Grantee Selection Process Summary					
<input type="checkbox"/> Competitive Selection		Describe the competitive selection process used.			
<input type="checkbox"/> Non-competitive Selection		Describe the reasons for a non-competitive grantee selection process.			
Budget Officer Confirmation: There is a balance in the appropriation from which obligations hereunder are required to be paid that is not already encumbered to pay other obligations.				<i>CPO USE - GG</i>	
Speed Chart (optional)		Account Code (optional)			

**GRANT CONTRACT
BETWEEN THE STATE OF TENNESSEE,
STATE AGENCY NAME
AND
GRANTEE NAME**

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

Grantee Edison Vendor ID # Number

A. SCOPE OF SERVICES AND DELIVERABLES:

- A.1. The Grantee shall provide the scope of services and deliverables ("Scope") as required, described, and detailed in this Grant Contract.
- A.#. Specify the Scope that the Grantee must provide under this Grant Contract. Do NOT include payment terms in the Scope.

B. TERM OF CONTRACT:

This Grant Contract shall be effective on DATE ("Effective Date") and extend for a period of number (#) months after the Effective Date ("Term"). The State shall have no obligation to the Grantee for fulfillment of the Scope outside the Term.

C. PAYMENT TERMS AND CONDITIONS:

- C.1. Maximum Liability. In no event shall the maximum liability of the State under this Grant Contract exceed Written Dollar Amount (\$Number) ("Maximum Liability"). The Grant Budget, attached and incorporated as Attachment Reference is the maximum amount due the Grantee under this Grant Contract. The Grant Budget line-items include, but are not limited to, all applicable taxes, fees, overhead, and all other direct and indirect costs incurred or to be incurred by the Grantee.
- C.2. Compensation Firm. The Maximum Liability of the State is not subject to escalation for any reason unless amended. The Grant Budget amounts are firm for the duration of the Grant Contract and are not subject to escalation for any reason unless amended, except as provided in section C.6.
- C.3. Payment Methodology. The Grantee shall be reimbursed for actual, reasonable, and necessary costs based upon the Grant Budget, not to exceed the Maximum Liability established in section C.1. Upon progress toward the completion of the Scope, as described in section A of this Grant Contract, the Grantee shall submit invoices prior to any reimbursement of allowable costs.
- C.4. Travel Compensation. Reimbursement to the Grantee for travel, meals, or lodging shall be subject to amounts and limitations specified in the "State Comprehensive Travel Regulations," as they are amended from time to time, and shall be contingent upon and limited by the Grant Budget funding for said reimbursement.
- C.5. Invoice Requirements. The Grantee shall invoice the State no more often than monthly, with all necessary supporting documentation, and present such to:

State Agency Billing Address

- a. Each invoice shall clearly and accurately detail all of the following required information (calculations must be extended and totaled correctly).

- (1) Invoice/Reference Number (assigned by the Grantee).
- (2) Invoice Date.
- (3) Invoice Period (to which the reimbursement request is applicable).
- (4) Grant Contract Number (assigned by the State).
- (5) Grantor: State Agency & Division Name.
- (6) Grantor Number (assigned by the Grantee to the above-referenced Grantor).
- (7) Grantee Name.
- (8) Grantee Tennessee Edison Registration ID Number Referenced in Preamble of this Grant Contract.
- (9) Grantee Remittance Address.
- (10) Grantee Contact for Invoice Questions (name, phone, or fax).
- (11) Itemization of Reimbursement Requested for the Invoice Period— it must detail, at minimum, all of the following:
 - i. The amount requested by Grant Budget line-item (including any travel expenditure reimbursement requested and for which documentation and receipts, as required by "State Comprehensive Travel Regulations," are attached to the invoice).
 - ii. The amount reimbursed by Grant Budget line-item to date.
 - iii. The total amount reimbursed under the Grant Contract to date.
 - iv. The total amount requested (all line-items) for the Invoice Period.

- b. The Grantee understands and agrees to all of the following.

- (1) An invoice under this Grant Contract shall include only reimbursement requests for actual, reasonable, and necessary expenditures required in the delivery of service described by this Grant Contract and shall be subject to the Grant Budget and any other provision of this Grant Contract relating to allowable reimbursements.
- (2) An invoice under this Grant Contract shall not include any reimbursement request for future expenditures.
- (3) An invoice under this Grant Contract shall initiate the timeframe for reimbursement only when the State is in receipt of the invoice, and the invoice meets the minimum requirements of this section C.5.

C.6. Budget Line-items. Expenditures, reimbursements, and payments under this Grant Contract shall adhere to the Grant Budget. The Grantee may vary from a Grant Budget line-item amount by up to one percent (1%) of the line-item amount, provided that any increase is off-set by an equal reduction of other line-item amount(s) such that the net result of variances shall not increase the total Grant Contract amount detailed by the Grant Budget. Any increase in the Grant Budget, grand total amounts shall require an amendment of this Grant Contract.

C.7. Disbursement Reconciliation and Close Out. The Grantee shall submit any final invoice and a grant disbursement reconciliation report within sixty (60) days of the Grant Contract end date, in form and substance acceptable to the State.

- a. If total disbursements by the State pursuant to this Grant Contract exceed the amounts permitted by the section C, payment terms and conditions of this Grant Contract, the Grantee shall refund the difference to the State. The Grantee shall submit the refund with the final grant disbursement reconciliation report.
- b. The State shall not be responsible for the payment of any invoice submitted to the State after the grant disbursement reconciliation report. The State will not deem any Grantee

costs submitted for reimbursement after the grant disbursement reconciliation report to be allowable and reimbursable by the State, and such invoices will NOT be paid.

- c. The Grantee's failure to provide a final grant disbursement reconciliation report to the State as required by this Grant Contract shall result in the Grantee being deemed ineligible for reimbursement under this Grant Contract, and the Grantee shall be required to refund any and all payments by the state pursuant to this Grant Contract.
 - d. The Grantee must close out its accounting records at the end of the Term in such a way that reimbursable expenditures and revenue collections are NOT carried forward.
- C.8. Indirect Cost. Should the Grantee request reimbursement for indirect costs, the Grantee must submit to the State a copy of the indirect cost rate approved by the cognizant federal agency and/or the State cognizant state agency, as applicable. The Grantee will be reimbursed for indirect costs in accordance with the approved indirect cost rate and amounts and limitations specified in the attached Grant Budget. Once the Grantee makes an election and treats a given cost as direct or indirect, it must apply that treatment consistently and may not change during the Term. Any changes in the approved indirect cost rate must have prior approval of the cognizant federal agency and/or the State cognizant state agency, as applicable. If the indirect cost rate is provisional during the Term, once the rate becomes final, the Grantee agrees to remit any overpayment of funds to the State, and subject to the availability of funds the State agrees to remit any underpayment to the Grantee.
- C.9. Cost Allocation. If any part of the costs to be reimbursed under this Grant Contract are joint costs involving allocation to more than one program or activity, such costs shall be allocated and reported in accordance with the provisions of Department of Finance and Administration Policy Statement 03 or any amendments or revisions made to this policy statement during the ~~contract period~~ Term.
- C.10. Payment of Invoice. A payment by the State shall not prejudice the State's right to object to or question any reimbursement, invoice, or related matter. A payment by the State shall not be construed as acceptance of any part of the work or service provided or as approval of any amount as an allowable cost.
- C.11. Non-allowable Costs. Any amounts payable to the Grantee shall be subject to reduction for amounts included in any invoice or payment that are determined by the State, on the basis of audits or monitoring conducted in accordance with the terms of this Grant Contract, to constitute unallowable costs.
- C.12. State's Right to Set Off. The State reserves the right to set off or deduct from amounts that are or shall become due and payable to the Grantee under this Grant Contract or under any other agreement between the Grantee and the State of Tennessee under which the Grantee has a right to receive payment from the State.
- C.13. Prerequisite Documentation. The Grantee shall not invoice the State under this Grant Contract until the State has received the following documentation properly completed.
- a. The Grantee shall complete, sign, and return to the State an "Authorization Agreement for Automatic Deposit (ACH Credits) Form" provided by the State. The State will pay via ACH Credits.
 - b. The Grantee shall complete, sign, and return to the State a "Substitute W-9 Form" provided by the State. The Grantee taxpayer identification number must agree with the Federal Employer Identification Number or Social Security Number referenced in this Grant Contract or the Grantee's Tennessee Edison Registration.

D. STANDARD TERMS AND CONDITIONS:

- D.1. Required Approvals. The State is not bound by this Grant Contract until it is signed by the parties and approved by appropriate officials in accordance with applicable Tennessee laws and regulations (depending upon the specifics of this Grant Contract, the officials may include, but are not limited to, the Commissioner of Finance and Administration, the Commissioner of Human Resources, and the Comptroller of the Treasury).
- D.2. Modification and Amendment. This Grant Contract may be modified only by a written amendment signed by all parties and approved by the officials who approved the Grant Contract and, depending upon the specifics of the Grant Contract as amended, any additional officials required by Tennessee laws and regulations (the officials may include, but are not limited to, the Commissioner of Finance and Administration, the Commissioner of Human Resources, and the Comptroller of the Treasury).
- D.3. Termination for Convenience. The State may terminate this Grant Contract without cause for any reason. A termination for convenience shall not be a breach of this Grant Contract by the State. The State shall give the Grantee at least thirty (30) days written notice before the effective termination date. The Grantee shall be entitled to compensation for authorized expenditures and satisfactory services completed as of the termination date, but in no event shall the State be liable to the Grantee for compensation for any service that has not been rendered. The final decision as to the amount for which the State is liable shall be determined by the State. The Grantee shall not have any right to any actual general, special, incidental, consequential, or any other damages whatsoever of any description or amount for the State's exercise of its right to terminate for convenience.
- D.4. Termination for Cause. If the Grantee fails to properly perform its obligations under this Grant Contract, or if the Grantee violates any terms of this Grant Contract, the State shall have the right to immediately terminate this Grant Contract and withhold payments in excess of fair compensation for completed services. Notwithstanding the exercise of the State's right to terminate this Grant Contract for cause, the Grantee shall not be relieved of liability to the State for damages sustained by virtue of any breach of this Grant Contract by the Grantee.
- D.5. Subcontracting. The Grantee shall not assign this Grant Contract or enter into a subcontract for any of the services performed under this Grant Contract without obtaining the prior written approval of the State. If such subcontracts are approved by the State, each shall contain, at a minimum, sections of this Grant Contract pertaining to "Conflicts of Interest," "Lobbying," "Nondiscrimination," "Public Accountability," "Public Notice," and "Records" (as identified by the section headings). Notwithstanding any use of approved subcontractors, the Grantee shall remain responsible for all work performed.
- D.6. Conflicts of Interest. The Grantee warrants that no part of the total Grant Contract Amount shall be paid directly or indirectly to an employee or official of the State of Tennessee as wages, compensation, or gifts in exchange for acting as an officer, agent, employee, subcontractor, or consultant to the Grantee in connection with any work contemplated or performed relative to this Grant Contract.
- D.7. Lobbying. The Grantee certifies, to the best of its knowledge and belief, that:
- a. No federally appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.

- b. If any funds other than federally appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this contract, grant, loan, or cooperative agreement, the Grantee shall complete and submit Standard Form-LLL, "Disclosure of Lobbying Activities," in accordance with its instructions.
- c. The Grantee shall require that the language of this certification be included in the award documents for all sub-awards at all tiers (including subcontracts, sub-grants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

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

- D.8. Communications and Contacts. All instructions, notices, consents, demands, or other communications required or contemplated by this Grant 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 as set out below:

The State:

State Contact Name & Title

State Agency Name

Address

Email Address

Telephone # Number

FAX # Number

The Grantee:

Grantee Contact Name & Title

Grantee Name

Address

Email Address

Telephone # Number

FAX # Number

A change to the above contact information requires written notice to the person designated by the other party to receive notice.

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

- D.9. Subject to Funds Availability. This Grant 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 Grant Contract upon written notice to the Grantee. The State's right to terminate this Grant Contract due to lack of funds is not a breach of this Grant Contract by the State. Upon receipt of the written notice, the Grantee shall cease all work associated with the Grant Contract. Should such an event occur, the Grantee shall be entitled to compensation for all satisfactory and authorized services completed as of the termination date. Upon such termination, the Grantee shall have no right to recover from the State any actual.

general, special, incidental, consequential, or any other damages whatsoever of any description or amount.

- D.10. Nondiscrimination. The Grantee 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 Grant Contract or in the employment practices of the Grantee on the grounds of handicap or disability, age, race, color, religion, sex, national origin, or any other classification protected by federal, Tennessee state constitutional, or statutory law. The Grantee shall, upon request, show proof of nondiscrimination and shall post in conspicuous places, available to all employees and applicants, notices of nondiscrimination.
- ~~D.9. Prohibition of Illegal Immigrants.~~ ~~The requirements of Tenn. Code Ann. § 12-3-309, et seq., addressing the use of illegal immigrants in the performance of any contract to supply goods or services to the state of Tennessee, shall be a material provision of this Grant Contract, a breach of which shall be grounds for monetary or other penalties, including termination of this Grant Contract.~~
- ~~a. The Grantee agrees that the Grantee shall not knowingly utilize the services of an illegal immigrant in the performance of this Grant 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 Grant Contract. The Grantee shall reaffirm this attestation, in writing, by submitting to the State a completed and signed copy of the document at Attachment Reference semi-annually during the period of this Grant Contract. Such attestations shall be maintained by the Grantee and made available to state officials upon request.~~
- ~~b. Prior to the use of any subcontractor in the performance of this Grant Contract, and semi-annually thereafter during the period of this Grant Contract, the Grantee 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 Grant 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 Grant Contract. Attestations obtained from subcontractors shall be maintained by the Grantee and made available to state officials upon request.~~
- ~~c. The Grantee shall maintain records for all personnel used in the performance of this Grant Contract. Said records shall be subject to review and random inspection at any reasonable time upon reasonable notice by the State.~~
- ~~d. The Grantee understands and agrees that if the Grantee fails to comply with this Section, the Grantee will be subject to the sanctions of Tenn. Code Ann. § 12-3-309(c) for acts or omissions occurring after the Grant Contract's Effective Date.~~
- ~~e. For purposes of this Grant Contract, "illegal immigrant" shall be defined as any person who is not either a United States citizen, a Lawful Permanent Resident, or a person whose physical presence in the United States is authorized or allowed by the federal Department of Homeland Security and who, under federal immigration laws or regulations, is authorized to be employed in the U.S. or is otherwise authorized to provide services under the Grant Contract.~~
- D.10.11. HIPAA Compliance. The State and the Grantee shall comply with obligations under the Health Insurance Portability and Accountability Act of 1996 (HIPAA), Health Information Technology for Economic and Clinical Health Act (HITECH) 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 Grant Contract.

- a. The Grantee warrants to the State that it is familiar with the requirements of the Privacy Rules and will comply with all applicable HIPAA requirements in the course of this Grant Contract.
- b. The Grantee 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 this Grant Contract so that both parties will be in compliance with the Privacy Rules.
- c. The State and the Grantee 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 the Grantee in compliance with the Privacy Rules. This provision shall not apply if information received by the State under this Grant Contract is NOT "protected health information" as defined by the Privacy Rules, or if the Privacy Rules permit the State to receive such information without entering into a business associate agreement or signing another such document.

D.41.12. Public Accountability. If the Grantee is subject to Tenn. Code Ann. § 8-4-401 *et seq.*, or if this Grant Contract involves the provision of services to citizens by the Grantee on behalf of the State, the Grantee agrees to establish a system through which recipients of services may present grievances about the operation of the service program. The Grantee shall also display in a prominent place, located near the passageway through which the public enters in order to receive Grant supported services, a sign at least eleven inches (11") in height and seventeen inches (17") in width stating:

NOTICE: THIS AGENCY IS A RECIPIENT OF TAXPAYER FUNDING. IF YOU OBSERVE AN AGENCY DIRECTOR OR EMPLOYEE ENGAGING IN ANY ACTIVITY WHICH YOU CONSIDER TO BE ILLEGAL, IMPROPER, OR WASTEFUL, PLEASE CALL THE STATE COMPTROLLER'S TOLL-FREE HOTLINE: 1-800-232-5454.

The sign shall be on the form prescribed by the Comptroller of the Treasury. ~~Copies shall be provided to the Grantee by the~~ The Grantor State Agency shall obtain copies of the sign from the Comptroller of the Treasury, and upon request from the Grantee, provide Grantee with any necessary signs.

D.42.13. Public Notice. All notices, informational pamphlets, press releases, research reports, signs, and similar public notices prepared and released by the Grantee in relation to this Grant Contract shall include the statement, "This project is funded under a grant contract with the State of Tennessee." All notices by the Grantee in relation to this Grant Contract shall be approved by the State.

D.43.14. Licensure. The Grantee, its employees, and any approved subcontractor shall be licensed pursuant to all applicable federal, state, and local laws, ordinances, rules, and regulations and shall upon request provide proof of all licenses.

D.44.15. Records. The Grantee (and any approved subcontractor) shall maintain documentation for all charges under this Grant Contract. The books, records, and documents of the Grantee (and any approved subcontractor), insofar as they relate to work performed or money received under this Grant 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 Grantor State Agency, the Comptroller of the Treasury, or duly appointed representatives.

The records shall be maintained in accordance with Financial Accounting Standards Board (FASB) Accounting Standards Codification, Public Company Accounting Oversight Board (PCAOB) Accounting Standards Codification or Governmental Accounting Standards Board (GASB)

Accounting Standards Codification, as applicable, and any related AICPA Industry Audit and Accounting guides.

In addition, documentation of grant applications, budgets, reports, awards, and expenditures will be maintained in accordance with U.S. Office of Management and Budget's Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards.

The Grantee shall also comply with any recordkeeping and reporting requirements prescribed by the Tennessee Comptroller of the Treasury.

The Grantee shall establish a system of internal controls that utilize the COSO Internal Control - Integrated Framework model as the basic foundation for the internal control system. The Grantee shall incorporate any additional Comptroller of the Treasury directives into its internal control system.

Any other required records or reports which are not contemplated in the above standards shall follow the format designated by the head of the Grantor State Agency, the Central Procurement Office, or the Commissioner of Finance and Administration of the State of Tennessee.

D.45-16. Monitoring. The Grantee's activities conducted and records maintained pursuant to this Grant Contract shall be subject to monitoring and evaluation by the State, the Comptroller of the Treasury, or their duly appointed representatives.

D.46-17. Progress Reports. The Grantee shall submit brief, periodic, progress reports to the State as requested.

D.47-18. Annual and Final Reports. The Grantee shall submit, within three (3) months of the conclusion of each year of the Term, an annual report. For grant contracts with a term of less than one (1) year, the Grantee shall submit a final report within three (3) months of the conclusion of the Term. For grant contracts with multiyear terms, the final report will take the place of the annual report for the final year of the Term. The Grantee shall submit annual and final reports to the head of the Grantor State Agency and the Commissioner Department of Finance and Administration ("F&A"). Send electronic copies of annual and final reports to F&A at faudit@tn.gov. At minimum, annual and final reports shall include: (a) the Grantee's name; (b) the Grant Contract's Edison identification number, Term, and total amount; (c) a narrative section that describes the program's goals, outcomes, successes and setbacks, whether the Grantee used benchmarks or indicators to determine progress, and whether any proposed activities were not completed; and (d) other relevant details requested by the Grantor State Agency. Annual and final report documents to be completed by the Grantee shall appear on the Grantor State Agency's website or as an attachment to the Grant Contract.

D.48-19. Audit Report. When the Grantee has received seven hundred fifty thousand dollars (\$750,000.00) or more in aggregate federal and state funding for all of its programs within the Grantee's fiscal year, the Grantee shall provide audited financial statements to the Tennessee Comptroller of the Treasury. The Grantee may, with the prior approval of the Comptroller of the Treasury, engage a licensed independent public accountant to perform the audit. The audit contract between the Grantee and the licensed independent public accountant shall be on a contract form prescribed by the Tennessee Comptroller of the Treasury. When an audit is required under this Section, the audit shall be performed in accordance with U.S. Office of Management and Budget's Uniform Administration Requirements, Cost Principles, and Audit Requirements for Federal Awards.

The Grantee shall be responsible for reimbursing the Tennessee Comptroller of the Treasury for any costs of an audit prepared by the Tennessee Comptroller of the Treasury.

The Grantee shall be responsible for payment of fees for an audit prepared by a licensed independent public accountant. Payment of the audit fees for the licensed independent public accountant by the Grantee shall be subject to the provision relating to such fees contained within

this Grant Contract. Copies of such audit reports shall be provided to the designated cognizant state agency, the Grantor State Agency, the Tennessee Comptroller of the Treasury, the Central Procurement Office, and the Commissioner of Finance and Administration.

Audit reports shall be made available to the public.

D.19-20. Procurement. If other terms of this Grant Contract allow reimbursement for the cost of goods, materials, supplies, equipment, motor vehicles, or contracted services, procurements by the Grantee shall be competitive where practicable. For any procurement for which reimbursement is paid under this Grant Contract, the Grantee shall document the competitive procurement method. In each instance where it is determined that use of a competitive procurement method is not practicable, supporting documentation shall include a written justification for the decision and for the use of a non-competitive procurement. If the Grantee is a subrecipient, the Grantee shall comply with 2 C.F.R. §§ 200.318—200.326 when procuring property and services under a federal award.

The Grantee shall obtain prior approval from the State before purchasing any equipment or motor vehicles under this Grant Contract.

D.20-21. Strict Performance. Failure by any party to this Grant Contract to insist in any one or more cases upon the strict performance of any of the terms, covenants, conditions, or provisions of this Grant Contract is not a waiver or relinquishment of any term, covenant, condition, or provision. No term or condition of this Grant Contract shall be held to be waived, modified, or deleted except by a written amendment signed by the parties.

D.21-22. Independent Contractor. The parties shall not act as employees, partners, joint venturers, or associates of one another in the performance of this Grant Contract. The parties acknowledge that they are independent contracting entities and that nothing in this Grant Contract shall be construed to create a principal/agent relationship or to allow either to exercise control or direction over the manner or method by which the other transacts its business affairs or provides its usual services. The employees or agents of one party shall not be deemed or construed to be the employees or agents of the other party for any purpose whatsoever.

D.22-23. State Liability. The State shall have no liability except as specifically provided in this Grant Contract.

D.23-24. Force Majeure. The obligations of the parties to this Grant Contract are relieved to the extent the parties' non-performance is beyond the parties' control despite the exercise of due care due to, but not limited to, natural disasters, riots, wars, epidemics, or any other similar cause.

D.24-25. Tennessee Department of Revenue Registration. The Grantee shall be registered with the Tennessee Department of Revenue for the collection of Tennessee sales and use tax. This registration requirement is a material provision of this Grant Contract.

D.26. Charges to Service Recipients Prohibited. The Grantee shall not collect any amount in the form of fees or reimbursements from the recipients of any service provided pursuant to this Grant Contract.

D.27. No Acquisition of Equipment or Motor Vehicles. This Grant Contract does not involve the acquisition and disposition of equipment or motor vehicles acquired with funds provided under this Grant Contract.

D.25-28. State and Federal Compliance. The Grantee shall comply with all applicable state and federal laws and regulations in the performance of this Grant Contract. The U.S. Office of Management and Budget's Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards is available here:

http://www.ecfr.gov/cgi-bin/text-idx?SID=c6b2f053952359ba94470ad3a7c1a975&tpl=/ecfrbrowse/Title02/2cfr200_main_02.tpl

- D.26-29. Governing Law. This Grant Contract shall be governed by and construed in accordance with the laws of the State of Tennessee. The Grantee agrees that it will be subject to the exclusive jurisdiction of the courts of the State of Tennessee in actions that may arise under this Grant Contract. The Grantee acknowledges and agrees that any rights or claims against the State of Tennessee or its employees hereunder, and any remedies arising there from, shall be subject to and limited to those rights and remedies, if any, available under Tenn. Code Ann. §§ 9-8-101 through 9-8-407.
- D.27-30. Completeness. This Grant Contract is complete and contains the entire understanding between the parties relating to the subject matter contained herein, including all the terms and conditions agreed to by the parties. This Grant Contract supersedes any and all prior understandings, representations, negotiations, or agreements between the parties, whether written or oral.
- D.28-31. Severability. If any terms and conditions of this Grant Contract are held to be invalid or unenforceable as a matter of law, the other terms and conditions shall not be affected and shall remain in full force and effect. To this end, the terms and conditions of this Grant Contract are declared severable.
- D.29-32. Headings. Section headings are for reference purposes only and shall not be construed as part of this Grant Contract.

E. SPECIAL TERMS AND CONDITIONS:

- E.1. Conflicting Terms and Conditions. Should any of these special terms and conditions conflict with any other terms and conditions of this Grant Contract, ~~these~~the special terms and conditions shall control. be subordinate to the Grant Contract's other terms and conditions.
- E.2. ~~Communications and Contacts.~~ All instructions, notices, consents, demands, or other communications required or contemplated by this Grant 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 as set out below:
- The State:

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

The Grantee:

Grantee Contact Name & Title
 Grantee Name
 Address
 Email Address
 Telephone # - Number
 FAX # - Number

A change to the above contact information requires written notice to the person designated by the other party to receive notice.

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

- E.3. ~~Subject to Funds Availability. This Grant 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 Grant Contract upon written notice to the Grantee. The State's right to terminate this Grant Contract due to lack of funds is not a breach of this Grant Contract by the State. Upon receipt of the written notice, the Grantee shall cease all work associated with the Grant Contract. Should such an event occur, the Grantee shall be entitled to compensation for all satisfactory and authorized services completed as of the termination date. Upon such termination, the Grantee shall have no right to recover from the State any actual, general, special, incidental, consequential, or any other damages whatsoever of any description or amount.~~
- E.4. ~~Charges to Service Recipients Prohibited. The Grantee shall not collect any amount in the form of fees or reimbursements from the recipients of any service provided pursuant to this Grant Contract.~~
- E.5. ~~No Acquisition of Equipment or Motor Vehicles. This Grant Contract does not involve the acquisition and disposition of equipment or motor vehicles acquired with funds provided under this Grant Contract.~~

Add ALL Necessary or Contingently Required Special Terms & Conditions

IN WITNESS WHEREOF,

GRANTEE LEGAL ENTITY NAME:

GRANTEE SIGNATURE DATE

PRINTED NAME AND TITLE OF GRANTEE SIGNATORY (above)

GRANTOR STATE AGENCY NAME:

NAME & TITLE DATE

ATTACHMENT REFERENCE

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GRANT BUDGET				
Additional Identification Information As Necessary				
The Grant Budget line-item amounts below shall be applicable only to expense incurred during the following				
Applicable Period: BEGIN: DATE		END: DATE		
POLICY 03 Object Line-item Reference	EXPENSE OBJECT LINE-ITEM CATEGORY ¹	GRANT CONTRACT	GRANTEE PARTICIPATION	TOTAL PROJECT
1, 2	Salaries, Benefits & Taxes	0.00	0.00	0.00
4, 15	Professional Fee, Grant & Award ²	0.00	0.00	0.00
5, 6, 7, 8, 9, 10	Supplies, Telephone, Postage & Shipping, Occupancy, Equipment Rental & Maintenance, Printing & Publications	0.00	0.00	0.00
11, 12	Travel, Conferences & Meetings	0.00	0.00	0.00
13	Interest ²	0.00	0.00	0.00
14	Insurance	0.00	0.00	0.00
16	Specific Assistance To Individuals	0.00	0.00	0.00
17	Depreciation ²	0.00	0.00	0.00
18	Other Non-Personnel ²	0.00	0.00	0.00
20	Capital Purchase ²	0.00	0.00	0.00
22	Indirect Cost	0.00	0.00	0.00
24	In-Kind Expense	0.00	0.00	0.00
25	GRAND TOTAL	0.00	0.00	0.00

¹ Each expense object line-item shall be defined by the Department of Finance and Administration Policy 03, *Uniform Reporting Requirements and Cost Allocation Plans for Subrecipients of Federal and State Grant Monies, Appendix A*, (posted on the Internet at: <http://www.state.tn.us/finance/act/documents/policy3.pdf>).

² Applicable detail follows this page if line-item is funded.

ATTACHMENT REFERENCE

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GRANT BUDGET LINE-ITEM DETAIL:

PROFESSIONAL FEE, GRANT & AWARD	AMOUNT
Specific, Descriptive, Detail (Repeat Row As Necessary)	Amount
TOTAL	Amount

INTEREST	AMOUNT
Specific, Descriptive, Detail (Repeat Row As Necessary)	Amount
TOTAL	Amount

DEPRECIATION	AMOUNT
Specific, Descriptive, Detail (Repeat Row As Necessary)	Amount
TOTAL	Amount

OTHER NON-PERSONNEL	AMOUNT
Specific, Descriptive, Detail (Repeat Row As Necessary)	Amount
TOTAL	Amount

CAPITAL PURCHASE	AMOUNT
Specific, Descriptive, Detail (Repeat Row As Necessary)	Amount
TOTAL	Amount

GG INSTRUCTIONS, CONSIDERATIONS, and OPTIONS

The following pages contain additional GG instructions, considerations, and options. Replace or modify the standard GG Template by including the following content as appropriate. Content included with a box around it is intended to be inserted into the standard GG Template as appropriate.

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

COVER SHEET

A summary cover sheet properly completed and in accordance with the template is required. Complete summary cover sheet fields as indicated within the template and the following field directions.

<i>Agency Tracking #</i>	unique tracking number comprised of: 5-digit business unit # + unique, 5-digit # example: 31707-12345
<i>Subrecipient or Contractor</i>	Subrecipient or Contractor in accordance with the OMB's Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards
<i>Funding</i>	Amounts by fiscal year and funding source with row and column totals; contract Maximum Liability MUST equal the sum of the TOTAL Grant Contract Amount column (<i>i.e.</i> , the grand total amount for all fiscal years & all sources of funding)

PREAMBLE

Add additional information only if necessary.

A. SCOPE OF SERVICES

It is the responsibility of the Grantor State Agency to adequately draft a scope of services. Oversight examiners will rely on the authorized signature of the Grantor State Agency on the Grant Contract as certification and assurance that the proposed scope of services is clear and correct, adequate for all legal and enforcement purposes, and sufficiently detailed to ensure Grantee accountability and results.

Do NOT include payment terms in the scope of services.

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

Option: Grant Proposal Attachment

It is NOT acceptable to attach the associated grant proposal to the Grant Contract in lieu of a properly drafted scope of services. Proposals for funding are NOT adequately definitive to stand alone as the description of Grantee duties and responsibilities or performance requirements.

To attach an associated grant proposal to the Grant Contract in support of a properly drafted scope of service, use the following optional section.

- A.#. Incorporation of Additional Documents. Each of the following documents is included as a part of this Grant Contract by reference or attachment. In the event of a discrepancy or ambiguity regarding the Grantee's duties, responsibilities, and performance hereunder, these items shall govern in order of precedence below.
- a. this Grant Contract document with any attachments or exhibits (excluding the items listed at subsections b. and c., below);
 - b. the State grant proposal solicitation as may be amended, if any;

- c. the Grantee's proposal (Attachment Reference) incorporated to elaborate supplementary scope of services specifications.

B. GRANT CONTRACT TERM

Procurement professionals should obtain the Grantee's signature first before submitting the Grant Contract for State signatures or approvals. Procurement professionals shall obtain all required approvals prior to the Effective Date written in the Grant Contract and submit it for Central Procurement Office approval no less than thirty (30) days before the Effective Date.

If a signed Grant Contract is not submitted to the Central Procurement Office at least thirty (30) days prior to the Effective Date, then the CPO may require that the Grant Contract be resubmitted with a new Effective Date or require a Rule Exception Request that explains why the Grant Contract was submitted less than thirty (30) days before the Effective Date. In no event shall the Grantee deliver goods or perform services prior to the Effective Date.

Draft the Grant Contract with an appropriate, definitive, and complete Term. Note that no Grant Contract with a Term exceeding sixty (60) months shall be awarded unless approved by the Central Procurement Officer as being in the best interests of the State. (Tenn. Comp. R. & Regs. 0690-03-01-.14(2)(c)). Comptroller of the Treasury approval will also be required.

Option: Term Renewal or Extension

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

B.2.#. Renewal Options. This Grant Contract may be renewed upon satisfactory completion of the Term. The State reserves the right to execute up to number (#) of renewal options under the same terms and conditions for a period not to exceed twelve (12) months each by the State, at the State's sole option. In no event, however, shall the maximum Term, including all renewals or extensions, exceed a total of sixty (60) months.

B.3.#. Term Extension. It is understood and agreed that the State may extend the Term an additional period of time, not to exceed one hundred-eighty (180) days beyond the expiration date of this Grant Contract, under the same terms and conditions. In no event, however, shall the maximum Term, including all extensions or renewals, exceed a total of sixty (60) months.

C. PAYMENT TERMS AND CONDITIONS

Revise Payment Terms and Conditions sections only as provided in the instructions.

Payment Methodology

Pursuant to Central Procurement Office Policy 2013-007, any Grantor State Agency seeking to effect a partial, periodic, or total advance payment shall ~~obtain the Chief Procurement Officer's approval. The Grantor State Agency must submit a written justification for the type of advance payment sought. All grant contracts with advance payments are subject to review and approval by the Comptroller of the Treasury. All grant contracts with approved advance payments will be reported to the Comptroller of the Treasury. submit a Rule Exception Request to justify the advance payment.~~

Option: Partial Advance Payment

To effect a partial advance payment, replace the section with the following.

C.3. Payment Methodology – Partial Advance Payment. The Grantee shall be reimbursed for actual, reasonable, and necessary costs based upon the Grant Budget, not to exceed the maximum liability established in section C.1. The amount of Written Dollar Amount (\$Number) shall be paid to the Grantee in advance upon approval of this Grant Contract. Upon progress toward the completion of the work, as described in section A of this Grant Contract, the Grantee shall submit invoices for payment prior to any additional reimbursement of allowable costs. The total of all payments to the Grantee shall not exceed the maximum liability of this Grant Contract.

Option: Periodic Advance Payment

To effect periodic advance payments: (1) Replace the ~~section~~Section with the following.

C.3. Payment Methodology – Periodic Advance Payment. The Grantee shall be reimbursed for actual, reasonable, and necessary costs based upon the Grant Budget, not to exceed the maximum liability established in section C.1. The amount of Written Dollar Amount (\$Number) shall be paid to the Grantee in advance upon approval of this Grant Contract and on Date(s) on which the state will make advance payment(s). The total of said payments shall not exceed the maximum liability of this Grant Contract.

- (2) Delete the Invoice Requirements ~~section~~Section (renumbering any subsequent sections accordingly).
- (3) Replace the first paragraph of the Disbursement Reconciliation and Close Out ~~section~~Section with the following (which may be further revised to require more frequent grant disbursement reconciliation reports).

C.#. Disbursement Reconciliation and Close Out. The Grantee shall submit a grant disbursement reconciliation report within sixty (60) days of the Grant Contract end date and in form and substance acceptable to the State (and include, as applicable, documentation and receipts as required by the above-referenced "State Comprehensive Travel Regulations").

Option: Total Advance Payment

To effect a total advance payment: (1) Replace the ~~section~~Section with the following.

C.3. Payment Methodology – Total Advance Payment. The Grantee shall be reimbursed for actual, reasonable, and necessary costs based upon the Grant Budget, not to exceed the maximum liability established in section C.1. Payment to the Grantee shall be a lump sum made in advance upon approval of this Grant Contract.

- (2) Delete the Invoice Requirements ~~section~~Section (renumbering any subsequent sections accordingly).
- (3) Replace the first paragraph of the Disbursement Reconciliation and Close Out ~~section~~Section with the following.

C.#. Disbursement Reconciliation and Close Out. The Grantee shall submit a grant disbursement reconciliation report within sixty (60) days of the Grant Contract end date and in form and substance acceptable to the State (and include, as applicable, documentation and receipts as required by the above-referenced "State Comprehensive Travel Regulations").

Invoice Requirements

Add clear, non-conflicting, invoice requirements to the ~~section~~Section as appropriate (revising the first sentence "no more often than monthly" requirement as necessary).

Delete the ~~section~~Section (and renumber subsequent sections appropriately) if the Payment Methodology ~~section~~Section provides for a total advance payment or periodic advance payments.

Option: Late Invoices Prohibition

Add the following new subsection C.5.b.(4) when appropriate and revise the maximum number of days to thirty (30) or more.

- (4) An invoice under this Grant Contract shall be presented to the State within sixty (60) days after the end of the calendar month in which the subject costs were incurred or services were rendered by the Grantee. An invoice submitted more than sixty (60) days after such date will NOT be paid. The State will not deem such Grantee costs to be allowable and reimbursable by the State unless, at the sole discretion of the State, the failure to submit a timely invoice is warranted. The Grantee shall submit a special, written request for reimbursement with any such untimely invoice. The request must detail the reason the invoice is untimely as well as the Grantee's plan for submitting future invoices as required, and it must be signed by a Grantee agent that would be authorized to sign this Grant Contract.

Budget Line-Items

Revise line-item variance amount as appropriate and up to the maximum of twenty percent (20%).

(Any further change would require an amendment). After the Budget Line-Items provision should NOT be amended after Grant Contract approval.

Option: Grantee May Request Budget Line-Item Variance Not Exceeding Twenty Percent (20%) Per Line Item

Replace the section Section with the following:

- C.6. Grant Budget and Revisions to Grant Budget Line-Items. Expenditures, reimbursements, and payments under this Grant Contract shall adhere to the Grant Budget.
- a. The Grantee may vary from a Grant Budget line-item amount by up to twenty percent (20%) of the line-item amount, provided that any increase is off-set by an equal reduction of other line-item amounts. The net result of any changes to Grant Budget line-item amounts shall not result in funding for a line-item that was previously funded at zero dollars (\$0.00) or increase the total Grant Contract amount detailed by the Grant Budget.
 - b. The Grantee may request in writing Grant Budget line-item revisions exceeding the limitation set forth in section C.6.a., above, giving full details supporting the Grantee's request, provided that such revisions do not result in funding for a line-item that was previously funded at zero dollars (\$0.00) and do not increase the total Grant Contract amount. Grant Budget line-item revisions may not be made without prior, written approval of the State in which the terms of the approved revisions are detailed. Any approval of a revision to a Grant Budget line-item greater than twenty percent (20%) shall be superseded by a subsequent revision of the Grant Budget by Grant Contract amendment.
 - c. Any increase in the total Grant Contract amount shall require a Grant Contract Amendment.

Option: NO Line-Item Variance

Replace the section Section with the following alternative as appropriate.

C.6. Budget Line-Items. Expenditures, reimbursements, and payments under this Grant Contract shall adhere to the Grant Budget. Reimbursable expenditures may NOT vary from the Grant Budget line-item amounts.

Disbursement Reconciliation and Close Out

To require additional grant disbursement reconciliation reports, revise the first paragraph of the standard C.7. Disbursement Reconciliation and Close Out language, as necessary.

Option: Grantee Match Requirement

If the Grant Budget details a grantee match requirement (in which the maximum total amount reimbursable by the state under the grant will be reduced by the amount of any Grantee failure to meet the match requirement) replace the Disbursement Reconciliation and Close Out section ~~Section~~ Section with the following (revising the maximum number of days to no less than thirty (30)).

C.7. Disbursement Reconciliation and Close Out. The Grantee shall submit any final invoice and a grant disbursement reconciliation report within sixty (60) days of the Grant Contract end date and in form and substance acceptable to the State.

- a. The Grant Budget specifies a Grantee Match Requirement and the final grant disbursement reconciliation report shall detail all Grantee expenditures recorded to meet this requirement.
 - i. No Grantee expenditure shall be recorded and reported toward meeting a Grantee Match Requirement of more than one grant contract with the State.
 - ii. The final grant disbursement reconciliation report shall specifically detail the exact amount of any Grantee failure to meet a Match Requirement, and the maximum total amount reimbursable by the State pursuant to this Grant Contract, as detailed by the Grant Budget column "Grant Contract," shall be reduced by the amount that the Grantee failed to contribute to the Total Project as budgeted.
- b. If total disbursements by the State pursuant to this Grant Contract exceed the amounts permitted by the section C, payment terms and conditions of this Grant Contract (including any adjustment pursuant to subsection a.ii. above), the Grantee shall refund the difference to the State. The Grantee shall submit the refund with the final grant disbursement reconciliation report.
- c. The State shall not be responsible for the payment of any invoice submitted to the state after the grant disbursement reconciliation report. The State will not deem any Grantee costs submitted for reimbursement after the grant disbursement reconciliation report to be allowable and reimbursable by the State, and such invoices will NOT be paid.
- d. The Grantee's failure to provide a final grant disbursement reconciliation report to the state as required shall result in the Grantee being deemed ineligible for reimbursement under this Grant Contract, and the Grantee shall be required to refund any and all payments by the state pursuant to this Grant Contract.
- e. The Grantee must close out its accounting records at the end of the contract period in such a way that reimbursable expenditures and revenue collections are NOT carried forward.

D. STANDARD TERMS AND CONDITIONS

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

Termination for Convenience

Increase the thirty (30) days written notice requirement as appropriate.

Option: Bilateral Termination

Replace the ~~section~~Section with the following bilateral termination provision only if the contracting agency can justify that the bilateral provision is in the best interest of the state.

D. #. Bilateral Termination for Convenience. The Grant Contract may be terminated by either party by giving written notice to the other, at least thirty (30) days before the effective date of termination. Should either party exercise this provision, the Grantee shall be entitled to reimbursement for authorized expenditures and satisfactory services completed as of the termination date, but in no event shall the State be liable to the Grantee for any service which has not been rendered. The final decision as to the amount, for which the State is liable, shall be determined by the State. In the event of disagreement, the Grantee may file a claim with the Tennessee Claims Commission to seek redress.

HIPAA Compliance

A Grantee must execute a Business Associate Agreement (BAA) if: (a) the Grantee is a "covered entity" as defined in the Privacy Rules; (b) the Grantee engages another person or entity outside of its workforce to perform activities on its behalf; and (c) those activities involve access to protected health information.

If the Grantor State Agency obtains an approved Rule Exception Request to delete the HIPAA Compliance ~~term~~provision, add the following ~~section~~Section:

D.10. ~~This space is intentionally left blank.~~ 11. **Reserved.**

Independent Contractor

Replace this provision with the following if the grantee is an entity of the federal government.

D.22. Independent Contractor. The parties, in the performance of this Grant Contract, shall be acting in their individual capacities and not as employees, partners, joint venturers, or associates of one another. The parties acknowledge that they are independent contracting entities and that nothing in this Grant Contract shall be construed to create a principal/agent relationship or to allow either to exercise control or direction over the manner or method by which the other transacts its business affairs or provides its usual services. The employees or agents of one party shall not be deemed or construed to be the employees or agents of the other party for any purpose whatsoever.

The Grantee, being a federal agency, shall be considered to be self-insured for the purposes of public liability. The Grantee is also subject to the Federal Torts Claims Act.

Charges to Service Recipients Prohibited

If the Grantor State Agency obtains an approved Rule Exception to delete the Charges to Service Recipients Prohibited provision, add the following Section:

D.26. **Reserved.**

No Acquisition of Equipment or Motor Vehicles

Delete the Section if the Grant Budget provides funding for the acquisition of equipment or motor vehicles and insert the State Interest In Equipment or Motor Vehicles Section below.

State Interest in Equipment or Motor Vehicles

Attorney General staff have advised that the Grantor State Agency must file a UCC-1 or perfect in accordance with applicable law to the extent that it wishes to secure a security agreement and priority.

Add the following Section if the Grant Contract provides for the reimbursement of expenditures for equipment or motor vehicles (revising the second to last sentence of the first paragraph as necessary to establish a lower dollar threshold for the definition of "equipment or motor vehicles").

D.27. State Interest in Equipment or Motor Vehicles. The Grantee shall take legal title to all equipment or motor vehicles purchased totally or in part with funds provided under this Grant Contract, subject to the State's equitable interest therein, to the extent of its *pro rata* share, based upon the State's contribution to the purchase price. The term "equipment" shall include any article of nonexpendable, tangible, personal property having a useful life of more than one year and an acquisition cost which equals or exceeds five thousand dollars (\$5,000.00). The term "motor vehicle" shall include any article of tangible personal property that is required to be registered under the "Tennessee Motor Vehicle Title and Registration Law", Tenn. Code Ann. Title 55, Chapters 1-6.

As authorized by the Tennessee Uniform Commercial Code, Tenn. Code Ann. Title 47, Chapter 9 and the "Tennessee Motor Vehicle Title and Registration Law," Tenn. Code Ann. Title 55, Chapters 1-6, the parties intend this Grant Contract to create a security interest in favor of the State in the equipment or motor vehicles acquired by the Grantee pursuant to the provisions of this Grant Contract. A further intent of this Grant Contract is to acknowledge and continue the security interest in favor of the State in the equipment or motor vehicles acquired by the Grantee pursuant to the provisions of this program's prior year Grant Contracts between the State and the Grantee.

The Grantee grants the State a security interest in all equipment or motor vehicles acquired in whole or in part by the Grantee under this Grant Contract. This Grant Contract is intended to be a security agreement pursuant to the Uniform Commercial Code for any of the equipment or motor vehicles herein specified which, under applicable law, may be subject to a security interest pursuant to the Uniform Commercial Code, and the Grantee hereby grants the State a security interest in said equipment or motor vehicles. The Grantee agrees that the State may file this Grant Contract or a reproduction thereof, in any appropriate office, as a financing statement for any of the equipment or motor vehicles herein specified. Any reproduction of this or any other security agreement or financing statement shall be sufficient as a financing statement. In addition, the Grantee agrees to execute and deliver to the State, upon the State's request, any financing statements, as well as extensions, renewals, and amendments thereof, and reproduction of this Grant Contract in such form as the State may require to perfect a security interest with respect to said equipment or motor vehicles. The Grantee shall pay all costs of filing such financing statements and any extensions, renewals, amendments and releases thereof, and shall pay all reasonable costs and expenses of any record searches for financing statements the State may reasonably require. Without the prior written consent of the State, the Grantee shall not create or suffer to be created pursuant to the Uniform Commercial Code any other security interest in said equipment or motor vehicles, including replacements and additions thereto. Upon the Grantee's breach of any covenant or agreement contained in this Grant Contract, including the covenants to pay when due all sums secured by this Grant Contract, the State shall have the remedies of a secured party under the Uniform Commercial Code and, at the State's option, may also invoke the remedies herein provided.

The Grantee agrees to be responsible for the accountability, maintenance, management, and inventory of all property purchased totally or in part with funds provided under this Grant Contract. The Grantee shall maintain a perpetual inventory system for all equipment or motor vehicles purchased with funds provided under this Grant Contract and shall submit an inventory control report which must include, at a minimum, the following:

- a. Description of the equipment or motor vehicles;
- b. Manufacturer's serial number or other identification number, when applicable;
- c. Consecutive inventory equipment or motor vehicles tag identification;
- d. Acquisition date, cost, and check number;
- e. Fund source, State Grant number, or other applicable fund source identification;
- f. Percentage of state funds applied to the purchase;
- g. Location within the Grantee's operations where the equipment or motor vehicles is used;
- h. Condition of the property or disposition date if Grantee no longer has possession;
- i. Depreciation method, if applicable; and
- j. Monthly depreciation amount, if applicable.

The Grantee shall tag equipment or motor vehicles with an identification number which is cross referenced to the equipment or motor vehicle item on the inventory control report. The Grantee shall inventory equipment or motor vehicles annually. The Grantee must compare the results of the inventory with the inventory control report and investigate any differences. The Grantee must then adjust the inventory control report to reflect the results of the physical inventory and subsequent investigation.

The Grantee shall submit its inventory control report of all equipment or motor vehicles purchased with funding through this Grant Contract within thirty (30) days of its end date and in form and substance acceptable to the State. This inventory control report shall contain, at a minimum, the requirements specified above for inventory control. The Grantee shall notify the State, in writing, of any equipment or motor vehicle loss describing the reasons for the loss. Should the equipment or motor vehicles be destroyed, lost, or stolen, the Grantee shall be responsible to the State for the *pro rata* amount of the residual value at the time of loss based upon the State's original contribution to the purchase price.

Upon termination of the Grant Contract, where a further contractual relationship is not entered into, or at another time during the term of the Grant Contract, the Grantee shall request written approval from the State for any proposed disposition of equipment or motor vehicles purchased with Grant funds. All equipment or motor vehicles shall be disposed of in such a manner as the parties may agree from among alternatives approved by the Tennessee Department of General Services as appropriate and in accordance with any applicable federal laws or regulations.

Prevailing Wage Rates

Add the following ~~section~~Section if the ~~grant contract~~Grant Contract involves a construction project for the purpose of building, repairing, locating, relocating or repairing any Tennessee streets, highways, or bridges ~~or expenditure of funds for building or construction work.~~

D.#. Prevailing Wage Rates. All State contracts for highway construction projects that are for the purpose of building, rebuilding, locating, relocating or repairing any streets, highways or bridges require compliance with the prevailing wage laws provided in Tenn. Code Ann. §§ 12-4-401-415.

Audit Report

Add the following text just prior to the final sentence of the section as appropriate.

The State may reimburse the Grantee for a reasonably proportionate share of the costs of audits required by and performed in accordance with the "Single Audit Act Amendments of 1996" as provided in 2 C.F.R. § 200.425.

Procurement

Replace the ~~section~~Section with the following if contracting agency head approval is required for non-competitive procurements under the grant.

D.#. **Procurement.** If other terms of this Grant Contract allow reimbursement for the cost of goods, materials, supplies, equipment, motor vehicles, or contracted services, such procurement(s) shall be made on a competitive basis, including the use of competitive bidding procedures, where practicable. The Grantee shall maintain documentation for the basis of each procurement for which reimbursement is paid pursuant to this Grant Contract. In each instance where it is determined that use of a competitive procurement method is not practicable, supporting documentation shall include a written justification, approved by the State Agency Head Title, for such decision and non-competitive procurement. Further and notwithstanding the foregoing, if such reimbursement is to be made with funds derived wholly or partially from federal sources, the determination of cost shall be governed by and reimbursement shall be subject to the Grantee's compliance with applicable federal procurement requirements.

The Grantee shall obtain prior approval from the State before purchasing any equipment or motor vehicles under this Grant Contract.

Independent Contractor

Replace this provision with the following if the grantee is an entity of the federal government.

D.21. ~~Independent Contractor. The parties, in the performance of this Grant Contract, shall be acting in their individual capacities and not as employees, partners, joint venturers, or associates of one another. The parties acknowledge that they are independent contracting entities and that nothing in this Grant Contract shall be construed to create a principal/agent relationship or to allow either to exercise control or direction over the manner or method by which the other transacts its business affairs or provides its usual services. The employees or agents of one party shall not be deemed or construed to be the employees or agents of the other party for any purpose whatsoever.~~

~~The Grantee, being a federal agency, shall be considered to be self-insured for the purposes of public liability. The Grantee is also subject to the Federal Torts Claims Act.~~

E. SPECIAL TERMS AND CONDITIONS

Add the following sections as indicated appropriate and in the order below. ~~Additional terms and conditions may be added as appropriate. Seek legal advice as required. An approved Rule Exception Request is required to add any Section E provisions that are not among the options below. Should any of these special terms and conditions conflict with any other terms and condition of this Grant Contract, the special terms and conditions shall be subordinate to the Grant Contract's other terms and conditions.~~

~~**Charges To Service Recipients Prohibited**~~

~~Delete the section as appropriate.~~

~~**No Acquisition of Equipment or Motor Vehicles**~~

~~Delete the section if the Grant Budget provides funding for the acquisition of equipment or motor vehicles (if so, the contingently required State Interest In Equipment or Motor Vehicles section below will likely be applicable).~~

~~**State Interest In Equipment or Motor Vehicles**~~

~~Attorney General staff have advised that the Grantor State Agency must file a UCC-1 or perfect in accordance with applicable law to the extent that it wishes to secure a security agreement and priority.~~

~~**Debarment and Suspension**~~

~~Add the following section if the contract provides for the reimbursement of expenditures for equipment or motor vehicles (revising the second to last sentence of the first paragraph as necessary to establish a~~

lower-dollar-threshold-for-the-definition-of-"equipment-or-motor-vehicles").Section if required by federal law and the Grant Contract involves federal funds.

E.#. ~~State Interest in Equipment~~—The Grantee shall take legal title to all equipment or motor vehicles purchased totally or in part with funds provided under this Grant Contract, subject to the State's equitable interest therein, to the extent of its *pro rata* share, based upon the State's contribution to the purchase price. The term "equipment" shall include any article of nonexpendable, tangible, personal property having a useful life of more than one year and an acquisition cost which equals or exceeds five thousand dollars (\$5,000.00). The term "motor vehicle" shall include any article of tangible personal property that is required to be registered under the "Tennessee Motor Vehicle Title and Registration Law", Tenn. Code Ann. Title 55, Chapters 1-6.

As authorized by the Tennessee Uniform Commercial Code, Tenn. Code Ann. Title 47, Chapter 9 and the "Tennessee Motor Vehicle Title and Registration Law," Tenn. Code Ann. Title 55, Chapters 1-6, the parties intend this Grant Contract to create a security interest in favor of the State in the equipment or motor vehicles acquired by the Grantee pursuant to the provisions of this Grant Contract. A further intent of this Grant Contract is to acknowledge and continue the security interest in favor of the State in the equipment or motor vehicles acquired by the Grantee pursuant to the provisions of this program's prior year Grant Contracts between the State and the Grantee.

The Grantee grants the State a security interest in all equipment or motor vehicles acquired in whole or in part by the Grantee under this Grant Contract. This Grant Contract is intended to be a security agreement pursuant to the Uniform Commercial Code for any of the equipment or motor vehicles herein specified which, under applicable law, may be subject to a security interest pursuant to the Uniform Commercial Code, and the Grantee hereby grants the State a security interest in said equipment or motor vehicles. The Grantee agrees that the State may file this Grant Contract or a reproduction thereof, in any appropriate office, as a financing statement for any of the equipment or motor vehicles herein specified. Any reproduction of this or any other security agreement or financing statement shall be sufficient as a financing statement. In addition, the Grantee agrees to execute and deliver to the State, upon the State's request, any financing statements, as well as extensions, renewals, and amendments thereof, and reproduction of this Grant Contract in such form as the State may require to perfect a security interest with respect to said equipment or motor vehicles. The Grantee shall pay all costs of filing such financing statements and any extensions, renewals, amendments and releases thereof, and shall pay all reasonable costs and expenses of any record searches for financing statements the State may reasonably require. Without the prior written consent of the State, the Grantee shall not create or suffer to be created pursuant to the Uniform Commercial Code any other security interest in said equipment or motor vehicles, including replacements and additions thereto. Upon the Grantee's breach of any covenant or agreement contained in this Grant Contract, including the covenants to pay when due all sums secured by this Grant Contract, the State shall have the remedies of a secured party under the Uniform Commercial Code and, at the State's option, may also invoke the remedies herein provided.

The Grantee agrees to be responsible for the accountability, maintenance, management, and inventory of all property purchased totally or in part with funds provided under this Grant Contract. The Grantee shall maintain a perpetual inventory system for all equipment or motor vehicles purchased with funds provided under this Grant Contract and shall submit an inventory control report which must include, at a minimum, the following:

- a. Description of the equipment or motor vehicles;
- b. Manufacturer's serial number or other identification number, when applicable;
- c. Consecutive inventory equipment or motor vehicles tag identification;
- d. Acquisition date, cost, and check number;
- e. Fund source, State Grant number, or other applicable fund source identification;
- f. Percentage of state funds applied to the purchase;
- g. Location within the Grantee's operations where the equipment or motor vehicles is used;
- h. Condition of the property or disposition date if Grantee no longer has possession;
- i. Depreciation method, if applicable; and
- j. Monthly depreciation amount, if applicable.

The Grantee shall tag equipment or motor vehicles with an identification number which is cross referenced to the equipment or motor vehicle item on the inventory control report. The Grantee shall inventory equipment or motor vehicles annually. The Grantee must compare the results of the inventory with the inventory control report and investigate any differences. The Grantee must then adjust the inventory control report to reflect the results of the physical inventory and subsequent investigation.

The Grantee shall submit its inventory control report of all equipment or motor vehicles purchased with funding through this Grant Contract within thirty (30) days of its end date and in form and substance acceptable to the State. This inventory control report shall contain, at a minimum, the requirements specified above for inventory control. The Grantee shall notify the State, in writing, of any equipment or motor vehicle loss describing the reasons for the loss. Should the equipment or motor vehicles be destroyed, lost, or stolen, the Grantee shall be responsible to the State for the *pro rata* amount of the residual value at the time of loss based upon the State's original contribution to the purchase price.

Upon termination of the Grant Contract, where a further contractual relationship is not entered into, or at another time during the term of the Grant Contract, the Grantee shall request written approval from the State for any proposed disposition of equipment or motor vehicles purchased with Grant funds. All equipment or motor vehicles shall be disposed of in such a manner as the parties may agree from among alternatives approved by the Tennessee Department of General Services as appropriate and in accordance with any applicable federal laws or regulations.

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

The Grantee 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 or disqualified.

As appropriate, add the following section or an alternative recommended by the Grantor State Agency legal counsel Add the following Section as appropriate. If unsure whether the Section is applicable, consult the CPO legal team.

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

~~The Grantee's obligations under this Section do not apply to information: (1) in the public domain; (2) entering the public domain other than as a result of disclosure by the Grantee; (3) previously possessed by the Grantee without written obligations to the State to protect it; (4) acquired by the Grantee without written restrictions against disclosure from a third party which, to the Grantee's knowledge, is free to disclose the information; (5) independently developed by the Grantee without the use of the State's information; or, (6) disclosed by the State to others without restrictions against disclosure. Nothing in this paragraph~~ under state or federal law shall be regarded as "Confidential Information." Nothing in this Section shall permit Grantee to disclose any information that is confidential under state or federal law Confidential Information, regardless of whether it has been disclosed or made available to the Grantee due to intentional or negligent actions or inactions of agents of the State or third parties. ~~It is expressly understood and agreed the~~ Confidential Information shall not be disclosed except as required or permitted under state or federal law. Grantee 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 Grant Contract.

Printing Authorization

Add the following section Section as appropriate.

E.#. Printing Authorization. The Grantee agrees that no publication coming within the jurisdiction of Tenn. Code Ann. § 12-7-101, *et seq.*, shall be printed pursuant to this Grant Contract unless a printing authorization number has been obtained and affixed as required by Tenn. Code Ann. § 12-7-103(d).

State Furnished Property

Add the following section Section as appropriate.

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

Work Papers Subject To Review

Add the following section Section only if the Grant Contract requires the performance of audit, accounting or financial analysis services.

E.#. Work Papers Subject to Review. The Grantee shall make all audit, accounting, or financial analysis work papers, notes, and other documents available for review by the Comptroller of the Treasury or his representatives, upon request, during normal working hours either while the analysis is in

progress or subsequent to the completion of this Grant Contract.

Environmental Tobacco Smoke

Add the following section Section as appropriate.

- E.#. Environmental Tobacco Smoke. Pursuant to the provisions of the federal "Pro-Children Act of 1994" and the "Children's Act for Clean Indoor Air of 1995," Tenn. Code Ann. §§ 39-17-1601 through 1606, the Grantee shall prohibit smoking of tobacco products within any indoor premises in which services are provided to individuals under the age of eighteen (18) years. The Grantee shall post "no smoking" signs in appropriate, permanent sites within such premises. This prohibition shall be applicable during all hours, not just the hours in which children are present. Violators of the prohibition may be subject to civil penalties and fines. This prohibition shall apply to and be made part of any subcontract related to this Grant Contract.

Drug Free Workplace

Add the following section Section as appropriate.

- E.#. The Grantee shall provide a drug-free workplace pursuant to the "Drug-Free Workplace Act," 41 U.S.C. §§ 8101 through 8106, and its accompanying regulations.

Grantee Participation

Add the following section Section as appropriate.

- E.#. Grantee Participation. Grantee Participation amounts detailed in the Grant Budget are intended as a goal for the total project, and the amount of actual Grantee Participation expenditures will not impact the maximum amounts reimbursable to the Grantee as detailed by the Grant Budget column, "Grant Contract."

Disclosure of Personally Identifiable Information

Add the following section Section as appropriate.

- E.#. Disclosure of Personally Identifiable Information. The Grantee shall report to the State any instances of unauthorized disclosure of personally identifiable information that come to the attention of the Grantee. Any such report shall be made by the Grantee within twenty-four (24) hours after the instance has come to the attention of the Grantee. The Grantee, at the sole discretion of the State, shall provide no cost credit monitoring services for individuals that are deemed to be part of a potential disclosure. The Grantee shall bear the cost of notification to individuals having personally identifiable information involved in a potential disclosure event, including individual letters or public notice. The remedies set forth in this section are not exclusive and are in addition to any claims or remedies available to the State under this Grant Contract or otherwise available at law.

Federal Funding Accountability and Transparency Act

Add the following section Section if the Grant Contract will be funded in whole or part by a federal grant or federal contract of \$25,000 or more (excluding federal grants subject to section 1512 of the American Recovery and Reinvestment Act of 2009)), and the federal grant will provide for the expenditure of \$25,000 or more in federal funds.

- E.#. Federal Funding Accountability and Transparency Act (FFATA).

This Grant Contract requires the Grantee to provide supplies or services that are funded in whole or in part by federal funds that are subject to FFATA. The Grantee is responsible for ensuring that all applicable FFATA requirements, including but not limited to those below, are met and that the

Grantee provides information to the State as required.

The Grantee shall comply with the following:

a. Reporting of Total Compensation of the Grantee's Executives.

- (1) The Grantee shall report the names and total compensation of each of its five most highly compensated executives for the Grantee's preceding completed fiscal year, if in the Grantee's preceding fiscal year it received:
- i. 80 percent or more of the Grantee'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 sub awards); 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 sub awards); 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 § 6104 of the Internal Revenue Code of 1986. (To determine if the public has access to the compensation information, see the U.S. Security 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 Grantee's preceding fiscal year and includes the following (for more information see 17 CFR § 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 Grantee must report executive total compensation described above to the State by the end of the month during which this Grant Contract is established.
- c. If this Grant Contract is amended to extend its term, the Grantee must submit an executive total compensation report to the State by the end of the month in which the amendment to this Grant Contract becomes effective.
- d. The Grantee will obtain a Data Universal Numbering System (DUNS) number and maintain

its DUNS number for the term of this Grant Contract. More information about obtaining a DUNS Number can be found at: <http://fedgov.dnb.com/webform/>.

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

Transfer of Grantee's Obligations

Add the following section ~~Section~~ Section as appropriate.

E.#. Transfer of Grantee's Obligations.

The Grantee shall not transfer or restructure its operations related to this Grant Contract without the prior written approval of the State. The Grantee shall immediately notify the State in writing of a proposed transfer or restructuring of its operations related to this Grant Contract. The State reserves the right to request additional information or impose additional terms and conditions before approving a proposed transfer or restructuring.

SIGNATURES

By signature, the Grantor State Agency head or authorized designee shall assure and affirm that:

- there is a balance in the appropriation from which obligations under the Grant Contract are required to be paid that is not already encumbered to pay other obligations;
- the Grantor State Agency maintains documentation of a fair and impartial Grantee selection in full compliance with the approved procurement methodology as indicated by the summary cover sheet; and
- the proposed scope of services is clear and correct, adequate for all legal and enforcement purposes, and sufficiently detailed to ensure Grantee accountability and results.

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

FEDERAL AWARD IDENTIFICATION

If the Grantee is a subrecipient and the Grant Contract involves any federal funds, complete the Federal Award Identification worksheet. Reference the worksheet in Section A and include it as the first attachment to the Grant Contract. If some federal award identification information is not available, provide as much information as is available. If any of the data elements in the worksheet change, complete another worksheet containing the updated information. Send the updated worksheet to the Grantee and upload a copy into Edison.

GRANT BUDGET

ALL Grant Budgets must be type-written and mathematically correct in every aspect.

Each Grant Budget page must be numbered consecutively.

The Grant Contract column total must equal the Maximum Liability of the Grant Contract.

Line-Item funding must comply with the Expense Object Line-Item Category Definitions provided by F&A Accounts Policy 03, Appendix A (which is posted on the Internet at: <http://www.state.tn.us/finance/act/documents/policy3.pdf>). Budget line-items and the definitions above have legal, audit, and federal funding implications, and contracting agency staff are solely responsible for whether appropriate line-items are funded in accordance with the scope of service and the definitions set out by F&A Accounts Policy 03.

In line-items that WILL BE FUNDED, replace the zeros ("0.00") associated with each line-item as appropriate. If a line-item will NOT be funded, leave the associated, "0.00" dollar amount.

Grant Budget Line-Item Detail.

These instructions do NOT preclude adding Line-Item Detail (and associated requirements) for other line-items, provided that the additional detail is clear and mathematically correct.

Delete the entire Grant Budget Line-Item Detail page if NONE of the following five line-items, which requires detail, is funded: Professional Fee, Grant & Award; Interest; Depreciation; Other Non-Personnel; Capital Purchase.

For each line-item requiring detail that is funded by the Grant Budget, complete the appropriate line-item detail box.

Delete the line-item detail box for each of the line-items that is NOT funded.

Do NOT draft the Grant Budget Line-Item Detail to describe a line-item only as "contracts," "grant contracts," "contracted services," "other," "professional services," or "miscellaneous."

Multiple Grant Budget Periods.

If a multi-year grant contract is to be written such that funding is restricted on an annual basis, such must be reflected in the Grant Budget by means of repeated use of the grant budget pages, numbered consecutively, detailing funding information for consecutive periods of applicability. If a grant budget attachment does include multiple pages respectively applicable to consecutive periods of applicability, a "roll-up" budget page totaling all lines for all periods is NOT required. However, the sum of all totals must agree with the Grant Contract Maximum Liability and any other relevant provisions of this Grant Contract.

Option: Grant Budget Grantee Match Requirement

Replace the Grant Budget table with the table on the following page if a grantee match is required.

Federal Award Identification Worksheet

Subrecipient's name (must match registered name in DUNS)	
Subrecipient's DUNS number	
Federal Award Identification Number (FAIN)	
Federal award date	
CFDA number and name	
Grant contract's begin date	
Grant contract's end date	
Amount of federal funds obligated by this grant contract	
Total amount of federal funds obligated to the subrecipient	
Total amount of the federal award to the pass-through entity (Grantor State Agency)	
Name of federal awarding agency	
Name and contact information for the federal awarding official	
Is the federal award for research and development?	
Indirect cost rate for the federal award (See 2 C.F.R. §200.331 for information on type of indirect cost rate)	

GRANT BUDGET

Additional Identification Information As Necessary

The Grant Budget line-item amounts below shall be applicable only to expenses incurred during the following applicable period:

BEGIN: DATE

END: DATE

POLICY 03 Object Line-Item Reference	EXPENSE OBJECT LINE-ITEM CATEGORY ¹	GRANT CONTRACT	GRANTEE MATCH	TOTAL PROJECT
1. 2	Salaries, Benefits & Taxes	0.00	0.00	0.00
4, 15	Professional Fee, Grant & Award ²	0.00	0.00	0.00
5, 6, 7, 8, 9, 10	Supplies, Telephone, Postage & Shipping, Occupancy, Equipment Rental & Maintenance, Printing & Publications	0.00	0.00	0.00
11, 12	Travel, Conferences & Meetings	0.00	0.00	0.00
13	Interest ²	0.00	0.00	0.00
14	Insurance	0.00	0.00	0.00
16	Specific Assistance To Individuals	0.00	0.00	0.00
17	Depreciation ²	0.00	0.00	0.00
18	Other Non-Personnel ²	0.00	0.00	0.00
20	Capital Purchase ²	0.00	0.00	0.00
22	Indirect Cost	0.00	0.00	0.00
24	In-Kind Expense	0.00	0.00	0.00
n/a	Grantee Match Requirement (for any amount of the required Grantee Match that is <u>not</u> specifically delineated by budget line-items above)	0.00	0.00	0.00
25	GRAND TOTAL	0.00	0.00	0.00

¹ Each expense object line-item shall be defined by the Department of Finance and Administration Policy 03, *Uniform Reporting Requirements and Cost Allocation Plans for Subrecipients of Federal and State Grant Monies, Appendix A.* (posted on the Internet at: <http://www.state.tn.us/finance/act/documents/policy3.pdf>).

² Applicable detail follows this page if line-item is funded.

³ A Grantee Match Requirement is detailed by this Grant Budget, and the maximum total amount reimbursable by the State pursuant to this Grant Contract, as detailed by the "Grant Contract" column above, shall be reduced by the amount of any Grantee failure to meet the Match Requirement.

ATTACHMENT REFERENCE

ATTESTATION RE PERSONNEL USED IN GRANT CONTRACT

PERFORMANCE

SUBJECT GRANT CONTRACT NUMBER:	
GRANTEE LEGAL ENTITY NAME:	
FEDERAL EMPLOYER IDENTIFICATION NUMBER: (or Social Security Number)	

The Grantee, identified above, agrees that the Grantee shall not knowingly utilize the services of an illegal immigrant in the performance of this Grant 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 Grant Contract.

GRANTEE SIGNATURE

NOTICE: This attestation **MUST** be signed by an individual empowered to contractually bind the Grantee. If the signatory is not the head of the Grantee's organization, or his or her designee, this document shall attach evidence showing the individual's authority to contractually bind the Grantee.

PRINTED NAME AND TITLE OF SIGNATORY

DATE

Document comparison by Workshare Compare on Wednesday, October 15, 2014
4:07:15 PM

Input:	
Document 1 ID	file://C:\Users\BA10408\Desktop\GGTemplate_approved8.21.14.docx
Description	GGTemplate_approved8.21.14
Document 2 ID	file://M:\C.Mallea's documents\Policy subcommittee\Ready for AC review\10.27.14 Meeting\GG Template_clean.docx
Description	GG Template_clean
Rendering set	Standard

Legend:	
<u>Insertion</u>	
Deletion	
Moved from	
<u>Moved to</u>	
Style change	
Format change	
Moved deletion	
Inserted cell	
Deleted cell	
Moved cell	
Split/Merged cell	
Padding cell	

Statistics:	
	Count
Insertions	111
Deletions	113
Moved from	16
Moved to	16
Style change	0
Format changed	0
Total changes	256

**GOVERNMENTAL GRANT (GG)
TEMPLATE**

CLEAN VERSION

GOVERNMENTAL GRANT (GG) TEMPLATE

This template prescribes the format and content for a cost-reimbursement grant contract with a federal or Tennessee local governmental entities and their agents or instrumentalities.

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

Procurement professionals should complete text fields and follow, replace, or otherwise address red instructional text (e.g., State Agency Name, amount, will/will not) as indicated with appropriate font and color. The standard GG Template begins on the following page. Additional GG instructions, considerations, and options follow the standard GG Template.



GOVERNMENTAL GRANT CONTRACT

(cost reimbursement grant contract with a federal or Tennessee local governmental entity or their agents and instrumentalities)

Begin Date	End Date	Agency Tracking #	Edison ID		
Grantee Legal Entity Name			Edison Vendor ID		
Subrecipient or Contractor <input type="checkbox"/> Subrecipient <input type="checkbox"/> Contractor		CFDA #			
		Grantee's fiscal year end			
Service Caption (one line only)					
Funding —					
FY	State	Federal	Interdepartmental	Other	TOTAL Grant Contract Amount
TOTAL:					
Grantee Selection Process Summary					
<input type="checkbox"/> Competitive Selection		Describe the competitive selection process used.			
<input type="checkbox"/> Non-competitive Selection		Describe the reasons for a non-competitive grantee selection process.			
Budget Officer Confirmation: There is a balance in the appropriation from which obligations hereunder are required to be paid that is not already encumbered to pay other obligations.			CPO USE - GG		
Speed Chart (optional)		Account Code (optional)			

**GRANT CONTRACT
BETWEEN THE STATE OF TENNESSEE,
STATE AGENCY NAME
AND
GRANTEE NAME**

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

Grantee Edison Vendor ID # Number

A. SCOPE OF SERVICES AND DELIVERABLES:

- A.1. The Grantee shall provide the scope of services and deliverables ("Scope") as required, described, and detailed in this Grant Contract.
- A.#. Specify the Scope that the Grantee must provide under this Grant Contract. Do NOT include payment terms in the Scope.

B. TERM OF CONTRACT:

This Grant Contract shall be effective on DATE ("Effective Date") and extend for a period of number (#) months after the Effective Date ("Term"). The State shall have no obligation to the Grantee for fulfillment of the Scope outside the Term.

C. PAYMENT TERMS AND CONDITIONS:

- C.1. Maximum Liability. In no event shall the maximum liability of the State under this Grant Contract exceed Written Dollar Amount (\$Number) ("Maximum Liability"). The Grant Budget, attached and incorporated as Attachment Reference is the maximum amount due the Grantee under this Grant Contract. The Grant Budget line-items include, but are not limited to, all applicable taxes, fees, overhead, and all other direct and indirect costs incurred or to be incurred by the Grantee.
- C.2. Compensation Firm. The Maximum Liability of the State is not subject to escalation for any reason unless amended. The Grant Budget amounts are firm for the duration of the Grant Contract and are not subject to escalation for any reason unless amended, except as provided in section C.6.
- C.3. Payment Methodology. The Grantee shall be reimbursed for actual, reasonable, and necessary costs based upon the Grant Budget, not to exceed the Maximum Liability established in section C.1. Upon progress toward the completion of the Scope, as described in section A of this Grant Contract, the Grantee shall submit invoices prior to any reimbursement of allowable costs.
- C.4. Travel Compensation. Reimbursement to the Grantee for travel, meals, or lodging shall be subject to amounts and limitations specified in the "State Comprehensive Travel Regulations," as they are amended from time to time, and shall be contingent upon and limited by the Grant Budget funding for said reimbursement.
- C.5. Invoice Requirements. The Grantee shall invoice the State no more often than monthly, with all necessary supporting documentation, and present such to:

State Agency Billing Address

a. Each invoice shall clearly and accurately detail all of the following required information (calculations must be extended and totaled correctly).

- (1) Invoice/Reference Number (assigned by the Grantee).
- (2) Invoice Date.
- (3) Invoice Period (to which the reimbursement request is applicable).
- (4) Grant Contract Number (assigned by the State).
- (5) Grantor: State Agency & Division Name.
- (6) Grantor Number (assigned by the Grantee to the above-referenced Grantor).
- (7) Grantee Name.
- (8) Grantee Tennessee Edison Registration ID Number Referenced in Preamble of this Grant Contract.
- (9) Grantee Remittance Address.
- (10) Grantee Contact for Invoice Questions (name, phone, or fax).
- (11) Itemization of Reimbursement Requested for the Invoice Period— it must detail, at minimum, all of the following:
 - i. The amount requested by Grant Budget line-item (including any travel expenditure reimbursement requested and for which documentation and receipts, as required by "State Comprehensive Travel Regulations," are attached to the invoice).
 - ii. The amount reimbursed by Grant Budget line-item to date.
 - iii. The total amount reimbursed under the Grant Contract to date.
 - iv. The total amount requested (all line-items) for the Invoice Period.

b. The Grantee understands and agrees to all of the following.

- (1) An invoice under this Grant Contract shall include only reimbursement requests for actual, reasonable, and necessary expenditures required in the delivery of service described by this Grant Contract and shall be subject to the Grant Budget and any other provision of this Grant Contract relating to allowable reimbursements.
- (2) An invoice under this Grant Contract shall not include any reimbursement request for future expenditures.
- (3) An invoice under this Grant Contract shall initiate the timeframe for reimbursement only when the State is in receipt of the invoice, and the invoice meets the minimum requirements of this section C.5.

C.6. Budget Line-items. Expenditures, reimbursements, and payments under this Grant Contract shall adhere to the Grant Budget. The Grantee may vary from a Grant Budget line-item amount by up to one percent (1%) of the line-item amount, provided that any increase is off-set by an equal reduction of other line-item amount(s) such that the net result of variances shall not increase the total Grant Contract amount detailed by the Grant Budget. Any increase in the Grant Budget, grand total amounts shall require an amendment of this Grant Contract.

C.7. Disbursement Reconciliation and Close Out. The Grantee shall submit any final invoice and a grant disbursement reconciliation report within sixty (60) days of the Grant Contract end date, in form and substance acceptable to the State.

- a. If total disbursements by the State pursuant to this Grant Contract exceed the amounts permitted by the section C, payment terms and conditions of this Grant Contract, the Grantee shall refund the difference to the State. The Grantee shall submit the refund with the final grant disbursement reconciliation report.
- b. The State shall not be responsible for the payment of any invoice submitted to the State after the grant disbursement reconciliation report. The State will not deem any Grantee

costs submitted for reimbursement after the grant disbursement reconciliation report to be allowable and reimbursable by the State, and such invoices will NOT be paid.

- c. The Grantee's failure to provide a final grant disbursement reconciliation report to the State as required by this Grant Contract shall result in the Grantee being deemed ineligible for reimbursement under this Grant Contract, and the Grantee shall be required to refund any and all payments by the state pursuant to this Grant Contract.
 - d. The Grantee must close out its accounting records at the end of the Term in such a way that reimbursable expenditures and revenue collections are NOT carried forward.
- C.8. Indirect Cost. Should the Grantee request reimbursement for indirect costs, the Grantee must submit to the State a copy of the indirect cost rate approved by the cognizant federal agency or the cognizant state agency, as applicable. The Grantee will be reimbursed for indirect costs in accordance with the approved indirect cost rate and amounts and limitations specified in the attached Grant Budget. Once the Grantee makes an election and treats a given cost as direct or indirect, it must apply that treatment consistently and may not change during the Term. Any changes in the approved indirect cost rate must have prior approval of the cognizant federal agency or the cognizant state agency, as applicable. If the indirect cost rate is provisional during the Term, once the rate becomes final, the Grantee agrees to remit any overpayment of funds to the State, and subject to the availability of funds the State agrees to remit any underpayment to the Grantee.
- C.9. Cost Allocation. If any part of the costs to be reimbursed under this Grant Contract are joint costs involving allocation to more than one program or activity, such costs shall be allocated and reported in accordance with the provisions of Department of Finance and Administration Policy Statement 03 or any amendments or revisions made to this policy statement during the Term.
- C.10. Payment of Invoice. A payment by the State shall not prejudice the State's right to object to or question any reimbursement, invoice, or related matter. A payment by the State shall not be construed as acceptance of any part of the work or service provided or as approval of any amount as an allowable cost.
- C.11. Non-allowable Costs. Any amounts payable to the Grantee shall be subject to reduction for amounts included in any invoice or payment that are determined by the State, on the basis of audits or monitoring conducted in accordance with the terms of this Grant Contract, to constitute unallowable costs.
- C.12. State's Right to Set Off. The State reserves the right to set off or deduct from amounts that are or shall become due and payable to the Grantee under this Grant Contract or under any other agreement between the Grantee and the State of Tennessee under which the Grantee has a right to receive payment from the State.
- C.13. Prerequisite Documentation. The Grantee shall not invoice the State under this Grant Contract until the State has received the following documentation properly completed.
- a. The Grantee shall complete, sign, and return to the State an "Authorization Agreement for Automatic Deposit (ACH Credits) Form" provided by the State. The State will pay via ACH Credits.
 - b. The Grantee shall complete, sign, and return to the State a "Substitute W-9 Form" provided by the State. The Grantee taxpayer identification number must agree with the Federal Employer Identification Number or Social Security Number referenced in this Grant Contract or the Grantee's Tennessee Edison Registration.

D. STANDARD TERMS AND CONDITIONS:

- D.1. Required Approvals. The State is not bound by this Grant Contract until it is signed by the parties and approved by appropriate officials in accordance with applicable Tennessee laws and regulations (depending upon the specifics of this Grant Contract, the officials may include, but are not limited to, the Commissioner of Finance and Administration, the Commissioner of Human Resources, and the Comptroller of the Treasury).
- D.2. Modification and Amendment. This Grant Contract may be modified only by a written amendment signed by all parties and approved by the officials who approved the Grant Contract and, depending upon the specifics of the Grant Contract as amended, any additional officials required by Tennessee laws and regulations (the officials may include, but are not limited to, the Commissioner of Finance and Administration, the Commissioner of Human Resources, and the Comptroller of the Treasury).
- D.3. Termination for Convenience. The State may terminate this Grant Contract without cause for any reason. A termination for convenience shall not be a breach of this Grant Contract by the State. The State shall give the Grantee at least thirty (30) days written notice before the effective termination date. The Grantee shall be entitled to compensation for authorized expenditures and satisfactory services completed as of the termination date, but in no event shall the State be liable to the Grantee for compensation for any service that has not been rendered. The final decision as to the amount for which the State is liable shall be determined by the State. The Grantee shall not have any right to any actual general, special, incidental, consequential, or any other damages whatsoever of any description or amount for the State's exercise of its right to terminate for convenience.
- D.4. Termination for Cause. If the Grantee fails to properly perform its obligations under this Grant Contract, or if the Grantee violates any terms of this Grant Contract, the State shall have the right to immediately terminate this Grant Contract and withhold payments in excess of fair compensation for completed services. Notwithstanding the exercise of the State's right to terminate this Grant Contract for cause, the Grantee shall not be relieved of liability to the State for damages sustained by virtue of any breach of this Grant Contract by the Grantee.
- D.5. Subcontracting. The Grantee shall not assign this Grant Contract or enter into a subcontract for any of the services performed under this Grant Contract without obtaining the prior written approval of the State. If such subcontracts are approved by the State, each shall contain, at a minimum, sections of this Grant Contract pertaining to "Conflicts of Interest," "Lobbying," "Nondiscrimination," "Public Accountability," "Public Notice," and "Records" (as identified by the section headings). Notwithstanding any use of approved subcontractors, the Grantee shall remain responsible for all work performed.
- D.6. Conflicts of Interest. The Grantee warrants that no part of the total Grant Contract Amount shall be paid directly or indirectly to an employee or official of the State of Tennessee as wages, compensation, or gifts in exchange for acting as an officer, agent, employee, subcontractor, or consultant to the Grantee in connection with any work contemplated or performed relative to this Grant Contract.
- D.7. Lobbying. The Grantee certifies, to the best of its knowledge and belief, that:
- a. No federally appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.

- b. If any funds other than federally appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this contract, grant, loan, or cooperative agreement, the Grantee shall complete and submit Standard Form-LLL, "Disclosure of Lobbying Activities," in accordance with its instructions.
- c. The Grantee shall require that the language of this certification be included in the award documents for all sub-awards at all tiers (including subcontracts, sub-grants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

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

- D.8. Communications and Contacts. All instructions, notices, consents, demands, or other communications required or contemplated by this Grant 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 as set out below:

The State:

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

The Grantee:

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

A change to the above contact information requires written notice to the person designated by the other party to receive notice.

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

- D.9. Subject to Funds Availability. This Grant 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 Grant Contract upon written notice to the Grantee. The State's right to terminate this Grant Contract due to lack of funds is not a breach of this Grant Contract by the State. Upon receipt of the written notice, the Grantee shall cease all work associated with the Grant Contract. Should such an event occur, the Grantee shall be entitled to compensation for all satisfactory and authorized services completed as of the termination date. Upon such termination, the Grantee shall have no right to recover from the

State any actual, general, special, incidental, consequential, or any other damages whatsoever of any description or amount.

- D.10. Nondiscrimination. The Grantee 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 Grant Contract or in the employment practices of the Grantee on the grounds of handicap or disability, age, race, color, religion, sex, national origin, or any other classification protected by federal, Tennessee state constitutional, or statutory law. The Grantee shall, upon request, show proof of nondiscrimination and shall post in conspicuous places, available to all employees and applicants, notices of nondiscrimination.
- D.11. HIPAA Compliance. The State and the Grantee shall comply with obligations under the Health Insurance Portability and Accountability Act of 1996 (HIPAA), Health Information Technology for Economic and Clinical Health Act (HITECH) 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 Grant Contract.
- a. The Grantee warrants to the State that it is familiar with the requirements of the Privacy Rules and will comply with all applicable HIPAA requirements in the course of this Grant Contract.
 - b. The Grantee 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 this Grant Contract so that both parties will be in compliance with the Privacy Rules.
 - c. The State and the Grantee 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 the Grantee in compliance with the Privacy Rules. This provision shall not apply if information received by the State under this Grant Contract is NOT "protected health information" as defined by the Privacy Rules, or if the Privacy Rules permit the State to receive such information without entering into a business associate agreement or signing another such document.
- D.12. Public Accountability. If the Grantee is subject to Tenn. Code Ann. § 8-4-401 *et seq.*, or if this Grant Contract involves the provision of services to citizens by the Grantee on behalf of the State, the Grantee agrees to establish a system through which recipients of services may present grievances about the operation of the service program. The Grantee shall also display in a prominent place, located near the passageway through which the public enters in order to receive Grant supported services, a sign at least eleven inches (11") in height and seventeen inches (17") in width stating:
- NOTICE: THIS AGENCY IS A RECIPIENT OF TAXPAYER FUNDING. IF YOU OBSERVE AN AGENCY DIRECTOR OR EMPLOYEE ENGAGING IN ANY ACTIVITY WHICH YOU CONSIDER TO BE ILLEGAL, IMPROPER, OR WASTEFUL, PLEASE CALL THE STATE COMPTROLLER'S TOLL-FREE HOTLINE: 1-800-232-5454.
- The sign shall be on the form prescribed by the Comptroller of the Treasury. The Grantor State Agency shall obtain copies of the sign from the Comptroller of the Treasury, and upon request from the Grantee, provide Grantee with any necessary signs.
- D.13. Public Notice. All notices, informational pamphlets, press releases, research reports, signs, and similar public notices prepared and released by the Grantee in relation to this Grant Contract shall

include the statement, "This project is funded under a grant contract with the State of Tennessee." All notices by the Grantee in relation to this Grant Contract shall be approved by the State.

- D.14. Licensure. The Grantee, its employees, and any approved subcontractor shall be licensed pursuant to all applicable federal, state, and local laws, ordinances, rules, and regulations and shall upon request provide proof of all licenses.
- D.15. Records. The Grantee (and any approved subcontractor) shall maintain documentation for all charges under this Grant Contract. The books, records, and documents of the Grantee (and any approved subcontractor), insofar as they relate to work performed or money received under this Grant 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 Grantor State Agency, the Comptroller of the Treasury, or duly appointed representatives.
- The records shall be maintained in accordance with Financial Accounting Standards Board (FASB) Accounting Standards Codification, Public Company Accounting Oversight Board (PCAOB) Accounting Standards Codification or Governmental Accounting Standards Board (GASB) Accounting Standards Codification, as applicable, and any related AICPA Industry Audit and Accounting guides.
- In addition, documentation of grant applications, budgets, reports, awards, and expenditures will be maintained in accordance with U.S. Office of Management and Budget's Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards.
- The Grantee shall also comply with any recordkeeping and reporting requirements prescribed by the Tennessee Comptroller of the Treasury.
- The Grantee shall establish a system of internal controls that utilize the COSO Internal Control - Integrated Framework model as the basic foundation for the internal control system. The Grantee shall incorporate any additional Comptroller of the Treasury directives into its internal control system.
- Any other required records or reports which are not contemplated in the above standards shall follow the format designated by the head of the Grantor State Agency, the Central Procurement Office, or the Commissioner of Finance and Administration of the State of Tennessee.
- D.16. Monitoring. The Grantee's activities conducted and records maintained pursuant to this Grant Contract shall be subject to monitoring and evaluation by the State, the Comptroller of the Treasury, or their duly appointed representatives.
- D.17. Progress Reports. The Grantee shall submit brief, periodic, progress reports to the State as requested.
- D.18. Annual and Final Reports. The Grantee shall submit, within three (3) months of the conclusion of each year of the Term, an annual report. For grant contracts with a term of less than one (1) year, the Grantee shall submit a final report within three (3) months of the conclusion of the Term. For grant contracts with multiyear terms, the final report will take the place of the annual report for the final year of the Term. The Grantee shall submit annual and final reports to the Grantor State Agency and the Department of Finance and Administration ("F&A"). Send electronic copies of annual and final reports to F&A at faaudit@tn.gov. At minimum, annual and final reports shall include: (a) the Grantee's name; (b) the Grant Contract's Edison identification number, Term, and total amount; (c) a narrative section that describes the program's goals, outcomes, successes and setbacks, whether the Grantee used benchmarks or indicators to determine progress, and whether any proposed activities were not completed; and (d) other relevant details requested by the Grantor State Agency. Annual and final report documents to be completed by the Grantee shall appear on the Grantor State Agency's website or as an attachment to the Grant Contract.

- D.19. Audit Report. When the Grantee has received seven hundred fifty thousand dollars (\$750,000.00) or more in aggregate federal and state funding for all of its programs within the Grantee's fiscal year, the Grantee shall provide audited financial statements to the Tennessee Comptroller of the Treasury. The Grantee may, with the prior approval of the Comptroller of the Treasury, engage a licensed independent public accountant to perform the audit. The audit contract between the Grantee and the licensed independent public accountant shall be on a contract form prescribed by the Tennessee Comptroller of the Treasury. When an audit is required under this Section, the audit shall be performed in accordance with U.S. Office of Management and Budget's Uniform Administration Requirements, Cost Principles, and Audit Requirements for Federal Awards.

The Grantee shall be responsible for reimbursing the Tennessee Comptroller of the Treasury for any costs of an audit prepared by the Tennessee Comptroller of the Treasury.

The Grantee shall be responsible for payment of fees for an audit prepared by a licensed independent public accountant. Payment of the audit fees for the licensed independent public accountant by the Grantee shall be subject to the provision relating to such fees contained within this Grant Contract. Copies of such audit reports shall be provided to the designated cognizant state agency, the Grantor State Agency, the Tennessee Comptroller of the Treasury, the Central Procurement Office, and the Commissioner of Finance and Administration.

Audit reports shall be made available to the public.

- D.20. Procurement. If other terms of this Grant Contract allow reimbursement for the cost of goods, materials, supplies, equipment, motor vehicles, or contracted services, procurements by the Grantee shall be competitive where practicable. For any procurement for which reimbursement is paid under this Grant Contract, the Grantee shall document the competitive procurement method. In each instance where it is determined that use of a competitive procurement method is not practicable, supporting documentation shall include a written justification for the decision and for the use of a non-competitive procurement. If the Grantee is a subrecipient, the Grantee shall comply with 2 C.F.R. §§ 200.318—200.326 when procuring property and services under a federal award.

The Grantee shall obtain prior approval from the State before purchasing any equipment or motor vehicles under this Grant Contract.

- D.21. Strict Performance. Failure by any party to this Grant Contract to insist in any one or more cases upon the strict performance of any of the terms, covenants, conditions, or provisions of this Grant Contract is not a waiver or relinquishment of any term, covenant, condition, or provision. No term or condition of this Grant Contract shall be held to be waived, modified, or deleted except by a written amendment signed by the parties.

- D.22. Independent Contractor. The parties shall not act as employees, partners, joint venturers, or associates of one another in the performance of this Grant Contract. The parties acknowledge that they are independent contracting entities and that nothing in this Grant Contract shall be construed to create a principal/agent relationship or to allow either to exercise control or direction over the manner or method by which the other transacts its business affairs or provides its usual services. The employees or agents of one party shall not be deemed or construed to be the employees or agents of the other party for any purpose whatsoever.

- D.23. State Liability. The State shall have no liability except as specifically provided in this Grant Contract.

- D.24. Force Majeure. The obligations of the parties to this Grant Contract are relieved to the extent the parties' non-performance is beyond the parties' control despite the exercise of due care due to, but not limited to, natural disasters, riots, wars, epidemics, or any other similar cause.

- D.25. Tennessee Department of Revenue Registration. The Grantee shall be registered with the Tennessee Department of Revenue for the collection of Tennessee sales and use tax. This registration requirement is a material provision of this Grant Contract.
- D.26. Charges to Service Recipients Prohibited. The Grantee shall not collect any amount in the form of fees or reimbursements from the recipients of any service provided pursuant to this Grant Contract.
- D.27. No Acquisition of Equipment or Motor Vehicles. This Grant Contract does not involve the acquisition and disposition of equipment or motor vehicles acquired with funds provided under this Grant Contract.
- D.28. State and Federal Compliance. The Grantee shall comply with all applicable state and federal laws and regulations in the performance of this Grant Contract. The U.S. Office of Management and Budget's Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards is available here: http://www.ecfr.gov/cgi-bin/text-idx?SID=c6b2f053952359ba94470ad3a7c1a975&tpl=/ecfrbrowse/Title02/2cfr200_main_02.tpl
- D.29. Governing Law. This Grant Contract shall be governed by and construed in accordance with the laws of the State of Tennessee. The Grantee agrees that it will be subject to the exclusive jurisdiction of the courts of the State of Tennessee in actions that may arise under this Grant Contract. The Grantee acknowledges and agrees that any rights or claims against the State of Tennessee or its employees hereunder, and any remedies arising there from, shall be subject to and limited to those rights and remedies, if any, available under Tenn. Code Ann. §§ 9-8-101 through 9-8-407.
- D.30. Completeness. This Grant Contract is complete and contains the entire understanding between the parties relating to the subject matter contained herein, including all the terms and conditions agreed to by the parties. This Grant Contract supersedes any and all prior understandings, representations, negotiations, or agreements between the parties, whether written or oral.
- D.31. Severability. If any terms and conditions of this Grant Contract are held to be invalid or unenforceable as a matter of law, the other terms and conditions shall not be affected and shall remain in full force and effect. To this end, the terms and conditions of this Grant Contract are declared severable.
- D.32. Headings. Section headings are for reference purposes only and shall not be construed as part of this Grant Contract.

E. SPECIAL TERMS AND CONDITIONS:

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

Add ALL Necessary or Contingently Required Special Terms & Conditions

IN WITNESS WHEREOF,

GRANTEE LEGAL ENTITY NAME:

GRANTEE SIGNATURE **DATE**

PRINTED NAME AND TITLE OF GRANTEE SIGNATORY (above)

GRANTOR STATE AGENCY NAME:

NAME & TITLE **DATE**

ATTACHMENT REFERENCE

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GRANT BUDGET				
Additional Identification Information As Necessary				
The Grant Budget line-item amounts below shall be applicable only to expense incurred during the following				
Applicable Period: BEGIN: DATE				
END: DATE				
POLICY 03 Object Line-item Reference	EXPENSE OBJECT LINE-ITEM CATEGORY ¹	GRANT CONTRACT	GRANTEE PARTICIPATION	TOTAL PROJECT
1, 2	Salaries, Benefits & Taxes	0.00	0.00	0.00
4, 15	Professional Fee, Grant & Award ²	0.00	0.00	0.00
5, 6, 7, 8, 9, 10	Supplies, Telephone, Postage & Shipping, Occupancy, Equipment Rental & Maintenance, Printing & Publications	0.00	0.00	0.00
11, 12	Travel, Conferences & Meetings	0.00	0.00	0.00
13	Interest ²	0.00	0.00	0.00
14	Insurance	0.00	0.00	0.00
16	Specific Assistance To Individuals	0.00	0.00	0.00
17	Depreciation ²	0.00	0.00	0.00
18	Other Non-Personnel ²	0.00	0.00	0.00
20	Capital Purchase ²	0.00	0.00	0.00
22	Indirect Cost	0.00	0.00	0.00
24	In-Kind Expense	0.00	0.00	0.00
25	GRAND TOTAL	0.00	0.00	0.00

¹ Each expense object line-item shall be defined by the Department of Finance and Administration Policy 03, *Uniform Reporting Requirements and Cost Allocation Plans for Subrecipients of Federal and State Grant Monies, Appendix A.* (posted on the Internet at: <http://www.state.tn.us/finance/act/documents/policy3.pdf>).

² Applicable detail follows this page if line-item is funded.

ATTACHMENT REFERENCE

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GRANT BUDGET LINE-ITEM DETAIL:

PROFESSIONAL FEE, GRANT & AWARD	AMOUNT
Specific, Descriptive, Detail (Repeat Row As Necessary)	Amount
TOTAL	Amount

INTEREST	AMOUNT
Specific, Descriptive, Detail (Repeat Row As Necessary)	Amount
TOTAL	Amount

DEPRECIATION	AMOUNT
Specific, Descriptive, Detail (Repeat Row As Necessary)	Amount
TOTAL	Amount

OTHER NON-PERSONNEL	AMOUNT
Specific, Descriptive, Detail (Repeat Row As Necessary)	Amount
TOTAL	Amount

CAPITAL PURCHASE	AMOUNT
Specific, Descriptive, Detail (Repeat Row As Necessary)	Amount
TOTAL	Amount

GG INSTRUCTIONS, CONSIDERATIONS, and OPTIONS

The following pages contain additional GG instructions, considerations, and options. Replace or modify the standard GG Template by including the following content as appropriate. Content included with a box around it is intended to be inserted into the standard GG Template as appropriate.

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

COVER SHEET

A summary cover sheet properly completed and in accordance with the template is required. Complete summary cover sheet fields as indicated within the template and the following field directions.

<i>Agency Tracking #</i>	unique tracking number comprised of: 5-digit business unit # + unique, 5-digit # example: 31707-12345
<i>Subrecipient or Contractor</i>	Subrecipient or Contractor in accordance with the OMB's Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards
<i>Funding</i>	Amounts by fiscal year and funding source with row and column totals; contract Maximum Liability MUST equal the sum of the TOTAL Grant Contract Amount column (i.e., the grand total amount for all fiscal years & all sources of funding)

PREAMBLE

Add additional information only if necessary.

A. SCOPE OF SERVICES

It is the responsibility of the Grantor State Agency to adequately draft a scope of services. Oversight examiners will rely on the authorized signature of the Grantor State Agency on the Grant Contract as certification and assurance that the proposed scope of services is clear and correct, adequate for all legal and enforcement purposes, and sufficiently detailed to ensure Grantee accountability and results.

Do NOT include payment terms in the scope of services.

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

Option: Grant Proposal Attachment

It is NOT acceptable to attach the associated grant proposal to the Grant Contract in lieu of a properly drafted scope of services. Proposals for funding are NOT adequately definitive to stand alone as the description of Grantee duties and responsibilities or performance requirements.

To attach an associated grant proposal to the Grant Contract in support of a properly drafted scope of service, use the following optional section.

- A.#. Incorporation of Additional Documents. Each of the following documents is included as a part of this Grant Contract by reference or attachment. In the event of a discrepancy or ambiguity regarding the Grantee's duties, responsibilities, and performance hereunder, these items shall govern in order of precedence below.
- a. this Grant Contract document with any attachments or exhibits (excluding the items listed at subsections b. and c., below);
 - b. the State grant proposal solicitation as may be amended, if any;

- c. the Grantee's proposal (Attachment Reference) incorporated to elaborate supplementary scope of services specifications.

B. GRANT CONTRACT TERM

Procurement professionals should obtain the Grantee's signature first before submitting the Grant Contract for State signatures or approvals. Procurement professionals shall obtain all required approvals prior to the Effective Date written in the Grant Contract and submit it for Central Procurement Office approval no less than thirty (30) days before the Effective Date.

If a signed Grant Contract is not submitted to the Central Procurement Office at least thirty (30) days prior to the Effective Date, then the CPO may require that the Grant Contract be resubmitted with a new Effective Date or require a Rule Exception Request that explains why the Grant Contract was submitted less than thirty (30) days before the Effective Date. In no event shall the Grantee deliver goods or perform services prior to the Effective Date.

Draft the Grant Contract with an appropriate, definitive, and complete Term. Note that no Grant Contract with a Term exceeding sixty (60) months shall be awarded unless approved by the Central Procurement Officer as being in the best interests of the State. (Tenn. Comp. R. & Regs. 0690-03-01-.14(2)(c)). Comptroller of the Treasury approval will also be required.

Option: Term Renewal or Extension

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

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

B.#. Term Extension. It is understood and agreed that the State may extend the Term an additional period of time, not to exceed one hundred-eighty (180) days beyond the expiration date of this Grant Contract, under the same terms and conditions. In no event, however, shall the maximum Term, including all extensions or renewals, exceed a total of sixty (60) months.

C. PAYMENT TERMS AND CONDITIONS

Revise Payment Terms and Conditions sections only as provided in the instructions.

Payment Methodology

Pursuant to Central Procurement Office Policy 2013-007, any Grantor State Agency seeking to effect a partial, periodic, or total advance payment shall submit a Rule Exception Request to justify the advance payment.

Option: Partial Advance Payment

To effect a partial advance payment, replace the section with the following.

C.3. Payment Methodology – Partial Advance Payment. The Grantee shall be reimbursed for actual, reasonable, and necessary costs based upon the Grant Budget, not to exceed the maximum liability established in section C.1. The amount of Written Dollar Amount (\$Number) shall be paid

to the Grantee in advance upon approval of this Grant Contract. Upon progress toward the completion of the work, as described in section A of this Grant Contract, the Grantee shall submit invoices for payment prior to any additional reimbursement of allowable costs. The total of all payments to the Grantee shall not exceed the maximum liability of this Grant Contract.

Option: Periodic Advance Payment

To effect periodic advance payments: (1) Replace the Section with the following.

C.3. Payment Methodology – Periodic Advance Payment. The Grantee shall be reimbursed for actual, reasonable, and necessary costs based upon the Grant Budget, not to exceed the maximum liability established in section C.1. The amount of Written Dollar Amount (\$Number) shall be paid to the Grantee in advance upon approval of this Grant Contract and on Date(s) on which the state will make advance payment(s). The total of said payments shall not exceed the maximum liability of this Grant Contract.

- (2) Delete the Invoice Requirements Section (renumbering any subsequent sections accordingly).
- (3) Replace the first paragraph of the Disbursement Reconciliation and Close Out Section with the following (which may be further revised to require more frequent grant disbursement reconciliation reports).

C.#. Disbursement Reconciliation and Close Out. The Grantee shall submit a grant disbursement reconciliation report within sixty (60) days of the Grant Contract end date and in form and substance acceptable to the State (and include, as applicable, documentation and receipts as required by the above-referenced "State Comprehensive Travel Regulations").

Option: Total Advance Payment

To effect a total advance payment: (1) Replace the Section with the following.

C.3. Payment Methodology – Total Advance Payment. The Grantee shall be reimbursed for actual, reasonable, and necessary costs based upon the Grant Budget, not to exceed the maximum liability established in section C.1. Payment to the Grantee shall be a lump sum made in advance upon approval of this Grant Contract.

- (2) Delete the Invoice Requirements Section (renumbering any subsequent sections accordingly).
- (3) Replace the first paragraph of the Disbursement Reconciliation and Close Out Section with the following.

C.#. Disbursement Reconciliation and Close Out. The Grantee shall submit a grant disbursement reconciliation report within sixty (60) days of the Grant Contract end date and in form and substance acceptable to the State (and include, as applicable, documentation and receipts as required by the above-referenced "State Comprehensive Travel Regulations").

Invoice Requirements

Add clear, non-conflicting, invoice requirements to the Section as appropriate (revising the first sentence "no more often than monthly" requirement as necessary).

Delete the Section (and renumber subsequent sections appropriately) if the Payment Methodology Section provides for a total advance payment or periodic advance payments.

Option: Late Invoices Prohibition

Add the following new subsection C.5.b.(4) when appropriate and revise the maximum number of days to thirty (30) or more.

- (4) An invoice under this Grant Contract shall be presented to the State within sixty (60) days after the end of the calendar month in which the subject costs were incurred or services were rendered by the Grantee. An invoice submitted more than sixty (60) days after such date will NOT be paid. The State will not deem such Grantee costs to be allowable and reimbursable by the State unless, at the sole discretion of the State, the failure to submit a timely invoice is warranted. The Grantee shall submit a special, written request for reimbursement with any such untimely invoice. The request must detail the reason the invoice is untimely as well as the Grantee's plan for submitting future invoices as required, and it must be signed by a Grantee agent that would be authorized to sign this Grant Contract.

Budget Line-Items

Revise line-item variance amount as appropriate and up to the maximum of twenty percent (20%).

(Any further change would require an amendment). After the Budget Line-Items provision should NOT be amended after Grant Contract approval.

Option: Grantee May Request Budget Line-Item Variance Not Exceeding Twenty Percent (20%) Per Line Item

Replace the Section with the following:

- C.6. Grant Budget and Revisions to Grant Budget Line-Items. Expenditures, reimbursements, and payments under this Grant Contract shall adhere to the Grant Budget.
- a. The Grantee may vary from a Grant Budget line-item amount by up to twenty percent (20%) of the line-item amount, provided that any increase is off-set by an equal reduction of other line-item amounts. The net result of any changes to Grant Budget line-item amounts shall not result in funding for a line-item that was previously funded at zero dollars (\$0.00) or increase the total Grant Contract amount detailed by the Grant Budget.
 - b. The Grantee may request in writing Grant Budget line-item revisions exceeding the limitation set forth in section C.6.a., above, giving full details supporting the Grantee's request, provided that such revisions do not result in funding for a line-item that was previously funded at zero dollars (\$0.00) and do not increase the total Grant Contract amount. Grant Budget line-item revisions may not be made without prior, written approval of the State in which the terms of the approved revisions are detailed. Any approval of a revision to a Grant Budget line-item greater than twenty percent (20%) shall be superseded by a subsequent revision of the Grant Budget by Grant Contract amendment.
 - c. Any increase in the total Grant Contract amount shall require a Grant Contract Amendment.

Option: NO Line-Item Variance

Replace the Section with the following alternative as appropriate.

- C.6. Budget Line-Items. Expenditures, reimbursements, and payments under this Grant Contract

shall adhere to the Grant Budget. Reimbursable expenditures may NOT vary from the Grant Budget line-item amounts.

Disbursement Reconciliation and Close Out

To require additional grant disbursement reconciliation reports, revise the first paragraph of the standard C.7. Disbursement Reconciliation and Close Out language, as necessary.

Option: Grantee Match Requirement

If the Grant Budget details a grantee match requirement (in which the maximum total amount reimbursable by the state under the grant will be reduced by the amount of any Grantee failure to meet the match requirement) replace the Disbursement Reconciliation and Close Out Section with the following (revising the maximum number of days to no less than thirty (30)).

- C.7. Disbursement Reconciliation and Close Out. The Grantee shall submit any final invoice and a grant disbursement reconciliation report within sixty (60) days of the Grant Contract end date and in form and substance acceptable to the State.
- a. The Grant Budget specifies a Grantee Match Requirement and the final grant disbursement reconciliation report shall detail all Grantee expenditures recorded to meet this requirement.
 - i. No Grantee expenditure shall be recorded and reported toward meeting a Grantee Match Requirement of more than one grant contract with the State.
 - ii. The final grant disbursement reconciliation report shall specifically detail the exact amount of any Grantee failure to meet a Match Requirement, and the maximum total amount reimbursable by the State pursuant to this Grant Contract, as detailed by the Grant Budget column "Grant Contract," shall be reduced by the amount that the Grantee failed to contribute to the Total Project as budgeted.
 - b. If total disbursements by the State pursuant to this Grant Contract exceed the amounts permitted by the section C, payment terms and conditions of this Grant Contract (including any adjustment pursuant to subsection a.ii. above), the Grantee shall refund the difference to the State. The Grantee shall submit the refund with the final grant disbursement reconciliation report.
 - c. The State shall not be responsible for the payment of any invoice submitted to the state after the grant disbursement reconciliation report. The State will not deem any Grantee costs submitted for reimbursement after the grant disbursement reconciliation report to be allowable and reimbursable by the State, and such invoices will NOT be paid.
 - d. The Grantee's failure to provide a final grant disbursement reconciliation report to the state as required shall result in the Grantee being deemed ineligible for reimbursement under this Grant Contract, and the Grantee shall be required to refund any and all payments by the state pursuant to this Grant Contract.
 - e. The Grantee must close out its accounting records at the end of the contract period in such a way that reimbursable expenditures and revenue collections are NOT carried forward.

D. STANDARD TERMS AND CONDITIONS

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

Termination for Convenience

Increase the thirty (30) days written notice requirement as appropriate.

Option: Bilateral Termination

Replace the Section with the following bilateral termination provision only if the contracting agency can justify that the bilateral provision is in the best interest of the state.

D. #. Bilateral Termination for Convenience. The Grant Contract may be terminated by either party by giving written notice to the other, at least thirty (30) days before the effective date of termination. Should either party exercise this provision, the Grantee shall be entitled to reimbursement for authorized expenditures and satisfactory services completed as of the termination date, but in no event shall the State be liable to the Grantee for any service which has not been rendered. The final decision as to the amount, for which the State is liable, shall be determined by the State. In the event of disagreement, the Grantee may file a claim with the Tennessee Claims Commission to seek redress.

HIPAA Compliance

A Grantee must execute a Business Associate Agreement (BAA) if: (a) the Grantee is a "covered entity" as defined in the Privacy Rules; (b) the Grantee engages another person or entity outside of its workforce to perform activities on its behalf; and (c) those activities involve access to protected health information.

If the Grantor State Agency obtains an approved Rule Exception Request to delete the HIPAA Compliance provision, add the following Section:

D.11. **Reserved.**

Independent Contractor

Replace this provision with the following if the grantee is an entity of the federal government.

D.22. Independent Contractor. The parties, in the performance of this Grant Contract, shall be acting in their individual capacities and not as employees, partners, joint venturers, or associates of one another. The parties acknowledge that they are independent contracting entities and that nothing in this Grant Contract shall be construed to create a principal/agent relationship or to allow either to exercise control or direction over the manner or method by which the other transacts its business affairs or provides its usual services. The employees or agents of one party shall not be deemed or construed to be the employees or agents of the other party for any purpose whatsoever.

The Grantee, being a federal agency, shall be considered to be self-insured for the purposes of public liability. The Grantee is also subject to the Federal Torts Claims Act.

Charges to Service Recipients Prohibited

If the Grantor State Agency obtains an approved Rule Exception to delete the Charges to Service Recipients Prohibited provision, add the following Section:

D.26. **Reserved.**

No Acquisition of Equipment or Motor Vehicles

Delete the Section if the Grant Budget provides funding for the acquisition of equipment or motor vehicles and insert the State Interest In Equipment or Motor Vehicles Section below.

State Interest in Equipment or Motor Vehicles

Attorney General staff have advised that the Grantor State Agency must file a UCC-1 or perfect in accordance with applicable law to the extent that it wishes to secure a security agreement and priority.

Add the following Section if the Grant Contract provides for the reimbursement of expenditures for equipment or motor vehicles (revising the second to last sentence of the first paragraph as necessary to establish a lower dollar threshold for the definition of "equipment or motor vehicles").

D.27. State Interest in Equipment or Motor Vehicles. The Grantee shall take legal title to all equipment or motor vehicles purchased totally or in part with funds provided under this Grant Contract, subject to the State's equitable interest therein, to the extent of its *pro rata* share, based upon the State's contribution to the purchase price. The term "equipment" shall include any article of nonexpendable, tangible, personal property having a useful life of more than one year and an acquisition cost which equals or exceeds five thousand dollars (\$5,000.00). The term "motor vehicle" shall include any article of tangible personal property that is required to be registered under the "Tennessee Motor Vehicle Title and Registration Law", Tenn. Code Ann. Title 55, Chapters 1-6.

As authorized by the Tennessee Uniform Commercial Code, Tenn. Code Ann. Title 47, Chapter 9 and the "Tennessee Motor Vehicle Title and Registration Law," Tenn. Code Ann. Title 55, Chapters 1-6, the parties intend this Grant Contract to create a security interest in favor of the State in the equipment or motor vehicles acquired by the Grantee pursuant to the provisions of this Grant Contract. A further intent of this Grant Contract is to acknowledge and continue the security interest in favor of the State in the equipment or motor vehicles acquired by the Grantee pursuant to the provisions of this program's prior year Grant Contracts between the State and the Grantee.

The Grantee grants the State a security interest in all equipment or motor vehicles acquired in whole or in part by the Grantee under this Grant Contract. This Grant Contract is intended to be a security agreement pursuant to the Uniform Commercial Code for any of the equipment or motor vehicles herein specified which, under applicable law, may be subject to a security interest pursuant to the Uniform Commercial Code, and the Grantee hereby grants the State a security interest in said equipment or motor vehicles. The Grantee agrees that the State may file this Grant Contract or a reproduction thereof, in any appropriate office, as a financing statement for any of the equipment or motor vehicles herein specified. Any reproduction of this or any other security agreement or financing statement shall be sufficient as a financing statement. In addition, the Grantee agrees to execute and deliver to the State, upon the State's request, any financing statements, as well as extensions, renewals, and amendments thereof, and reproduction of this Grant Contract in such form as the State may require to perfect a security interest with respect to said equipment or motor vehicles. The Grantee shall pay all costs of filing such financing statements and any extensions, renewals, amendments and releases thereof, and shall pay all reasonable costs and expenses of any record searches for financing statements the State may reasonably require. Without the prior written consent of the State, the Grantee shall not create or suffer to be created pursuant to the Uniform Commercial Code any other security interest in said equipment or motor vehicles, including replacements and additions thereto. Upon the Grantee's breach of any covenant or agreement contained in this Grant Contract, including the covenants to pay when due all sums secured by this Grant Contract, the State shall have the remedies of a secured party under the Uniform Commercial Code and, at the State's option, may also invoke the remedies herein provided.

The Grantee agrees to be responsible for the accountability, maintenance, management, and inventory of all property purchased totally or in part with funds provided under this Grant Contract.

The Grantee shall maintain a perpetual inventory system for all equipment or motor vehicles purchased with funds provided under this Grant Contract and shall submit an inventory control report which must include, at a minimum, the following:

- a. Description of the equipment or motor vehicles;
- b. Manufacturer's serial number or other identification number, when applicable;
- c. Consecutive inventory equipment or motor vehicles tag identification;
- d. Acquisition date, cost, and check number;
- e. Fund source, State Grant number, or other applicable fund source identification;
- f. Percentage of state funds applied to the purchase;
- g. Location within the Grantee's operations where the equipment or motor vehicles is used;
- h. Condition of the property or disposition date if Grantee no longer has possession;
- i. Depreciation method, if applicable; and
- j. Monthly depreciation amount, if applicable.

The Grantee shall tag equipment or motor vehicles with an identification number which is cross referenced to the equipment or motor vehicle item on the inventory control report. The Grantee shall inventory equipment or motor vehicles annually. The Grantee must compare the results of the inventory with the inventory control report and investigate any differences. The Grantee must then adjust the inventory control report to reflect the results of the physical inventory and subsequent investigation.

The Grantee shall submit its inventory control report of all equipment or motor vehicles purchased with funding through this Grant Contract within thirty (30) days of its end date and in form and substance acceptable to the State. This inventory control report shall contain, at a minimum, the requirements specified above for inventory control. The Grantee shall notify the State, in writing, of any equipment or motor vehicle loss describing the reasons for the loss. Should the equipment or motor vehicles be destroyed, lost, or stolen, the Grantee shall be responsible to the State for the *pro rata* amount of the residual value at the time of loss based upon the State's original contribution to the purchase price.

Upon termination of the Grant Contract, where a further contractual relationship is not entered into, or at another time during the term of the Grant Contract, the Grantee shall request written approval from the State for any proposed disposition of equipment or motor vehicles purchased with Grant funds. All equipment or motor vehicles shall be disposed of in such a manner as the parties may agree from among alternatives approved by the Tennessee Department of General Services as appropriate and in accordance with any applicable federal laws or regulations.

Prevailing Wage Rates

Add the following Section if the Grant Contract involves a construction project for the purpose of building, repairing, locating, relocating or repairing any Tennessee streets, highways, or bridges.

D.#. Prevailing Wage Rates. All State contracts for highway construction projects that are for the purpose of building, rebuilding, locating, relocating or repairing any streets, highways or bridges require compliance with the prevailing wage laws provided in Tenn. Code Ann. §§ 12-4-401--415.

Audit Report

Add the following text just prior to the final sentence of the section as appropriate.

The State may reimburse the Grantee for a reasonably proportionate share of the costs of audits required by and performed in accordance with the "Single Audit Act Amendments of 1996" as provided in 2 C.F.R. § 200.425.

Procurement

Replace the Section with the following if contracting agency head approval is required for non-competitive procurements under the grant.

D.#. Procurement. If other terms of this Grant Contract allow reimbursement for the cost of goods, materials, supplies, equipment, motor vehicles, or contracted services, such procurement(s) shall be made on a competitive basis, including the use of competitive bidding procedures, where practicable. The Grantee shall maintain documentation for the basis of each procurement for which reimbursement is paid pursuant to this Grant Contract. In each instance where it is determined that use of a competitive procurement method is not practicable, supporting documentation shall include a written justification, approved by the State Agency Head Title, for such decision and non-competitive procurement. Further and notwithstanding the foregoing, if such reimbursement is to be made with funds derived wholly or partially from federal sources, the determination of cost shall be governed by and reimbursement shall be subject to the Grantee's compliance with applicable federal procurement requirements.

The Grantee shall obtain prior approval from the State before purchasing any equipment or motor vehicles under this Grant Contract.

E. SPECIAL TERMS AND CONDITIONS

Add the following sections as appropriate and in the order below. An approved Rule Exception Request is required to add any Section E provisions that are not among the options below. Should any of these special terms and conditions conflict with any other terms and condition of this Grant Contract, the special terms and conditions shall be subordinate to the Grant Contract's other terms and conditions.

Debarment and Suspension

Add the following Section if required by federal law and the Grant Contract involves federal funds.

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

The Grantee 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 or disqualified.

Confidentiality of Records

Add the following Section as appropriate. If unsure whether the Section is applicable, consult the CPO legal team.

E.#. Confidentiality of Records. Strict standards of confidentiality of records and information shall be maintained in accordance with applicable state and federal law. All material and information, regardless of form, medium or method of communication, provided to the Grantee by the State or acquired by the Grantee 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 Grantee to disclose any Confidential Information, regardless of whether it has been disclosed or made available to the Grantee 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. Grantee 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 Grant Contract.

Printing Authorization

Add the following Section as appropriate.

E.#. Printing Authorization. The Grantee agrees that no publication coming within the jurisdiction of Tenn. Code Ann. § 12-7-101, *et seq.*, shall be printed pursuant to this Grant Contract unless a printing authorization number has been obtained and affixed as required by Tenn. Code Ann. § 12-7-103(d).

State Furnished Property

Add the following Section as appropriate.

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

Work Papers Subject To Review

Add the following Section only if the Grant Contract requires the performance of audit, accounting or financial analysis services.

E.#. Work Papers Subject to Review. The Grantee shall make all audit, accounting, or financial analysis work papers, notes, and other documents available for review by the Comptroller of the Treasury or his representatives, upon request, during normal working hours either while the analysis is in progress or subsequent to the completion of this Grant Contract.

Environmental Tobacco Smoke

Add the following Section as appropriate.

E.#. Environmental Tobacco Smoke. Pursuant to the provisions of the federal "Pro-Children Act of 1994" and the "Children's Act for Clean Indoor Air of 1995," Tenn. Code Ann. §§ 39-17-1601 through 1606, the Grantee shall prohibit smoking of tobacco products within any indoor premises

in which services are provided to individuals under the age of eighteen (18) years. The Grantee shall post "no smoking" signs in appropriate, permanent sites within such premises. This prohibition shall be applicable during all hours, not just the hours in which children are present. Violators of the prohibition may be subject to civil penalties and fines. This prohibition shall apply to and be made part of any subcontract related to this Grant Contract.

Drug Free Workplace

Add the following Section as appropriate.

- E.#. The Grantee shall provide a drug-free workplace pursuant to the "Drug-Free Workplace Act," 41 U.S.C. §§ 8101 through 8106, and its accompanying regulations.

Grantee Participation

Add the following Section as appropriate.

- E.#. Grantee Participation. Grantee Participation amounts detailed in the Grant Budget are intended as a goal for the total project, and the amount of actual Grantee Participation expenditures will not impact the maximum amounts reimbursable to the Grantee as detailed by the Grant Budget column, "Grant Contract."

Disclosure of Personally Identifiable Information

Add the following Section as appropriate.

- E.#. Disclosure of Personally Identifiable Information. The Grantee shall report to the State any instances of unauthorized disclosure of personally identifiable information that come to the attention of the Grantee. Any such report shall be made by the Grantee within twenty-four (24) hours after the instance has come to the attention of the Grantee. The Grantee, at the sole discretion of the State, shall provide no cost credit monitoring services for individuals that are deemed to be part of a potential disclosure. The Grantee shall bear the cost of notification to individuals having personally identifiable information involved in a potential disclosure event, including individual letters or public notice. The remedies set forth in this section are not exclusive and are in addition to any claims or remedies available to the State under this Grant Contract or otherwise available at law.

Federal Funding Accountability and Transparency Act

Add the following Section if the Grant Contract will be funded in whole or part by a federal grant or federal contract of \$25,000 or more (excluding federal grants subject to section 1512 of the American Recovery and Reinvestment Act of 2009), and the federal grant will provide for the expenditure of \$25,000 or more in federal funds.

- E.#. Federal Funding Accountability and Transparency Act (FFATA).

This Grant Contract requires the Grantee to provide supplies or services that are funded in whole or in part by federal funds that are subject to FFATA. The Grantee is responsible for ensuring that all applicable FFATA requirements, including but not limited to those below, are met and that the Grantee provides information to the State as required.

The Grantee shall comply with the following:

- a. Reporting of Total Compensation of the Grantee's Executives.
 - (1) The Grantee shall report the names and total compensation of each of its five most highly compensated executives for the Grantee's preceding completed fiscal year, if in the Grantee's preceding fiscal year it received:

- i. 80 percent or more of the Grantee'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 sub awards); 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 sub awards); 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 § 6104 of the Internal Revenue Code of 1986. (To determine if the public has access to the compensation information, see the U.S. Security 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 Grantee's preceding fiscal year and includes the following (for more information see 17 CFR § 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 Grantee must report executive total compensation described above to the State by the end of the month during which this Grant Contract is established.
- c. If this Grant Contract is amended to extend its term, the Grantee must submit an executive total compensation report to the State by the end of the month in which the amendment to this Grant Contract becomes effective.
- d. The Grantee will obtain a Data Universal Numbering System (DUNS) number and maintain its DUNS number for the term of this Grant Contract. More information about obtaining a DUNS Number can be found at: <http://fedgov.dnb.com/webform/>.

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

Transfer of Grantee's Obligations

Add the following Section as appropriate.

E.#. Transfer of Grantee's Obligations.

The Grantee shall not transfer or restructure its operations related to this Grant Contract without the prior written approval of the State. The Grantee shall immediately notify the State in writing of a proposed transfer or restructuring of its operations related to this Grant Contract. The State reserves the right to request additional information or impose additional terms and conditions before approving a proposed transfer or restructuring.

SIGNATURES

By signature, the Grantor State Agency head or authorized designee shall assure and affirm that:

- there is a balance in the appropriation from which obligations under the Grant Contract are required to be paid that is not already encumbered to pay other obligations;
- the Grantor State Agency maintains documentation of a fair and impartial Grantee selection in full compliance with the approved procurement methodology as indicated by the summary cover sheet; and
- the proposed scope of services is clear and correct, adequate for all legal and enforcement purposes, and sufficiently detailed to ensure Grantee accountability and results.

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

FEDERAL AWARD IDENTIFICATION

If the Grantee is a subrecipient and the Grant Contract involves any federal funds, complete the Federal Award Identification worksheet. Reference the worksheet in Section A and include it as the first attachment to the Grant Contract. If some federal award identification information is not available, provide as much information as is available. If any of the data elements in the worksheet change, complete another worksheet containing the updated information. Send the updated worksheet to the Grantee and upload a copy into Edison.

GRANT BUDGET

ALL Grant Budgets must be type-written and mathematically correct in every aspect.

Each Grant Budget page must be numbered consecutively.

The Grant Contract column total must equal the Maximum Liability of the Grant Contract.

Line-Item funding must comply with the Expense Object Line-Item Category Definitions provided by F&A Accounts Policy 03, Appendix A (which is posted on the Internet at:

<http://www.state.tn.us/finance/act/documents/policy3.pdf>). Budget line-items and the definitions above have legal, audit, and federal funding implications, and contracting agency staff are solely responsible for whether appropriate line-items are funded in accordance with the scope of service and the definitions set out by F&A Accounts Policy 03.

In line-items that WILL BE FUNDED, replace the zeros ("0.00") associated with each line-item as appropriate. If a line-item will NOT be funded, leave the associated, "0.00" dollar amount.

Grant Budget Line-Item Detail.

These instructions do NOT preclude adding Line-Item Detail (and associated requirements) for other line-items, provided that the additional detail is clear and mathematically correct.

Delete the entire Grant Budget Line-Item Detail page if NONE of the following five line-items, which requires detail, is funded: Professional Fee, Grant & Award; Interest; Depreciation; Other Non-Personnel; Capital Purchase.

For each line-item requiring detail that is funded by the Grant Budget, complete the appropriate line-item detail box.

Delete the line-item detail box for each of the line-items that is NOT funded.

Do NOT draft the Grant Budget Line-Item Detail to describe a line-item only as “contracts,” “grant contracts,” “contracted services,” “other,” “professional services,” or “miscellaneous.”

Multiple Grant Budget Periods.

If a multi-year grant contract is to be written such that funding is restricted on an annual basis, such must be reflected in the Grant Budget by means of repeated use of the grant budget pages, numbered consecutively, detailing funding information for consecutive periods of applicability. If a grant budget attachment does include multiple pages respectively applicable to consecutive periods of applicability, a “roll-up” budget page totaling all lines for all periods is NOT required. However, the sum of all totals must agree with the Grant Contract Maximum Liability and any other relevant provisions of this Grant Contract.

Option: Grant Budget Grantee Match Requirement

Replace the Grant Budget table with the table on the following page if a grantee match is required.

Federal Award Identification Worksheet

Subrecipient's name (must match registered name in DUNS)	
Subrecipient's DUNS number	
Federal Award Identification Number (FAIN)	
Federal award date	
CFDA number and name	
Grant contract's begin date	
Grant contract's end date	
Amount of federal funds obligated by this grant contract	
Total amount of federal funds obligated to the subrecipient	
Total amount of the federal award to the pass-through entity (Grantor State Agency)	
Name of federal awarding agency	
Name and contact information for the federal awarding official	
Is the federal award for research and development?	
Indirect cost rate for the federal award (See 2 C.F.R. §200.331 for information on type of indirect cost rate)	

GRANT BUDGET				
Additional Identification Information As Necessary				
The Grant Budget line-item amounts below shall be applicable only to expenses incurred during the following applicable period:				
BEGIN: DATE		END: DATE		
POLICY 03 Object Line-Item Reference	EXPENSE OBJECT LINE-ITEM CATEGORY ¹	GRANT CONTRACT	GRANTEE MATCH	TOTAL PROJECT
1. 2	Salaries, Benefits & Taxes	0.00	0.00	0.00
4. 15	Professional Fee, Grant & Award ²	0.00	0.00	0.00
5, 6, 7, 8, 9, 10	Supplies, Telephone, Postage & Shipping, Occupancy, Equipment Rental & Maintenance, Printing & Publications	0.00	0.00	0.00
11. 12	Travel, Conferences & Meetings	0.00	0.00	0.00
13	Interest ²	0.00	0.00	0.00
14	Insurance	0.00	0.00	0.00
16	Specific Assistance To Individuals	0.00	0.00	0.00
17	Depreciation ²	0.00	0.00	0.00
18	Other Non-Personnel ²	0.00	0.00	0.00
20	Capital Purchase ²	0.00	0.00	0.00
22	Indirect Cost	0.00	0.00	0.00
24	In-Kind Expense	0.00	0.00	0.00
n/a	Grantee Match Requirement (for any amount of the required Grantee Match that is <u>not</u> specifically delineated by budget line-items above)	0.00	0.00	0.00
25	GRAND TOTAL	0.00	0.00	0.00

¹ Each expense object line-item shall be defined by the Department of Finance and Administration Policy 03, *Uniform Reporting Requirements and Cost Allocation Plans for Subrecipients of Federal and State Grant Monies, Appendix A.* (posted on the Internet at: <http://www.state.tn.us/finance/act/documents/policy3.pdf>).

² Applicable detail follows this page if line-item is funded.

³ A Grantee Match Requirement is detailed by this Grant Budget, and the maximum total amount reimbursable by the State pursuant to this Grant Contract, as detailed by the "Grant Contract" column above, shall be reduced by the amount of any Grantee failure to meet the Match Requirement.

**DELEGATED GRANT AUTHORITY (DG)
TEMPLATE**

REDLINE VERSION

DG MODEL DELEGATED GRANT AUTHORITY (DG) TEMPLATE

This ~~model template~~ prescribes the format and content for a the Delegated Grant Authority application (approval "DGA"). Approval of which the DGA confers delegated authority to make award grants as specified execute grant contracts for an individual program without additional, individual, independent approval).

~~Documents of this type must adhere to this model with revisions only as instructions permit. Insignificant deviations from this model, while always subject to disapproval, will, typically, not require a specific rule exception unless an oversight examiner requires separate documentation in a particular instance. If a formal rule exception request is not required, oversight approval of the document will constitute selected rule exception(s) as may be necessary. Procurement professionals shall adhere to this template and attach a copy of the proposed grant contract(s) that will be used under the DGA. If the proposed grant contract or contracts include modifications or additions to grant contract templates or models, redline the modifications or additions in the attachment(s) and include an approved Rule Exception Request ("RER").~~

~~Do NOT route a delegated authority DGA for approval after its begin date. (Any delegated authority DGA routed for approval after its begin date is subject to disapproval or may be approved with a begin date later than the one proposed.) Agencies may obtain a begin date that occurs before the routing date with an approved RER.~~

~~A delegated authority DGA will ONLY be approved for a period of either all or some part of one (1) fiscal year. However, it may specify a contract period of up to five (5) years for any grant contract entered pursuant to executed under the delegated authority. No single grant contract executed under a DGA shall have a maximum liability that exceeds five million dollars (\$5,000,000).~~

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

COVER SHEET

Complete summary cover sheet fields as indicated within the template ~~and the following field directions.~~

<i>Agency Tracking #</i>	unique tracking number comprised of: 5-digit business unit # + unique, 5-digit # example: 31707-12345
<i>Funding</i>	amounts by fiscal year and funding source with row and column totals; contract maximum liability MUST equal the sum of the TOTAL Contract Amount column (i.e., the grand total amount for all fiscal years & all sources of funding)

A summary cover sheet properly completed and in accordance with the model template is required for ~~every copy of the contracting document.~~ each grant contract executed under the DGA.

APPROVALS

~~Affix the contracting agency signature by the Grantor State Agency head certified or an authorized signatory.~~ Prepare the Contract Entry Record for the delegated authority Delegated Grant Authority as required by the Edison system. Then, scan the signed document with the completed summary cover sheet to a PDF file and attach the digital copy to the subject-Edison record. Attach any supporting documentation in PDF format to the subject-Edison record including, ~~as applicable, the following:~~

- ~~—a PDF copy of the previously approved delegated authority DGA if a delegated authority DGA with the same purpose similar to one proposed was approved in the prior year.~~
- ~~—a PDF copy of any associated rule exception necessary RERs~~

Submit the Edison Contract Entry Record with the proposed document DGA for approval routing.



DELEGATED GRANT AUTHORITY

Agency Tracking #	Edison ID	Begin <u>Date</u>	End <u>Date</u>
Edison Record-ID of Prior, Similar prior, similar DG (if any)		Last Possible <u>possible</u> End Date of Authorized Grants <u>authorized grant contracts</u>	

Subject Service Caption

Funding —					
FY	State	Federal	Interdepartmental	Other	TOTAL Maximum Liability
TOTAL:					

American Recovery and Reinvestment Act (ARRA) Funding: YES NO

Each Grant grant contract will ~~Establish~~ establish the following type Relationship of relationship:
 SUBRECIPIENT VENDOR CONTRACTOR

Budget Officer Confirmation: There is a balance in the appropriation from which obligations hereunder are required to be paid that is not already encumbered to pay other obligations.

OCRCPO USE — DG

Speed Chart (optional)	Account Code (optional)
-------------------------------	--------------------------------

DELEGATED GRANT AUTHORITY

This Delegated Grant Authority application for delegated authority, if approved as required by professional service contacting regulations ("DGA"), if approved in accordance with Central Procurement Office rules, policies, and procedures, shall authorize the applicant state agency (referenced herein as the "Contracting Grantor State Agency") to award grants for the subject ~~execute grant contracts for a particular program or programs~~ without individual, independent approval review, PROVIDED THAT all such grants grant contracts are within the limits, guidelines, and conditions specified herein of this DGA. The Grantor State Agency shall attach a copy of the proposed grant contract(s) that will be used under the DGA. If the proposed grant contract or contracts include modifications or additions to grant contract templates or models, redline the modifications or additions in the attachment(s) and include an approved Rule Exception Request ("RER").

Grantor agency State Agency:	Agency Name	
Subject Program Service Caption:	Program Identification	
A. What will be the maximum number of individual <u>grants grant contracts</u> ?	Number	
B. What will be the maximum period of an individual <u>grant contract</u> ?	Number months	
C. What will be the maximum amount of an individual <u>grant contract (must not exceed five million dollars (\$5,000,000))</u> ?	\$ Amount	
D. What is the maximum liability of the requested-delegated authority <u>Delegated Grant Authority</u> ?	\$ Amount	
<p>E. GRANTOR STATE AGENCY DECLARATION:</p> <p>1. Each of the following is true and applicable to the procurement situation described herein:</p> <p style="margin-left: 40px;">a) The program needs and general categories of services are such that adequate guidelines can be developed to direct the agency <u>Grantor State Agency</u> in competitively or impartially awarding a number of similar grants; <u>and</u></p> <p style="margin-left: 40px;">b) The individual <u>grants grant contracts</u> involved will be of such uniformity and volume that the <u>standardization of processes, procedures, and contract terms that</u> individual, independent, and prior approval is unnecessary and impractical.</p> <p>2. The summary cover <u>sheet</u> correctly records the requested delegated authority period in which every grant <u>contract</u> must begin as well as the relationship (as defined by <u>F&A Central Procurement Office Policy 22, Subrecipient Monitoring 2013-007</u>) that <u>each grant contract</u> will create.</p> <p>3. The Grantor agency <u>State Agency</u> will award each grant <u>select grantees</u> in strict accordance with the pre-defined, competitive process or impartial process (e.g., awarding the same contract to all applicants in a pre-defined class in order of receipt) for selecting grantees and determining grant award amounts, which is detailed at <u>This process is detailed in Attachment 1</u>.</p> <p>4. The Grantor agency <u>State Agency</u> will draft each grant <u>contract</u> with the exact "scope of <u>services services</u>" detailed at <u>in Attachment 2</u>, and in compliance with the form and content required by the current GR, GG, ID-GR, or ED-GR Model Cost Reimbursement Grant Contract guidelines as appropriate and <u>appropriate grant contract templates and models</u> in effect at the time that the agreement <u>each grant contract</u> is drafted (including</p> <p style="margin-left: 20px;">a. Each grant contract must include a completed summary cover completed and sheet</p>		

Grantor agency <u>State Agency:</u>	Agency Name
Subject Program <u>Service Caption:</u>	Program Identification
<p>attached to at the <u>facefront</u> of each copy and the required American Recovery and Reinvestment Act (ARRA) provision if ARRA funding is applicable).</p> <p>5. The Grantor agency <u>State Agency</u> will ensure that every grant awarded pursuant to the delegated authority is compliant with the following requirements. <u>contract entered into under the Delegated Grant Authority:</u></p> <p>a) Funding shall be budgeted and <u>Has</u> sufficient funds <u>budgeted and</u> available.;</p> <p>b) Each shall constitute a cost reimbursement grant as defined by the Rules of the Department of Finance and Administration, Chapter 0620-3-3.</p> <p>b) Each shall be consistent <u>Complies</u> with state of: Tennessee and <u>laws and regulations; Central Procurement Office rules and policies; program policy</u> rules, and regulations, including all applicable; and any federal laws, rules, regulations, and requirements.; <u>policies, rules, and regulations, including all applicable; and any federal laws, rules, regulations, and requirements.;</u></p> <p>c) NONE shall <u>Shall not</u> create an employer/employee relationship as prohibited by the Rules of the Department of Finance and Administration, Chapter 0620-3-3. <u>Tenn. R. & Regs. § 0690-03-01-.17;</u></p> <p>d) NONE shall <u>Shall not</u> procure goods, materials, supplies, equipment, or services EXCEPT as provided herein and for the program specified. <u>in this Delegated Grant Authority; and</u></p> <p>e) NONE shall <u>Shall not</u> provide for the payment of any amount directly or indirectly to an employee or official of the state of Tennessee <u>State.</u></p> <p>6. The Grantor agency <u>State Agency</u> will retain records to document that every grant <u>contract</u> has been awarded <u>executed</u> in accordance with the limits, guidelines, and conditions specified herein <u>in this Delegated Grant Authority.</u></p> <p>7. The Grantor agency <u>State Agency</u> will provide all such reports and information relating to the execution of this delegated authority <u>executed grant contracts under this Delegated Grant Authority</u> as may be requested by the state officials who approve the delegated authority.</p> <p>8. <u>The Grantor State Agency shall attach a copy of the proposed grant contract(s) that will be used under the DGA. If the proposed grant contract or contracts include modifications or additions to grant contract templates or models, redline the modifications or additions in the attachment(s) and include an approved Rule Exception Request ("RER").</u></p> <p>IN WITNESS WHEREOF, and by signature below, I affirm, certify, and assure that all information detailed herein <u>in this DGA</u> is, to the best of my knowledge, accurate and represents the limits, guidelines, conditions, and procedures that the Grantor agency staff <u>State Agency</u> shall follow in awarding <u>executing</u> each grant hereunder <u>contract.</u></p>	
<u>Grantor Agency Head Name & Title</u>	Date

ATTACHMENT 1

PRE-DEFINED GRANTEE SELECTION & GRANT AMOUNT DETERMINATION PROCEDURES

~~A non-~~The Grantor State Agency will select grantees in strict accordance with a pre-defined, competitive grant shall NOT be made pursuant to this delegated authority, or impartial process described below. The grantor agency Grantor State Agency shall retain records to show the clearly competitive or impartial basis of each grant contract executed, including documentation that each grant pursuant to this delegated authority was made contract under this Delegated Grant Authority was executed in accordance with the grantee selection &and grant contract amount determination procedures below.

~~Detailed Grantee Selection & Grant Amount Determination Selection Procedures~~grantee selection and grant contract amount determination procedures

ATTACHMENT 2

EXACT GRANT CONTRACT SCOPE OF SERVICES TEXT

~~Insert Exact Grant Scope of Service~~the exact scope of services ("Scope") that will be used in executed grant contracts. If the Grantor State Agency wishes to use more than one Scope, insert all Scopes and clearly identify each Scope and when it will be used.

~~The Scope of Services must describe~~describes the services and deliverables that the ~~grantee~~Grantee must provide. It must specify all associated functional and technical requirements. ~~It must not~~The Grantor State Agency may include payment terms outside of Section C with an approved Rule Exception Request.

~~The signature on the DGA application signifies the agency head's judgment that the proposed scope of services is:~~Grantor State Agency head or designee signifies by signing this DGA that all information in this DGA is, to the best of his or her knowledge, accurate and represents the limits, guidelines, conditions, and procedures that the Grantor State Agency shall follow in executing each grant contract.

- ~~▪ clear and correct,~~
- ~~▪ adequate for all legal and enforcement purposes, and~~
- ~~▪ sufficiently detailed to ensure contractor accountability and results~~

Document comparison by Workshare Compare on Wednesday, October 15, 2014
3:42:12 PM

Input:	
Document 1 ID	file://C:\Users\BA10408\Desktop\DG Model_original.doc
Description	DG Model_original
Document 2 ID	file://M:\C.Mallea's documents\Policy subcommittee\Ready for AC review\10.27.14 Meeting\DG Template_clean.doc
Description	DG Template_clean
Rendering set	Standard

Legend:	
<u>Insertion</u>	
Deletion	
Moved from	
<u>Moved to</u>	
Style change	
Format change	
Moved-deletion	
Inserted cell	
Deleted cell	
Moved cell	
Split/Merged cell	
Padding cell	

Statistics:	
	Count
Insertions	129
Deletions	129
Moved from	0
Moved to	0
Style change	0
Format changed	0
Total changes	258

**DELEGATED GRANT AUTHORITY (DG)
TEMPLATE**

CLEAN VERSION

DELEGATED GRANT AUTHORITY (DG) TEMPLATE

This template prescribes the format and content for the Delegated Grant Authority application ("DGA"). Approval of the DGA confers delegated authority to execute grant contracts for an individual program without additional, individual, independent approval.

Procurement professionals shall adhere to this template and attach a copy of the proposed grant contract(s) that will be used under the DGA. If the proposed grant contract or contracts include modifications or additions to grant contract templates or models, redline the modifications or additions in the attachment(s) and include an approved Rule Exception Request ("RER").

Do NOT route a DGA for approval after its begin date. Any DGA routed for approval after its begin date is subject to disapproval or may be approved with a begin date later than the one proposed. Agencies may obtain a begin date that occurs before the routing date with an approved RER.

A DGA will ONLY be approved for a period of either all or some part of one (1) fiscal year. However, it may specify a contract period of up to five (5) years for any grant contract executed under the delegated authority. No single grant contract executed under a DGA shall have a maximum liability that exceeds five million dollars (\$5,000,000).

Procurement professionals should complete template fields and follow, replace, or otherwise address red instructional text (e.g., State Agency Name, amount, will/will not) as indicated.

COVER SHEET

Complete summary cover sheet fields as indicated within the template.

Agency Tracking # unique tracking number comprised of: 5-digit business unit # + unique, 5-digit #
example: 31707-12345

Funding amounts by fiscal year and funding source with row and column totals;
contract maximum liability MUST equal the sum of the TOTAL Contract Amount column (i.e., the grand total amount for all fiscal years & all sources of funding)

A summary cover sheet properly completed and in accordance with the template is required for each grant contract executed under the DGA.

APPROVALS

Affix a signature by the Grantor State Agency head or an authorized designee. Prepare the Contract Entry Record for the Delegated Grant Authority as required by the Edison system. Then, scan the signed document with the completed summary cover sheet to a PDF file and attach the digital copy to the Edison record. Attach any supporting documentation in PDF format to the Edison record including:

- a PDF copy of the previously approved DGA if a DGA with the same purpose similar to one proposed was approved in the prior year.
- a PDF copy of any necessary RERs

Submit the Edison Contract Entry Record with the proposed DGA for approval routing.



DELEGATED GRANT AUTHORITY

Agency Tracking #	Edison ID	Begin Date	End Date
Edison ID of prior, similar DG (if any)		Last possible End Date of authorized grant contracts	

Service Caption

Funding —

FY	State	Federal	Interdepartmental	Other	TOTAL Maximum Liability
TOTAL:					

Each grant contract will establish the following type of relationship:

SUBRECIPIENT CONTRACTOR

Budget Officer Confirmation: There is a balance in the appropriation from which obligations hereunder are required to be paid that is not already encumbered to pay other obligations.

CPO USE – DG

Speed Chart (optional)

Account Code (optional)

DELEGATED GRANT AUTHORITY

This Delegated Grant Authority application ("DGA"), if approved in accordance with Central Procurement Office rules, policies, and procedures, shall authorize the applicant state agency ("Grantor State Agency") to execute grant contracts for a particular program or programs without individual, independent approval, PROVIDED THAT all grant contracts are within the limits, guidelines, and conditions of this DGA. The Grantor State Agency shall attach a copy of the proposed grant contract(s) that will be used under the DGA. If the proposed grant contract or contracts include modifications or additions to grant contract templates or models, redline the modifications or additions in the attachment(s) and include an approved Rule Exception Request ("RER").

Grantor State Agency:	Agency Name	
Service Caption:	Program Identification	
A. What will be the maximum number of individual grant contracts?		Number
B. What will be the maximum period of an individual grant contract?		Number months
C. What will be the maximum amount of an individual grant contract (must not exceed five million dollars (\$5,000,000))?		\$ Amount
D. What is the maximum liability of the Delegated Grant Authority?		\$ Amount
E. GRANTOR STATE AGENCY DECLARATION:		
<ol style="list-style-type: none"> 1. Each of the following is true and applicable: <ol style="list-style-type: none"> a) The program needs and general categories of services are such that adequate guidelines can be developed to direct the Grantor State Agency in competitively or impartially awarding a number of similar grants; and b) The individual grant contracts involved will be of such uniformity and standardization of processes, procedures, and contract terms that individual, independent, and prior approval is unnecessary and impractical. 2. The summary cover sheet correctly records the requested delegated authority period in which every grant contract must begin as well as the relationship (as defined by Central Procurement Office Policy 2013-007) that each grant contract will create. 3. The Grantor State Agency will select grantees in strict accordance with a pre-defined, competitive or impartial process. This process is detailed in Attachment 1. 4. The Grantor State Agency will draft each grant contract with the exact "scope of services" detailed in Attachment 2, and in compliance with the form and content required by the appropriate grant contract templates and models in effect at the time that each grant contract is drafted. Each grant contract must include a completed summary cover sheet attached at the front of each copy. 5. The Grantor State Agency will ensure that every grant contract entered into under the Delegated Grant Authority: <ol style="list-style-type: none"> a) Has sufficient funds budgeted and available; b) Complies with: Tennessee laws and regulations; Central Procurement Office rules and policies; program policies, rules, and regulations; and any federal laws, rules, regulations, and requirements; c) Shall not create an employer/employee relationship as prohibited by the Tenn. R. & Regs. § 0690-03-01-.17; 		

Grantor State Agency:	Agency Name
Service Caption:	Program Identification
<p>d) Shall not procure goods, materials, supplies, equipment, or services EXCEPT as provided in this Delegated Grant Authority; and</p> <p>e) Shall not provide for the payment of any amount directly or indirectly to an employee or official of the State.</p> <p>6. The Grantor State Agency will retain records to document that every grant contract has been executed in accordance with the limits, guidelines, and conditions specified in this Delegated Grant Authority.</p> <p>7. The Grantor State Agency will provide all such reports and information relating to the executed grant contracts under this Delegated Grant Authority as may be requested by state officials.</p> <p>8. The Grantor State Agency shall attach a copy of the proposed grant contract(s) that will be used under the DGA. If the proposed grant contract or contracts include modifications or additions to grant contract templates or models, redline the modifications or additions in the attachment(s) and include an approved Rule Exception Request ("RER").</p> <p>IN WITNESS WHEREOF, and by signature below, I certify that all information in this DGA is, to the best of my knowledge, accurate and represents the limits, guidelines, conditions, and procedures that the Grantor State Agency shall follow in executing each grant contract.</p>	
Grantor Agency Head Name & Title	Date

ATTACHMENT 1**PRE-DEFINED GRANTEE SELECTION & GRANT AMOUNT DETERMINATION PROCEDURES**

The Grantor State Agency will select grantees in strict accordance with a pre-defined, competitive or impartial process described below. The Grantor State Agency shall retain records to show the clearly competitive or impartial basis of each grant contract executed, including documentation that each grant contract under this Delegated Grant Authority was executed in accordance with the grantee selection and grant contract amount determination procedures below.

Detailed grantee selection and grant contract amount determination procedures

ATTACHMENT 2

EXACT GRANT CONTRACT SCOPE OF SERVICES TEXT

Insert the exact scope of services ("Scope") that will be used in executed grant contracts. If the Grantor State Agency wishes to use more than one Scope, insert all Scopes and clearly identify each Scope and when it will be used.


The Scope describes the services and deliverables that the Grantee must provide. It must specify all associated functional and technical requirements. The Grantor State Agency may include payment terms outside of Section C with an approved Rule Exception Request.

The Grantor State Agency head or designee signifies by signing this DGA that all information in this DGA is, to the best of his or her knowledge, accurate and represents the limits, guidelines, conditions, and procedures that the Grantor State Agency shall follow in executing each grant contract.

GRANT CONTRACT COVER SHEET

PROPOSED CHANGES

REQUEST: Delete the American Recovery and Reinvestment Act Funding section and make the additions highlighted below to all applicable grant contract cover sheets.

 GRANT CONTRACT (description of grant contract type)							
Begin Date		End Date		Agency Tracking #		Edison ID	
Grantee Legal Entity Name						Edison Vendor ID	
Subrecipient or Contractor			CFDA #				
<input type="checkbox"/> Subrecipient <input checked="" type="checkbox"/> Contractor			Grantee's fiscal year end				
Service Caption (one line only)							
Funding —							
FY	State	Federal	Interdepartmental	Other	TOTAL Grant Contract Amount		
TOTAL:							
Grantee Selection Process Summary							
<input type="checkbox"/> Competitive Selection			Describe the competitive selection process used.				
<input type="checkbox"/> Non-competitive Selection			Describe the reasons for a non-competitive grantee selection process.				
Budget Officer Confirmation: There is a balance in the appropriation from which obligations hereunder are required to be paid that is not already encumbered to pay other obligations.				CPO USE - XX			
Speed Chart (optional)			Account Code (optional)				

**SECTION 6.2.4, “REQUIRED AGENCY
DOCUMENTATION” OF THE
*PROCUREMENT PROCEDURES MANUAL
OF THE CENTRAL PROCUREMENT
OFFICE***

REDLINE VERSION

6.2.4. Required Agency Documentation:

~~A State Agency seeking approval to procure goods or services using a sole source method of procurement, must provide the following to the Chief Procurement Officer for approval:~~

- ~~• Documentation in Edison justifying the need for a sole source procurement;~~
- ~~• A letter from agency's Commissioner to the Chief Procurement Officer requesting approval of a sole source procurement;~~
- ~~• A letter from a vendor or manufacturer stating that the vendor or manufacturer is the sole source of the good or service being procured; and~~
- ~~• Diversity information from the sole source vendor or manufacturer, as currently required in the invitation to bid documents utilized by the CPO.~~

Any State Agency seeking to obtain goods or services through a sole source method of procurement must first obtain approval to do so from the Chief Procurement Officer. The agency, prior to using a sole source procurement, shall provide: (1) a Special Contract Request using the template on the CPO website; (2) any documents supporting the Special Contract Request or responding to the CPO's request for additional documentation; and (3) a letter from the vendor stating that it has the exclusive rights to provide the goods or services if the basis for the sole source request is that the vendor has the exclusive rights to provide the goods or services. The vendor's letter must also include diversity information, as required by the Central Procurement Office.

~~After review of the written justification from the requisitioning agency and determining that the item to be purchased meets one or several of the above criteria, the sole source purchase may be made without following competitive procurement method.~~

Only after the Chief Procurement Officer's approval may a State Agency proceed with a sole source procurement.

Document comparison by Workshare Compare on Wednesday, October 08, 2014
9:19:55 AM

Input:	
Document 1 ID	file://C:\Users\BA10408\Desktop\PPM 6.2.4_original.docx
Description	PPM 6.2.4_original
Document 2 ID	file://C:\Users\BA10408\Desktop\PPM 6.2.4_proposed.docx
Description	PPM 6.2.4_proposed
Rendering set	Standard

Legend:	
<u>Insertion</u>	
Deletion	
Moved from	
<u>Moved to</u>	
Style change	
Format change	
Moved deletion	
Inserted cell	
Deleted cell	
Moved cell	
Split/Merged cell	
Padding cell	

Statistics:	
	Count
Insertions	2
Deletions	7
Moved from	0
Moved to	0
Style change	0
Format changed	0
Total changes	9

**SECTION 6.2.4, “REQUIRED AGENCY
DOCUMENTATION” OF THE
*PROCUREMENT PROCEDURES MANUAL
OF THE CENTRAL PROCUREMENT
OFFICE***

CLEAN VERSION

REQUEST: Replace the current Section 6.2.4 of the *Procurement Procedures Manual of the Central Procurement Office* with the following.

6.2.4. Required Agency Documentation

Any State Agency seeking to obtain goods or services through a sole source method of procurement must first obtain approval to do so from the Chief Procurement Officer. The agency, prior to using a sole source procurement, shall provide: (1) a Special Contract Request using the template on the CPO website; (2) any documents supporting the Special Contract Request or responding to the CPO's request for additional documentation; and (3) a letter from the vendor stating that it has the exclusive rights to provide the goods or services **if** the basis for the sole source request is that the vendor has the exclusive rights to provide the goods or services. The vendor's letter must also include diversity information, as required by the Central Procurement Office.

Only after the Chief Procurement Officer's approval may a State Agency proceed with a sole source procurement.

**SECTION 10.8, “P-CARD PURCHASES”
OF THE *PROCUREMENT PROCEDURES*
MANUAL OF THE CENTRAL
*PROCUREMENT OFFICE***

REDLINE VERSION

10.8. *P-Card Purchases.*

The Department of General Services, Central Procurement Office, and the Department of Finance and Administration, Division of Accounts, shall maintain any statewide credit and debit card services contracts, which enable State Agencies to provide direct payment for goods, services, and State travel. State Agencies must utilize these statewide contracts when seeking credit and debit card services. Agencies are prohibited from developing alternative contracts or submitting applications outside of these contracts for payment card services. If an agencyAgency requires services not available from a current contract, such agencyAgency shall consult with the Central Procurement Office to determine if a separate procurement for such services is necessary.

~~The payment card program, as administered by~~Except for purchases of equipment that require tagging under the Department of Finance and Administration's policies, the Central Procurement Office,~~'s payment card program~~ shall be the primary method of payment for purchases made pursuant to an agencyAgency's local purchase authority. ~~Such local purchase authority is allowable for procurements costing less than \$5,000. Any such procurement shall not be small purchase authority. Under Tenn. Code Ann. § 12-3-503(b) and CPO Policy Number 2013-003, any State Agency may use its small purchase authority to make a purchase without soliciting quotes or proposals from multiple suppliers if the total value of the purchase is ten thousand dollars (\$10,000) or less. Agencies shall not artificially divided so as to meet the \$5,000 threshold~~divide transactions or accounts to constitute a small purchase. Agencies shall comply with all applicable Central Procurement Office Rules and Policies when utilizing a payment card for a purchase. Purchases of equipment that require tagging under the Department of Finance and Administration's policies require the prior approval of the Department of Finance and Administration, Division of Accounts, as the business owner of the Asset Management Module.

Each agencyAgency shall select an employee to serve as the "designated agency coordinator" for ~~that agency's~~sits payment card program. The coordinator shall assist the agency fiscal officer in providing day-to-day oversight of the agencyAgency's payment card use, in accordance with the payment card procedures established by the Central Procurement Office.

The Central Procurement Office will utilize electronic reporting and centralized payment for all credit and debit card vendors. Agencies shall be responsible for reconciling monthly payment card reports to agency transactions.

An agencyAgency may grant an exception to payment card use if a business refuses to accept a payment card or use of the payment card is otherwise impractical. Any other exceptions to this policySection shall be approved by the Chief Procurement Officer.

Document comparison by Workshare Compare on Wednesday, October 08, 2014
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Description	PPM 10.8_P-Card purchases_clean
Rendering set	Standard

Legend:	
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Statistics:	
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Total changes	27

**SECTION 10.8, “P-CARD PURCHASES”
OF THE *PROCUREMENT PROCEDURES*
MANUAL OF THE CENTRAL
*PROCUREMENT OFFICE***

CLEAN VERSION

REQUEST: Update § 10.8 of the *Procurement Procedures Manual of the Central Procurement Office* to reflect the Procurement Commission's approval of a \$10,000 threshold for small purchases. Delete the existing § 10.8 and replace it with the following:

10.8. *P-Card Purchases.*

The Department of General Services, Central Procurement Office, and the Department of Finance and Administration, Division of Accounts, shall maintain any statewide credit and debit card services contracts, which enable State Agencies to provide direct payment for goods, services, and State travel. State Agencies must utilize these statewide contracts when seeking credit and debit card services. Agencies are prohibited from developing alternative contracts or submitting applications outside of these contracts for payment card services. If an Agency requires services not available from a current contract, such Agency shall consult with the Central Procurement Office to determine if a separate procurement for such services is necessary.

Except for purchases of equipment that require tagging under the Department of Finance and Administration's policies, the Central Procurement Office's payment card program shall be the primary method of payment for purchases made pursuant to an Agency's small purchase authority. Under Tenn. Code Ann. § 12-3-503(b) and CPO Policy Number 2013-003, any State Agency may use its small purchase authority to make a purchase without soliciting quotes or proposals from multiple suppliers if the total value of the purchase is ten thousand dollars (\$10,000) or less. Agencies shall not artificially divide transactions or accounts to constitute a small purchase. Agencies shall comply with all applicable Central Procurement Office Rules and Policies when utilizing a payment card for a purchase. Purchases of equipment that require tagging under the Department of Finance and Administration's policies require the prior approval of the Department of Finance and Administration, Division of Accounts, as the business owner of the Asset Management Module.

Each Agency shall select an employee to serve as the "designated agency coordinator" for its payment card program. The coordinator shall assist the agency fiscal officer in providing day-to-day oversight of the Agency's payment card use, in accordance with the payment card procedures established by the Central Procurement Office.

The Central Procurement Office will utilize electronic reporting and centralized payment for all credit and debit card vendors. Agencies shall be responsible for reconciling monthly payment card reports to agency transactions.

An Agency may grant an exception to payment card use if a business refuses to accept a payment card or use of the payment card is otherwise impractical. Any other exceptions to this Section shall be approved by the Chief Procurement Officer.

PROPOSED ADDITION OF:

**SECTION 6.7, “PURCHASE ORDER
EXEMPTIONS” TO THE *PROCUREMENT
PROCEDURES MANUAL OF THE
CENTRAL PROCUREMENT OFFICE***

REQUEST: Add a new section to the *Procurement Procedures Manual of the Central Procurement Office* regarding Purchase Order Exemptions and modify the Table of Contents as appropriate.

6.7 Purchase Order Exemptions

Due to the unique nature of the goods or services involved, the CPO will not require a Purchase Order to accompany payment requests for certain purchases. No Purchase Order is required when using the P-Card in compliance with the P-Card Policy. The following items do not require a Purchase Order or a contract if: (a) they are not available on a statewide or agency term contract; (b) they are supported by an invoice from the vendor of the goods or services; (c) performance occurs in no more than ninety (90) days; and (d) the purchase does not exceed ten thousand dollars (\$10,000). The ten thousand dollar (\$10,000) limit does not apply to items with an asterisk.

- Telephone bills*
- Utility bills, including connection fees*
- Landfill charges
- Books, periodicals, or publications
- Advertisements, e.g., through radio, television, print, or internet
- Freight charges not incurred in connection with the purchase of supplies or equipment
- Postage charges
- Bonding fees
- Notary public fees
- Deed registration fees
- Court fees
- Title insurance*
- Fees in connection with titles or title searches
- Building permits
- Meeting expenses, e.g., charges for reserving a meeting venue and expenses for refreshments served at meetings
- Vehicle rental while on approved travel
- Tuition, fees, and supplies for state employee training that the Tennessee Department of Human Resources has approved
- Chemical and pesticide samples tested by the Tennessee Department of Agriculture as required by federal or state law (individual purchases cannot exceed \$200.00)
- Prescriptions for the emergency treatment of clients or wards of the State
- Late fees incurred under the Prompt Pay Act

PROPOSED

**TERMS AND CONDITIONS FOR
PURCHASE ORDERS ISSUED UNDER AN
AGENCY'S LOCAL PURCHASE
AUTHORITY**

REQUEST: (1) Modify the Edison system to allow procurement professionals to select from the following types of purchase orders: (a) purchase order for a purchase from a statewide contract; (b) purchase order for purchase from an agency term contract; and (c) purchase order for a purchase under an agency's local purchase authority. (2) Add the following terms and conditions to all purchase orders for purchases under an agency's local purchase authority.

Terms and Conditions

1. Total Purchase Order Amount. In no event shall the liability of the State under this Purchase Order exceed Written Dollar Amount (\$Number) ("Total Purchase Order Amount").
2. Inspection and Acceptance. The State shall have the right to inspect all goods or services provided by Vendor under this Purchase Order. If, upon inspection, the State determines that the goods or services are defective, the State shall notify Vendor, and Vendor 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.
3. Modification, Amendment or Change Order. This Purchase Order may be modified only by a written amendment or change order signed by the State and the Vendor.
4. Limitation of Liability. The State shall have no liability except as specifically provided in this Purchase Order. In no event shall the State be liable to the Vendor or any other party for any lost revenues, lost profits, loss of business, decrease in the value of any securities or cash position, time, money, goodwill, or any indirect, special, incidental, punitive, exemplary or consequential damages of any nature, whether based on warranty, contract, statute, regulation, tort (including but not limited to negligence), or any other legal theory that may arise. The State's total liability under this Purchase Order or otherwise shall under no circumstances exceed the Total Purchase Order Amount.
5. Limitation of Vendor's Liability. The Vendor's liability for all claims arising under this Purchase Order shall be limited to an amount equal to two (2) times the Total Purchase Order Amount. In no event shall this Section limit the Vendor's liability for intentional torts, criminal acts, fraudulent conduct, or omissions that result in personal injuries or death.
6. Termination for Convenience. The State shall have the right to immediately terminate this Purchase Order, without cause and for any reason, upon written notice to the Vendor, delivered by mail or electronic means. The State's notice of termination is effective upon the State's issuance.

7. Subject to Funds Availability. The State's payment of this Purchase Order is subject to the appropriation and availability of State or federal funds. In the event that funds are not appropriated or are otherwise unavailable, the State reserves the right to terminate this Purchase Order, effective immediately, upon written notice to the Vendor. If the State terminates this Purchase Order due to lack of funds availability, the Vendor 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.

8. Payment of Purchase Order. 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.

9. Deductions. The State reserves the right to deduct from amounts, which are or shall become due and payable to the Vendor, under any contract between the Vendor and the State.

10. Hold Harmless. The Vendor 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, omission, or negligence on the part of the Vendor, its employees, or any other person acting for or on its or their behalf relating to this Purchase Order. The Vendor further agrees it shall be liable for the reasonable costs of attorneys for the State to enforce the terms of this Purchase Order.

In the event of any suit or claim, the State and Vendor shall give each other immediate notice and provide all necessary assistance to respond. The State's failure to give notice shall only relieve the Vendor of its obligations under this Section to the extent that the Vendor can demonstrate actual prejudice arising from the failure to give notice. This Section shall not grant the Vendor, 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.

11. State and Federal Compliance. The Vendor shall comply with all applicable state and federal laws and regulations in the provision of goods or services under this Purchase Order.

12. Governing Law. This Purchase Order shall be governed by and construed in accordance with the laws of the State of Tennessee. The Tennessee Claims Commission or the state or federal courts in Tennessee shall be the venue for all claims, disputes, or disagreements arising under this Purchase Order. The Vendor acknowledges and agrees that any rights, claims, or remedies against the State of Tennessee or its employees arising under this Purchase Order shall be subject to and limited to those rights and remedies available under Tenn. Code Ann. §§ 9-8-101 through 9-8-407.

13. Entire Agreement. This Purchase Order contains the entire understanding between the State and the Vendor relating to its subject matter, including all terms and conditions of the parties' agreement. This Purchase Order supersedes any and all prior understandings, representations, negotiations, and agreements between the State and the Vendor, whether written or oral.