

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

This Contract, by and between the State of Tennessee, Tennessee Secretary of State ("State") and **Contractor Legal Entity Name** ("Contractor"), is for the provision of a Legal Case Management System (LCM) , as further defined in the "SCOPE."

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

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

Contractor Edison Registration ID # **Number**

**A. SCOPE:**

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

A.2. Service Definitions: **Defined terms shall be as follows and as designated by capitalized words in the terms and conditions of the Contract.**

**APD** – Administrative Procedures Division

**ALJ** – Administrative Law Judge

**SOS** – Secretary of State

**COTS** – “Commercial Off-The Shelf”, software or hardware products that are ready-made and available for sale to the general public

**LCM** – Legal Case Management System

**UAT** - the last phase of the software testing process where actual software users test the software to make sure it can handle required tasks in real-world scenarios, according to specifications

A.3. Service Goals: To implement a COTS LCM solution that provides all products and services as listed in this contract and its attachments.

A.4. Service Recipients: The recipients of the LCM will be the Tennessee Secretary of State's Office Administrative Procedures Division.

A.5. Service Description: The Contractor will provide the Tennessee Secretary of State's Office (SOS), software and services for the implementation of a LCM system that will allow the Administrative Procedures Division (APD) to create, schedule, and manage cases it presides over for Tennessee State Agencies pursuant to the Uniform Administrative Procedures Act Tennessee Code Annotated Title 4, Chapter 5.

The LCM Software must collect and maintain all information necessary for the Administrative Law Judges to conduct hearings, maintain official case records pursuant to Tenn. Code Ann. §4-5-319, draft and prepare orders, perform reconsideration proceedings, appeals, issue subpoenas, and rule on continuances. The LCM software must prepare reports and generate invoices as needed.

A.6. Service Deliverables: The Contractor shall deliver the following service deliverables:

- A.6.1 Project Kickoff Meeting and Presentation: The Contractor shall participate in an initial meeting (“Kickoff Meeting”) scheduled by the State. The purpose of the Kickoff Meeting shall be to introduce the Contractor to State project stakeholders, and to ensure agreement regarding project objectives, roles and responsibilities, strategy, and challenges. The Contractor shall prepare and deliver a presentation for the Kickoff Meeting that synthesizes its approach to the overall project, provides high-level milestones, and introduces the Contractor team.
- A.6.2 Project Management: The Contractor shall provide the following:
- A. Project Manager – The Contractor shall designate a project lead (“Project Manager”) to serve as the Contractor’s primary point of contact for all activities and issues. The Contractor shall ensure that its Project Manager provides sufficient management of the project to ensure all project activities are performed efficiently, accurately, and on schedule. The Contractor Project Manager shall coordinate as necessary with the State lead (“State Project Manager”) to ensure the Contractor activities are managed consistently with overall Contract requirements.
  - B. Project Management Plan: The Contractor shall provide a project plan (“Project Management Plan”) that describes the approach to activities, project schedule, stages, duration, risks, and implementation work for all Project work. The State will provide written acceptance for the Project Management Plan.
    - i. Work Breakdown Structure (“WBS”) and “Project Schedule”: lists the work packages to be performed for the project, and a schedule baseline that will be used as a reference point for managing project progress as it pertains to schedule and timeline.
    - ii. “Resource Management Plan”: explains how the Contractor will maintain a pool of resources for the project.
    - iii. “Issue Management Plan”: explains how project issues will be documented, tracked and reported, including the process for escalating issues for joint management decision by the Contractor and the State.
    - iv. “Change Management Plan”: a proposed plan for managing project changes including, but not limited to, process, scope, resources, and implementation.
    - v. “Release Management Plan”: outlines procedures for release and deployment of system components, including details on how the Contractor will manage the release of software upgrades and enhancements and how the State will be notified when upgrades become available.
  - C. Weekly Status Updates: Through the implementation period, the Contractor agrees to provide, at minimal, a weekly status update which will include any updates on progress towards milestones, explanation of schedule variances, updates on implementation status of deliverables, and the status of action items.
  - D. Monthly Status Meeting. Through the implementation period, the Contractor agrees to attend a monthly status meeting/conference call

with the State stakeholders to discuss current progress, discuss any concerns, and answer any questions.

- E. Final Project Report: The Contractor shall create a final report (“Final Project Report”) using the SOS’s Project Closure Report Form, summarizing project activities, lessons learned, and recommended next steps. The Final Project Report shall be submitted no later than fifteen (15) business days prior to the Contract End Date. Plan is subject to the State’s approval and written acceptance of the Final Project Report.
- A.6.3 LCM System: The Contractor shall provide a COTS system tailored to meet the requirements expressed in RFQ 30504-01717 and its attachments hereinafter referred to as the “RFQ”. The Contractor shall deliver a LCM system that meets all requirements to which the Contractor has agreed or has proposed in the Contractor’s Proposal and in this Contract.
- A.6.4 Licensure: Contractor grants a license to the State to use all software provided under this Contract in the course of the State’s business and purposes. This license shall provide for up to fifty (50) State concurrent users to use the LCM system.
- A. The Contractor shall provide, at the State’s request, additional user licenses to supplement the base licenses, if needed in order to support increases in the user base, or as a result of extending the use of the system to other parties.
- B. Any third-party software (excluding Microsoft SQL Server) that is required for the operation or maintenance of the proposed LCM, shall be provided with the initial licensure, full warranty support and license upgrades. The Contractor shall provide evidence to the State that the contractor has lawfully purchased this initial licensure, warranty support, and license upgrades, and that the State has the right to use any such third-party-software.
- A.6.5 Data Migration: The Contractor shall develop data conversion and migration methodology with State staff for databases to be migrated or converted. The Contractor shall perform the data conversion and migration with the State’s approval of the methodology, timeline, and conversion process. The existing case tracking system is TrialWorks.
- A. The “Data Migration Plan” shall convert, test, and load data to the new Legal Case Management System databases.
- B. The “Data Migration Plan” shall describe how data for a case record will be migrated into the new LCM, along with recommendations to minimize the risk of incorrect data migration. The Data Migration Plan is subject to the State’s approval and written acceptance.
- A.6.6 Consulting Services: At the State’s request, the Contractor will provide professional services (“Consulting Services”) to the State. Consulting Services may be required, for example, to analyze, design, develop, and implement additional functionality not specified in this Contract and RFQ. The Consulting Services may be provided either on or off-site, at the State’s option, and will be billed to the State on a per-hour basis. The types of Consulting Services provided may include, but not be limited to, on-site technical support, project management, software analysis, design, implementation, and training.

- A. There is no guarantee that the State will use any of the Contractor's Consulting Services. The State retains full control as to the timing and usage of Consulting Services.
- A.6.7. Training: The Contractor shall provide training to the State System administrators and staff members prior to "go-live" of the system.
- A. Functional Training: The Contractor shall provide training to all of the ALJ and APD support staff members on the functionality of the LCM system.
- B. Technical Training: The Contractor shall provide training to up to five (5) State Information Systems staff members on technical features. This training shall include an overview of the system design, and how to perform administrative tasks, and how to maintain the LCM system
- C. Training Documentation: The Contractor shall provide documentation for all training activities, made available in electronic format.
- D. Training Location: This training shall occur in the Nashville, Tennessee offices of the personnel to be trained.
- E. Training Schedule: The training dates and time shall be coordinated with the State's APD and IT staff.
- A.6.8. Reporting: The LCM system shall provide a method for authorized users to schedule and distribute reports. In addition, the LCM system shall include a user interface that will allow authorized users to develop new reports, both for *ad hoc* reporting and continued/scheduled reporting. More detailed requirements are incorporated into this contract in Contract Attachment 2, Business Requirements.
- A.6.9 Requirements Verification and Fit-Gap Analysis. The Contractor shall work with the State project team members, as identified by the State, to verify the requirements outlined in Contract Attachment 2 – Requirements Matrix, and to map and document the extent that the Contractor's solution meets each requirement. The Contractor shall use its responses to Contract Attachment 2 – Requirements Matrix, for verification process. The Contractor shall document any necessary requirement changes or requirement gaps identified as a result of the requirements verification process.
- The Contractor shall prepare and deliver to the State for review and approval a Requirements Verification document that includes a finalized list of Business and Technical Requirements Specifications, which detail the specific features and functions of each requirement.
- A. All requirements in RFQ Attachment D/*Pro Forma* Contract Attachment 2, Business and Technical Requirements Matrix, that are prioritized as "Mandatory" must be deliverable by the Contractor prior to "go-live".
- A.6.10. Testing. The Contractor shall develop and deliver a plan ("Test Plan") describing how the Contractor will coordinate, manage, and conduct thorough testing of the LCM system prior to the delivery to the State for UAT. The Test Plan shall include, at a minimum, testing all functionality, reports, correspondence, and interfaces. Documentation of the inputs, outputs, problems identified, and corrections made shall be required, in the form of a functional test results document. Functional testing shall be performed by the Contractor on each module of the LCM system. Individual sets of test data and test plans shall be

created by the Contractor to completely test internal conditions of the LCM system. The State will provide written acceptance of the Test Plan and reserves the right to request periodic updates to the document.

The State will develop a User Acceptance Test (“UAT”) plan and test scenarios, and will conduct the UATs. The Contractor shall be required to work with the State to facilitate and coordinate the execution of UAT in the designated test environment. The Contractor shall provide recommended processes and procedures for the UAT in the Test Plan.

- A.7. Software Upgrades. The Contractor shall provide for software upgrades and enhancements, as described below, to the LCM system.
- A.7.1 All upgrades and/or enhancements to the LCM system will be made known and available to the State as soon as they are released to any of the Contractor’s customers.
- A.7.2 Complete documentation of all LCM system enhancements or revisions will be provided with new releases of software. Documentation must describe, in a user-friendly manner, what the user needs to know to understand each level on which the software operates.
- A.7.3 The Contractor will coordinate with the State on the timing of the installation of the upgrades and/or enhancements.
- A.7.4 The Contractor will provide the State with full instructions regarding the steps necessary to install and test upgrades and/or enhancements
- A.8. Software Maintenance and Support: The Contractor shall provide telephone and email-based support to the State staff upon request.
- A.8.1 The Support and Maintenance period shall begin on the date of completion of Phase I of the System Implementation, and shall continue until the termination of this contract.
- A.8.2 The Contractor will provide regular maintenance of the LCM system as needed.
- A.8.3 The State will contact the Contractor in the event that it needs to report a support incident.
- A.8.4 The Contractor will have telephone and email based support available to the State at a minimum during the hours of Monday-Friday 8am-5pm CST.
- A.9. Information Security Compliance.: The Contractor warrants to the State that it is familiar with and will conform to the requirements of the State of Tennessee Enterprise Information Security Policies (“State Security Policies”), and has measures in place that ensure that all data records are transported, stored and accessed in a secure manner. All data is property of the State of Tennessee. The LCM system or Contractor must meet or exceed the requirements of the State Security Policies State’s for access control, authentication, storage, data destruction, system maintenance and patching must be compliant with best practices for secure application development as defined in ISO/IEC 27000 series. The State Security Policies can be found at the following link:
- <http://www.tn.gov/finance/oir/security/secpolicy.html>

Contractor warrants that it will cooperate with the State in the course of performance of the Contract so that both Parties will be in compliance with State Enterprise Information Security Policies requirements and any other state and federal computer security regulations including cooperation and coordination with State computer security officials and other compliance officers. Contractor staff may be required to undergo background checks.

A.9.1 The LCM system must meet all security requirements as defined in RFQ Attachment D Section 2/*Pro Forma* Contract Attachment 2, Section 2, Technical Requirements Matrix.

- A.10. Warranty: Contractor represents and warrants that the term of the warranty (“Warranty Period”) shall be the greater of the Term of this Contract or any other warranty general offered by Contractor, its suppliers, or manufacturers to customers of its goods or services. The goods or services provided under this Contract shall conform to the terms and conditions of this Contract throughout the Warranty Period. Any nonconformance of the goods or services to the terms and conditions of this Contract shall constitute a “Defect” and shall be considered “Defective.” If Contractor receives notice of a Defect during the Warranty Period, then Contractor shall correct the Defect, at no additional charge.

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

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

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

- A.11 Inspection and Acceptance: The State shall have the right to inspect all goods or services provided by Contractor under this Contract. If, upon inspection, the State determines that the goods or services are Defective, the State shall notify Contractor, and Contractor shall re-deliver the goods or provide the services at no additional cost to the State. If after a period of thirty (30) days following delivery of goods or performance of services the State does not provide a notice of any Defects, the goods or services shall be deemed to have been accepted by the State.
- A.12 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.
- A.13 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 D. 3. Remuneration for any such additional work shall be based on the applicable “contingent”, payment rate(s) detailed in Section C. 3 of this Contract.
- A.14 Service Location: A respondent’s principal place of business, as well as the location for the work to be performed pursuant to the Contract, must be located in the continental United States or Canada. Respondent must allow on-site visits by representatives of the

State, (at the sole expense of the State), upon reasonable notice during normal working hours, while the work is being performed.

**A.15 Change Orders:** 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, 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.

## **B. TERM OF CONTRACT:**

This Contract shall be effective on **DATE** ("Effective Date") and extend for a period **60 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)
COTS LCM Software	\$ Number
Implementation/Consulting Services	\$ Number
Data Conversion	\$ Number
Technical Support and Maintenance	\$ Number per Year
30 Perpetual User Licenses	\$ Number
30 Annual User Licenses	\$ Number per Year
Third Party Software and Fees, if any	\$ Number per Year
Customizations	\$ Number

Contingent Rates – In accordance with section A.13 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.

SERVICE	AMOUNT PER HOUR
ADDITIONAL SYSTEM ENHANCEMENTS	\$ Number

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

iii. The total amount spent for system enhancements shall be capped at 15% of the total non-contingent Contract cost.

- 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:

J. Richard Collier, Director  
 Secretary of State, Administrative Procedures Division  
 312 Rosa L. Parks Ave  
 8<sup>th</sup> Floor, William R. Snodgrass Tennessee Tower  
 Nashville, TN 37123

- 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: TN Secretary of State, Administrative Procedures Division;
  - (5) Customer account number (assigned by the Contractor to the above-referenced Customer);
  - (6) Contractor name;
  - (7) Contractor Tennessee Edison registration ID number;
  - (8) Contractor contact for invoice questions (name, phone, or email);
  - (9) Contractor remittance address;
  - (10) Description of delivered goods or services provided and invoiced, including identifying information as applicable;
  - (11) Number of delivered or completed units, increments, hours, or days as applicable, of each good or service invoiced;
  - (12) Applicable payment methodology (as stipulated in Section C.3.) of each good or service invoiced;
  - (13) Amount due for each compensable unit of good or service; and
  - (14) Total amount due for the invoice period.
- b. Contractor's invoices shall:
- (1) Only include charges for goods delivered or services provided as described in Section A and in accordance with payment terms and conditions set forth in Section C;
  - (2) Only be submitted for goods delivered or services completed and shall not include any charge for future goods to be delivered or services to be performed;
  - (3) Not include Contractor's taxes, which includes without limitation Contractor's sales and use tax, excise taxes, franchise taxes, real or personal property taxes, or income taxes; and
  - (4) Include shipping or delivery charges only as authorized in this Contract.
- c. The timeframe for payment (or any discounts) begins only when the State is in receipt of an invoice that meets the minimum requirements of this Section C.5.

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

- C.7. Invoice Reductions: The Contractor's invoice shall be subject to reduction for amounts included in any invoice or payment that is determined by the State, on the basis of audits

conducted in accordance with the terms of this Contract, to not constitute proper compensation for goods delivered or services provided.

- C.8. Deductions: The State reserves the right to deduct from amounts, which are or shall become due and payable to the Contractor under this or any contract between the Contractor and the State of Tennessee, any amounts that are or shall become due and payable to the State of Tennessee by the Contractor.
- C.9. Prerequisite Documentation: The Contractor shall not invoice the State under this Contract until the State has received the following, properly completed documentation.
- a. The Contractor shall complete, sign, and present to the State the "Authorization Agreement for Automatic Deposit Form" provided by the State. By doing so, the Contractor acknowledges and agrees that, once this form is received by the State, payments to the Contractor, under this or any other contract the Contractor has with the State of Tennessee, may be made by ACH; and
  - b. The Contractor shall complete, sign, and return to the State the State-provided W-9 form. The taxpayer identification number on the W-9 form must be the same as the Contractor's Federal Employer Identification Number or Social Security Number referenced in the Contractor's Edison registration information.

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

- D.1. Required Approvals. The State is not bound by this Contract until it is duly approved by the Parties and all appropriate State officials in accordance with applicable Tennessee laws and regulations. Depending upon the specifics of this Contract, this may include approvals by the Commissioner of Finance and Administration, the Commissioner of Human Resources, the Comptroller of the Treasury, and the Chief Procurement Officer. Approvals shall be evidenced by a signature or electronic approval.
- D.2. Communications and Contacts: All instructions, notices, consents, demands, or other communications required or contemplated by this Contract shall be in writing and shall be made by certified, first class mail, return receipt requested and postage prepaid, by overnight courier service with an asset tracking system, or by email or facsimile transmission with recipient confirmation. All communications, regardless of method of transmission, shall be addressed to the respective Party at the appropriate mailing address, facsimile number, or email address as stated below or any other address provided in writing by a Party.

The State:

J. Richard Collier, Director  
 Secretary of State, Administrative Procedures Division  
 312 Rosa L. Parks Ave  
 8<sup>th</sup> Floor, William R. Snodgrass Tennessee Tower  
 Nashville, TN 37123  
 Richard.Collier@tn.gov  
 Telephone # 615-747-5383  
 FAX # 615-741-4472

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 1, 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: (i) intellectual property or any Contractor indemnity obligations for infringement for third-party intellectual property rights; (ii) any claims covered by any specific provision in the Contract providing for liquidated damages; or (iii) any claims for intentional torts, criminal acts, fraudulent conduct, or acts or omissions that result in personal injuries or death.
- 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. §§ 67-6-601 – 608.

Compliance with applicable registration requirements is a material requirement of this Contract.

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

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

- D.24. Force Majeure: "Force Majeure Event" means fire, flood, earthquake, elements of nature or acts of God, wars, riots, civil disorders, rebellions or revolutions, acts of terrorism or any other similar cause beyond the reasonable control of the Party except to the extent that the non-performing Party is at fault in failing to prevent or causing the default or delay, and provided that the default or delay cannot reasonably be circumvented by the non-performing Party through the use of alternate sources, workaround plans or other means. A strike, lockout or labor dispute shall not excuse either Party from its obligations under this Contract. Except as set forth in this Section, any failure or delay by a Party in the performance of its obligations under this Contract arising from a Force Majeure Event is not a default under this Contract or grounds for termination. The non-performing Party will be excused from performing those obligations directly affected by the Force Majeure Event, and only for as long as the Force Majeure Event continues, provided that the Party continues to use diligent, good faith efforts to resume performance without delay. The occurrence of a Force Majeure Event affecting Contractor's representatives, suppliers, subcontractors, customers or business apart from this Contract is not a Force Majeure Event under this Contract. Contractor will promptly notify the State of any delay caused by a Force Majeure Event (to be confirmed in a written notice to the State within one (1) day of the inception of the delay) that a Force Majeure Event has occurred, and will describe in reasonable detail the nature of the Force Majeure Event. If any Force Majeure Event results in a delay in Contractor's performance longer than forty-eight (48) hours, the State may, upon notice to Contractor: (a) cease payment of the fees 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), which includes RFQ 30504-01717 Attachment D, Requirements Matrix as Attachment 2, and RFQ 30504-01717 Attachment J Sections 1.0, 2.0, 3.0 and 4.0;
  - c. any clarifications of or addenda to the Contractor's proposal seeking this Contract;
  - d. the State solicitation, as may be amended, requesting responses in competition for this Contract;
  - e. any technical specifications provided to proposers during the procurement process to award this Contract; and
  - f. the Contractor's response seeking this Contract.
- D.31. Iran Divestment Act: The requirements of Tenn. Code Ann. § 12-12-101 et.seq., addressing contracting with persons with investment activities in Iran, shall be a material provision of this Contract. The Contractor agrees, under penalty of perjury, that to the best of its knowledge and belief that it is not on the list created pursuant to Tenn. Code Ann. § 12-12-106.
- D.32. Insurance. Contractor shall provide the State a certificate of insurance ("COI") evidencing the coverages and amounts specified below. The COI shall be provided ten (10) business days prior to the Effective Date and again upon renewal or replacement of coverages required by this Contract. If insurance expires during the Term, the State must receive a new COI at least thirty (30) calendar days prior to the insurance's expiration date. If the Contractor loses insurance coverage, does not renew coverage, or for any reason becomes uninsured during the Term, the Contractor shall notify the State immediately.

The COI shall be on a form approved by the Tennessee Department of Commerce and Insurance ("TDCI") and signed by an authorized representative of the insurer. The COI shall list each insurer's national association of insurance commissioners (also known as NAIC) number and list the State of Tennessee, Risk Manager, 312 Rosa L. Parks Ave., 3<sup>rd</sup> floor Central Procurement Office, Nashville, TN 37243 in the certificate holder section. At any time, the State may require the Contractor to provide a valid COI detailing coverage description; insurance company; policy number; exceptions; exclusions; policy effective date; policy expiration date; limits of liability; and the name and address of insured. The Contractor's failure to maintain or submit evidence of insurance coverage is considered a material breach of this Contract.

If the Contractor desires to self-insure, then a COI will not be required to prove coverage. In place of the COI, the Contractor must provide a certificate of self-insurance or a letter on the Contractor's letterhead detailing its coverage, liability policy amounts, and proof of funds to reasonably cover such expenses. Compliance with Tenn. Code Ann. § 50-6-405 and the rules of the TDCI is required for the Contractor to self-insure workers' compensation.

All insurance companies must be: (a) acceptable to the State; (b) authorized by the TDCI to transact business in the State of Tennessee; and (c) rated A- VII or better by A. M. Best. The Contractor shall provide the State evidence that all subcontractors maintain the required insurance or that the subcontractors are included under the Contractor's policy.

The Contractor agrees to name the State as an additional insured on any insurance policies with the exception of workers' compensation (employer liability) and professional liability (errors and omissions) ("Professional Liability") insurance. Also, all policies shall contain an endorsement for a waiver of subrogation in favor of the State.

The deductible and any premiums are the Contractor's sole responsibility. Any deductible over fifty thousand dollars (\$50,000) must be approved by the State. The Contractor agrees that the insurance requirements specified in this Section do not reduce any liability the Contractor has assumed under this Contract including any indemnification or hold harmless requirements.

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

All coverage required shall be on a primary basis and noncontributory with any other insurance coverage or self-insurance carried by the State. The State reserves the right to amend or require additional endorsements, types of coverage, and higher or lower limits of coverage depending on the nature of the work. Purchases or contracts involving any hazardous activity or equipment, tenant, concessionaire and lease agreements, alcohol sales, cyber-liability risks, environmental risks, special motorized equipment, or property may require customized insurance requirements (e.g. umbrella liability insurance) in addition to the general requirements listed below.

To achieve the required coverage levels, a combination of a specific policy written with an umbrella policy covering liabilities above stated limits is acceptable (For example: If appropriate limits are two million dollars (\$2,000,000) per occurrence and two million dollars (\$2,000,000) aggregate, acceptable coverage would include a specific policy covering one million dollars (\$1,000,000) per occurrence and one million dollars (\$1,000,000) aggregate written with an umbrella policy for one million dollars

(\$1,000,000) per occurrence and one million dollars (\$1,000,000) aggregate. If the deficient underlying policy is for coverage area without aggregate limits (generally Automobile Liability and Employers' Liability Accident), Contractor shall provide a copy of the umbrella insurance policy documents to ensure that no aggregate limit applies to the umbrella policy for that coverage area as well.

**The Contractor shall obtain and maintain, at a minimum, the following insurance coverages and policy limits.**

a. Commercial General Liability Insurance

- (1) The Contractor shall maintain commercial general liability insurance, which shall be written on an Insurance Services Office, Inc. (also known as ISO) occurrence form (or a substitute form providing equivalent coverage) and shall cover liability arising from property damage, premises/operations, independent contractors, contractual liability, completed operations/products, personal and advertising injury, and liability assumed under an insured contract (including the tort liability of another assumed in a business contract).
- (2) The Contractor shall maintain bodily injury/property damage with a combined single limit not less than one million dollars (\$1,000,000) per occurrence and two million dollars (\$2,000,000) aggregate for bodily injury and property damage, including products and completed operations coverage with an aggregate limit of at least two million dollars (\$2,000,000).

b. Workers' Compensation and Employer Liability Insurance

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

- vi. The Contractor self-insures its workers' compensation and is in compliance with the TDCI rules and Tenn. Code Ann. § 50-6-405.
- c. Automobile Liability Insurance
    - 1) The Contractor shall maintain automobile liability insurance which shall cover liability arising out of any automobile (including owned, leased, hired, and non-owned automobiles).
    - 2) The Contractor shall maintain bodily injury/property damage with a limit not less than one million dollars (\$1,000,000) per occurrence or combined single limit.
  - d. Professional Liability Insurance
    - 1) Professional liability insurance shall be written on an occurrence basis. This coverage may be written on a claims-made basis but must include an extended reporting period or "tail coverage" of at least two (2) years after the Term;
    - 2) Any professional liability insurance policy shall have a limit not less than one million dollars (\$1,000,000) per claim and two million dollars (\$2,000,000) in the aggregate; and
    - 3) If the Contract involves the provision of services by medical professionals, a policy limit not less than two million (\$2,000,000) per claim.
  - e. Cyber Liability and Network Security Insurance
    - 1) Cyber liability and Network Security Insurance, covering network and privacy risks, including but not limited to unauthorized access, failure of security, breach of privacy perils, wrongful disclosure, or other negligence in the handling of confidential information, privacy perils, and including coverage for related regulatory defense and penalties; data breach expenses, in an amount not less than five million dollars (\$5,000,000.00) per occurrence or claim, five million dollars (\$5,000,000.00) in the aggregate including but not limited to consumer notification, whether or not required by law, in the performance of services hereunder.

## **E. SPECIAL TERMS AND CONDITIONS:**

- E.1. Conflicting Terms and Conditions: Should any of these special terms and conditions conflict with any other terms and conditions of this Contract, the special terms and conditions shall be subordinate to the Contract's other terms and conditions.
- E.2. 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.

- E.3. Additional lines, items, or options. At its sole discretion, the State may make written requests to the Contractor to add lines, items, or options that are needed and within the Scope but were not included in the original Contract. Such lines, items, or options will be added to the Contract through a Memorandum of Understanding (“MOU”), not an amendment.
- a. After the Contractor receives a written request to add lines, items, or options, the Contractor shall have ten (10) business days to respond with a written proposal. The Contractor’s written proposal shall include:
  - b. The effect, if any, of adding the lines, items, or options on the other goods or services required under the Contract;
  - c. Any pricing related to the new lines, items, or options;
  - d. The expected effective date for the availability of the new lines, items, or options.
  - e. The State may negotiate the terms of the Contractor’s proposal by requesting revisions to the proposal.
  - f. To indicate acceptance of a proposal, the State will sign it. The signed proposal shall constitute a MOU between the Parties, and the lines, items, or options shall be incorporated into the Contract as if set forth verbatim.

Only after a MOU has been executed shall the Contractor perform or deliver the new lines, items, or options.

- E.4. Personally Identifiable Information. While performing its obligations under this Contract, Contractor may have access to PII held by the State. 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.

E.5. Extraneous Terms and Conditions. Contractor shall fill all orders submitted by the State under this Contract. No purchase order, invoice, or other documents associated with any sales, orders, or supply of any good or service under this Contract shall contain any terms or conditions other than as set forth in the Contract. Any such extraneous terms and conditions shall be void, invalid and unenforceable against the State. Any refusal by Contractor to supply any goods or services under this Contract conditioned upon the State submitting to any extraneous terms and conditions shall be a material breach of the Contract and constitute an act of bad faith by Contractor.

E.6. 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, however, the failure of the State to give such notice shall only relieve Contractor of its obligations under this Section to the extent Contractor can demonstrate actual prejudice arising from the State’s failure to give notice. This Section shall not grant the Contractor, through its attorneys, the right to represent the State of Tennessee in any legal matter, as provided in Tenn. Code Ann. § 8-6-106.

E.7. 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 RFP #32110-17101 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.

E.8. 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.

E.9. Software Support and Maintenance Warranty. Contractor shall provide to the State all software upgrades, modifications, bug fixes, or other improvements in its software that it makes generally available to its customers

**IN WITNESS WHEREOF,**

**CONTRACTOR LEGAL ENTITY NAME:**

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**CONTRACTOR SIGNATURE**

**DATE**

---

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

**STATE AGENCY NAME:**

---

**NAME & TITLE**

**DATE**

**Pro Forma ATTACHMENT 1****(Fill out only by selected Contractor)****ATTESTATION RE PERSONNEL USED IN CONTRACT PERFORMANCE**

<b>SUBJECT CONTRACT NUMBER:</b>	
<b>CONTRACTOR LEGAL ENTITY NAME:</b>	
<b>EDISON VENDOR IDENTIFICATION NUMBER</b>	

The Contractor, identified above, does hereby attest, certify, warrant, and assure that 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 Contractor. If said individual is not the chief executive or president, this document shall attach evidence showing the individual's authority to contractually bind Contractor.

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

***Pro Forma ATTACHMENT 2***

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Please see the separate contract attachment, RFQ Attachment D, Pro Forma Contract Attachment 2 – Requirements Matrix

**Pro Forma ATTACHMENT 3****(Fill out only by selected Contractor)**

## SAMPLE LETTER OF DIVERSITY COMMITMENT

**(Company Letterhead/Logo)**

(Address)

(Date)

(Salutation),

(Company Name) is committed to achieving or surpassing a goal of (numeral) percent spend with certified diversity business enterprise firms on State of Tennessee contract # (Edison document #). Diversity businesses are defined as those that are owned by minority, women, small business and Tennessee service-disabled veterans which are certified by the Governor's Office of Diversity Business Enterprise (Go-DBE).

We confirm our commitment of (percentage) participation on the (Contract) by using the following diversity businesses:

- (i) Name and ownership characteristics (i.e., ethnicity, gender, Tennessee service-disabled veteran) of anticipated diversity subcontractors and suppliers:  
\_\_\_\_\_
- (ii) Participation estimates (expressed as a percent of the total contract value to be dedicated to diversity subcontractors and suppliers):  
\_\_\_\_\_ %.
- (iii) Description of anticipated services to be performed by diversity subcontractors and suppliers:  
\_\_\_\_\_  
\_\_\_\_\_

We accept that our commitment to diversity advances the State's efforts to expand opportunity of diversity businesses to do business with the State as contractors and sub-contractors.

Further, we commit to:

1. Using applicable reporting tools that allow the State to track and report purchases from businesses owned by minority, women, Tennessee service-disabled veterans and small business.
2. Reporting quarterly to the Go-DBE office the dollars spent with certified diversity businesses owned by minority, women, Tennessee service-disabled veterans and small business accomplished under contract # (Edison number).

(Company Name) is committed to working with the Go-DBE office to accomplish this goal.

Regards,

**(Company authority – signature and title)**

**ATTACHMENT J – Section 1.0**

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**RFQ # 30504-01717 Reference Document**

This is a place holder for the APD Workflow.

**ATTACHMENT J – Section 2.0**

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**RFQ # 30504-01717 Reference Document**

This is a place holder for examples of currently used reports.

## ATTACHMENT J – Section 3.0

## RFQ # 30504-01717 Reference Document

## TrialWorks Database Records

Production Database Total Space:

4454.63 MB

Archive Database Total Space:

1697.25 MB

Production Database Core Tables					
Table Description	Number Rows	Total Pages	Used Pages	Data Pages	Total Space MB
Petitioners	87542	9210	9149	7120	71
Agencies	67	2	2	1	0
Agency-Divisions	455	6	6	4	0
Document Types	56	2	2	1	0
Miscellaneous Documents	95368	3173	3065	3027	24
Case Contacts	172622	4386	3848	1818	34
Case Status Types	19	2	2	1	0
Cases	87448	25522	25425	21775	199
Clients	87423	11884	11791	8419	92
Contact Types	18	2	2	1	0
Contacts	135816	5266	4568	3876	41
Contacts History	225472	6057	5475	5474	47
Contact Type	198136	1249	934	898	9
Correspondence	95345	12346	11781	7649	96
Correspondence Templates	57	6	6	5	0
Document Categories	676	7	7	6	0
Dockets	203371	16282	16224	8332	127
Docket Reminders	158581	905	675	639	7
Email Records	15844	10586	10185	3458	82
Notes	18245	1522	1136	434	11
Other Attorneys	33789	817	170	169	6
Pleadings	321071	31514	31477	16238	246
Pleadings Template	23	4	4	3	0
Status Codes	22	2	2	1	0
Research	49	6	6	2	0
Sub Status Codes	9	2	2	1	0
Task Code	28	2	2	1	0
Billing Records	361263	16626	16491	9938	129
Billing Rates	65	2	2	1	0
TransactionLogs	2308987	206642	206605	54622	1614
User Table	46	6	6	3	0
User Groups	43	8	8	7	0

**ATTACHMENT J – Section 4.0**

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**RFQ # 30504-01717 Reference Document**

This is a place holder for the APD Agency/Division List.

**ATTACHMENT J – Section 5.0**

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**RFQ # 30504-01717 Reference Document**

This is a place holder for the Master Calendar Document example.