

CONTRACT #2
RFS # 317.01-03064
FA # NA
Edison # 33219

Department of General Services

VENDOR:
SunGard Availability Services
LP



STATE OF TENNESSEE
DEPARTMENT OF GENERAL SERVICES

BILL HASLAM
GOVERNOR

ROBERT E. OGLESBY, AIA
COMMISSIONER

TO: Ms. Leni Chick, Contract and Audit Coordinator, Fiscal Review Committee

FROM: Kenny Weaver, Central Procurement Office - Department of General Services 

DATE: November 14, 2013

SUBJECT: Request for Approval of Contract Amendment One with SunGard Availability Services LP

Please consider the enclosed request for an amendment to contract #33219 with SunGard Availability Services LP ("SunGard"). The Department of Finance and Administration competitively procured disaster recovery services through RFP #31701-03064, and SunGard was awarded a contract on August 1, 2012.

The Department of General Services respectfully requests approval of the attached Amendment One, which transfers the disaster recovery services contract to the Department of General Services. This contract is specifically for printers which have been transferred from Finance and Administration, Office of Information Resources to the Print Services Division of General Services.

Please contact me at (615)741-2740 with any questions or concerns. We appreciate your consideration of this matter.

Attachments:

- Exhibit A: Supplemental Documentation including expenditure report
- Exhibit B: Original Contract
- Exhibit C: Summary Sheet for Original Contract
- Exhibit D: Request for Contract - RFP#31701-03064
- Exhibit E: Amendment Request Form
- Exhibit F: Draft Amendment 1 & Summary Sheet (changes highlighted)

CENTRAL PROCUREMENT OFFICE

312 ROSA L. PARKS AVENUE, 3RD FLOOR • NASHVILLE, TENNESSEE 37243
(615) 741-1035 • FAX: (615) 741-0684 • WWW.TN.GOV/GENERALSERV/

Supplemental Documentation Required for
Fiscal Review Committee

*Contact Name:	Kenny Weaver		*Contact Phone:	615-741-2740	
*Original Contract Number:	33219		*Original RFS Number:	31701-03064	
Edison Contract Number: <i>(if applicable)</i>	33219		Edison RFS Number: <i>(if applicable)</i>	31701-03064	
*Original Contract Begin Date:	August 1, 2012		*Current End Date:	July 31, 2015	
Current Request Amendment Number: <i>(if applicable)</i>	1				
Proposed Amendment Effective Date: <i>(if applicable)</i>	January 15, 2014				
*Department Submitting:	General Services				
*Division:	Print Services				
*Date Submitted:	November 14, 2013				
*Submitted Within Sixty (60) days:	Yes				
<i>If not, explain:</i>					
*Contract Vendor Name:	SunGard Availability Services LP				
*Current Maximum Liability:	\$378,000.00				
*Current Contract Allocation by Fiscal Year: <i>(as Shown on Most Current Fully Executed Contract Summary Sheet)</i>					
FY:2013	FY:2014	FY:2015	FY:2016	FY	FY
\$115,500.00	\$126,000.00	\$126,000.00	\$10,500.00	\$	\$
*Current Total Expenditures by Fiscal Year of Contract: <i>(attach backup documentation from STARS or FDAS report)</i>					
FY:2013	FY:2014	FY:	FY:	FY	FY
\$115,500.00	\$31,500.00	\$	\$	\$	\$
IF Contract Allocation has been greater than Contract Expenditures, please give the reasons and explain where surplus funds were spent:			NA		
IF surplus funds have been carried forward, please give the reasons and provide the authority for the carry forward provision:			NA		
IF Contract Expenditures exceeded Contract Allocation, please give the reasons and explain how funding was acquired to pay the overage:			NA		
*Contract Funding	State:	\$378,000.00	Federal:		

Supplemental Documentation Required for
Fiscal Review Committee

Source/Amount:				
Interdepartmental:			<i>Other:</i>	
If “ <i>other</i> ” please define:				
Dates of All Previous Amendments or Revisions: <i>(if applicable)</i>		Brief Description of Actions in Previous Amendments or Revisions: <i>(if applicable)</i>		
Method of Original Award: <i>(if applicable)</i>		RFP		
*What were the projected costs of the service for the entire term of the contract prior to contract award?		The program area could not project cost for this project prior to receiving proposals, due to variability of services and cost amounts. Therefore they relied upon the actual proposed amounts to derive projected costs.		

Attachment (A)

Invoice Date	Payment Date	PO ID	Vendor ID	Vendor Name	Cntrct ID on PO	NIGP Long Description	UOM	Unit Price	Voucher Line Description	Fiscal Year
5/22/2013	6/21/2013	21693	13371	Sungard Availability Svcs	33218	Data Recovery Services	EA	\$10,500.00	Infrastructure Disaster Recovery Services	2013
6/3/2013	8/1/2013	22487	13371	Sungard Availability Svcs	33218	Data Recovery Services	EA	\$10,500.00	Infrastructure Disaster Recovery Services	2013
6/3/2013	8/1/2013	22487	13371	Sungard Availability Svcs	33218	Data Recovery Services	EA	\$10,500.00	Infrastructure Disaster Recovery Services	2013
6/3/2013	8/1/2013	22487	13371	Sungard Availability Svcs	33218	Data Recovery Services	EA	\$10,500.00	Infrastructure Disaster Recovery Services	2013
6/3/2013	8/1/2013	22487	13371	Sungard Availability Svcs	33218	Data Recovery Services	EA	\$10,500.00	Infrastructure Disaster Recovery Services	2013
6/3/2013	8/1/2013	22487	13371	Sungard Availability Svcs	33218	Data Recovery Services	EA	\$10,500.00	Infrastructure Disaster Recovery Services	2013
6/3/2013	8/1/2013	22487	13371	Sungard Availability Svcs	33218	Data Recovery Services	EA	\$10,500.00	Infrastructure Disaster Recovery Services	2013
6/3/2013	8/1/2013	22487	13371	Sungard Availability Svcs	33218	Data Recovery Services	EA	\$10,500.00	Infrastructure Disaster Recovery Services	2013
6/3/2013	8/1/2013	22487	13371	Sungard Availability Svcs	33218	Data Recovery Services	EA	\$10,500.00	Infrastructure Disaster Recovery Services	2013
6/3/2013	8/1/2013	22487	13371	Sungard Availability Svcs	33218	Data Recovery Services	EA	\$10,500.00	Infrastructure Disaster Recovery Services	2013
6/21/2013	8/2/2013	22487	13371	Sungard Availability Svcs	33218	Data Recovery Services	EA	\$10,500.00	Infrastructure Disaster Recovery Services	2013
								\$115,500.00	Total Spend FY/13	
7/24/2013	8/23/2013	22595	13371	Sungard Availability Svcs	33218	Data Recovery Services	EA	\$10,500.00	Infrastructure Disaster Recovery Services	2014
8/23/2013	10/23/2013	22914	13371	Sungard Availability Svcs	33219	Data Recovery Services	EA	\$10,500.00	Print Services Disaster Recovery Services	2014
9/20/2013	10/23/2013	23122	13371	Sungard Availability Svcs	33219	Data Recovery Services	EA	\$10,500.00	Print Services Disaster Recovery Services	2014
								\$31,500.00	Total Spend FY/14	

Edison Contract Adjustment Request

Date of Contract Adjustment Request:

PO Business Unit: 31701

Contract Adjustment Requestor's Name: Mitizi Hale

Contract Adjustment Edison User ID: mitzr1017001

Original Closed PO ID (if applicable):

Contract ID: 33218

Vendor ID Required: 13371

Contract Remaining Amount: 3,405,027 (What is the Edison system available amount?) Exact Amount to be put back on the Contract: 126,000

Justification for Contract Adjustment Request: the amount was taken out of the wrong contract. should of been taking out of 33219

Note: Edison Procurement will attach this request to the adjusted PO and Contract comment's section for verification of the Contract Adjustment Request.



STATE OF TENNESSEE
DEPARTMENT OF FINANCE AND ADMINISTRATION
OFFICE FOR INFORMATION RESOURCES
312 EIGHTH AVENUE NORTH
SUITE 1600, TENNESSEE TOWER
NASHVILLE, TENNESSEE 37243-0288
(615) 741-3700
FAX (615) 532-0471

LARRY B. MARTIN
COMMISSIONER

MARK BENDEL
CHIEF INFORMATION OFFICER

MEMORANDUM

TO: Judy Muth
ERP Procurement

FROM: Mitzi Hale *MHA*
OIR Procurement and Contract Management

DATE: October 9, 2013

SUBJECT: BU 31701 PO Correction on Edison Contracts #33218 and #33219

The Office for Information Resources (OIR) is requesting a negative PO be issued in BU 31701 against Contract #33218 with SunGard in the amount of \$126,000.00. The \$126,000.00 should then be decremented against Contract #33219. This will resolve Ticket #152933.

Attached is support to be included with the comments on the PO to provide an audit trail for this correction. Also, included in the support is an email from Maureen Abbey indicating fiscal officer approval for the negative PO request.

Should you have any questions, I can be reached at 741-3735.

Mitzi Hale

From: Remedy State <Remedy.State@tn.gov>
Sent: Wednesday, October 09, 2013 1:34 PM
To: Mitzi Hale
Subject: INC000000152933 receipt confirmation for Contract Adjustment Request (Increases Balance of Contract).

<http://remedy.tn.gov/arsys/servlet/ViewFormServlet?form=NTE%3aNotifier&server=remedyapp.tn.gov&eid=NTS000001878052>

Dear Mitzi Hale,

We are pleased to inform you that your reported Incident has been created. Your assigned Reference Number is INC000000152933. This number should be retained for reference purposes.

Incident Number: INC000000152933

Summary: Contract Adjustment Request (Increases Balance of Contract)

Notes: Date of Contract Adjustment Request:

PO Business Unit: 31701

Contract Adjustment Requestor's Name: Mitzi Hale Contract Adjustment Edison User ID: mitzr1017001 Original Closed PO ID (if applicable):

Contract ID: 33218 Vendor ID Required: 13371 Contract Remaining Amount: 3,405,027 (What is the Edison system available amount?) Exact Amount to be put back on the Contract: 126,000 Justification for Contract Adjustment Request: the amount was taken out of the wrong contract. should of been taking out of 33219

Note: Edison Procurement will attach this request to the adjusted PO and Contract comment's section for verification of the Contract Adjustment Request.

Please do not hesitate to contact the Service Desk should there be any further questions or inquiries regarding your Incident. Please quote your assigned Incident Number.

Please do not reply, this is an automated notification sent from an unmanned mailbox.

Yours sincerely,
Service Desk

Mitzi Hale

From: Jane Chittenden
Sent: Wednesday, October 02, 2013 2:47 PM
To: Mitzi Hale
Subject: FW: SunGard DR Print Negative PO Approval
Attachments: SunGard.xlsx; Contract 24532 Negative PO Request.pdf

Thanks!

Jane Chittenden
 State of Tennessee: Finance & Administration
 Office for Information Resources
 Procurement & Contract Management
 Voice: 615.741.1624
 Fax: 615.532.0471
Jane.Chittenden@tn.gov

From: Maureen Abbey
Sent: Wednesday, October 02, 2013 9:37 AM
To: Jane Chittenden
Cc: Jeannie Way
Subject: SunGard DR Print Negative PO Approval

Jane,

This is the first you have made OBF aware of the issue but it is not an OBF issue to resolve and we have not made any adjustments to the contract. Jeannie did have the last payment and PO canceled that was processing to the wrong contract and the right contract referenced. That is the \$10,500 that is in process.

It looks like you have ran some queries. I did run the ones to be used for the contract reconciliation procedures and have attached the file as well as a negative PO request example OBF did on a grant contract.

Either you as the lead OIR contract staff member or the contract administrator should request the negative PO and also ensure the PO to decrement contract 33219 in the amount of \$126,000 is done. I am not sure if Edison procurement is doing the negative PO's or the CPO office now. I would check with Judy Muth first.

This e-mail can be used as the fiscal officer approval for the negative PO request in the amount of \$126,000 against contract #33218.

Hope this helps.

From: Jane Chittenden
Sent: Monday, September 30, 2013 1:03 PM
To: Dennis Baker; Jeannie Way; Maureen Abbey
Cc: Michael Dow; Renee Christiansen; Jimmy Simerly; Tommie Pendergrass; Jamie Etheridge
Subject: RE: SunGard DR Print info

Maureen/Jeannie,

See the email below. Where are we on crediting Edison 33218 and debiting Edison 33219 for the printer DR payments that were made to Sungard under the wrong contract? Currently, on the Contracts page, Edison 33219 only shows a single payment (\$10,500) released and decremented from the maximum liability and that payment does not show when I run a "Payments against a Contract" report for Edison 33219. I don't know if that is a single adjustment that was made, is a pending payment and just not on the report yet, or what. Regardless, the attached spreadsheet shows the multiple payments (highlighted) that were paid under Edison 33218 and should have been paid under Edison 33219. The spreadsheet is a combined "Payments against a Contract" report for Edison 33218 from FY2013 and FY2014.

We are in the process of getting ready to transfer Edison 33219 to DGS. We have a meeting to discuss with them on Oct 15. Therefore, I request this be corrected by October 11 before we meet with DGS. We cannot transfer a contract with an incorrect remaining balance to DGS.

Thanks,

Jane

Attachment (A)

Unit	Voucher	Invoice	PO #	Remit Vndr	Name	Gross Amt	Reference	Pymnt Date
31701	00055981	120117503		0000013371	Sungard Availability Services Lp	44,714.00	0000391261	1/16/2013
31701	00055982	120117500		0000013371	Sungard Availability Services Lp	44,714.00	0000391261	1/16/2013
31701	00055983	120117502		0000013371	Sungard Availability Services Lp	44,714.00	0000391261	1/16/2013
31701	00056272	120118020		0000013371	Sungard Availability Services Lp	44,714.00	0000406747	1/30/2013
31701	00058223	120119854		0000013371	Sungard Availability Services Lp	44,714.00	0000549622	5/13/2013
31701	00058224	120119319		0000013371	Sungard Availability Services Lp	44,714.00	0000549622	5/13/2013
31701	00058802	120120788		0000013371	Sungard Availability Services Lp	44,714.00	0000590311	6/12/2013
31701	00058912	120121364		0000013371	Sungard Availability Services Lp	44,714.00	0000603143	6/18/2013
31701	00060002	120121379	0000022487	0000013371	Sungard Availability Services Lp	500.00	0000662980	7/31/2013
31701	00060455	120122154		0000013371	Sungard Availability Services Lp	44,714.00	0000694144	8/22/2013
31701	00060457	120121709		0000013371	Sungard Availability Services Lp	44,714.00	0000694144	8/22/2013
31701	00060459	152450947		0000013371	Sungard Availability Services Lp	44,714.00	0000695462	8/23/2013
						492,354.00		

31701	00058913	152439784	0000021693	0000013371	Sungard Availability Services Lp	10,500.00	0000608322	6/21/2013
31701	00059985	120121607	0000022487	0000013371	Sungard Availability Services Lp	10,500.00	0000664580	8/1/2013
31701	00059986	120121609	0000022487	0000013371	Sungard Availability Services Lp	10,500.00	0000664580	8/1/2013
31701	00059987	120121610	0000022487	0000013371	Sungard Availability Services Lp	10,500.00	0000664580	8/1/2013
31701	00059988	120121611	0000022487	0000013371	Sungard Availability Services Lp	10,500.00	0000664580	8/1/2013
31701	00059989	120121612	0000022487	0000013371	Sungard Availability Services Lp	10,500.00	0000664580	8/1/2013
31701	00059996	120121613	0000022487	0000013371	Sungard Availability Services Lp	10,500.00	0000664580	8/1/2013
31701	00059999	120121614	0000022487	0000013371	Sungard Availability Services Lp	10,500.00	0000664580	8/1/2013
31701	00060000	120121615	0000022487	0000013371	Sungard Availability Services Lp	10,500.00	0000665917	8/2/2013
31701	00060001	152447498	0000022487	0000013371	Sungard Availability Services Lp	10,500.00	0000664580	8/1/2013
31701	00060003	120121608	0000022487	0000013371	Sungard Availability Services Lp	10,500.00	0000664580	8/1/2013
31701	00060237	152449872	0000022595	0000013371	Sungard Availability Services Lp	10,500.00	0000695462	8/23/2013
						126,000.00		

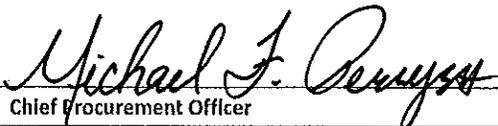
cy13-2862

Non-Competitive Amendment Request

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

Route a completed request, as one file in PDF format, via e-mail attachment sent to: Agsprrs.Agsprsr@state.tn.us

APPROVED



Chief Procurement Officer

Request Tracking #	32101-14001	
1. Procuring Agency	DGS – Print Division	
2. Contractor	SunGard Availability Services LP	
3. Contract #	33219	
4. Proposed Amendment #	1	
5. Edison ID #	33219	
6. Contract Begin Date	8/1/2012	
7. Current Contract End Date – with ALL options to extend exercised	7/31/2015	
8. Proposed Contract End Date – with ALL options to extend exercised	7/31/2015	
9. Current Maximum Contract Cost – with ALL options to extend exercised	\$ 2,485,210.02	
10. Proposed Maximum Contract Cost – with ALL options to extend exercised	\$ 2,485,210.02	
11. Office for Information Resources Endorsement – information technology service (N/A to THDA)	<input checked="" type="checkbox"/> Not Applicable <input type="checkbox"/> Attached	
12. eHealth Initiative Support – health-related professional, pharmaceutical, laboratory, or imaging	<input checked="" type="checkbox"/> Not Applicable <input type="checkbox"/> Attached	
13. Human Resources Support – state employee training service	<input checked="" type="checkbox"/> Not Applicable <input type="checkbox"/> Attached	
14. Explanation Need for the Proposed Amendment	<p>Print & Media Services has acquired this contract from OIR (F&A) – This amendment is required to change the agency name in the contract to “Department of General Services” from “Department of Finance and Administration”</p>	
15. Name & Address of the Contractor's Principal Owner(s) – NOT required for a TN state education institution	<p>Larry Stamm – 680 East Swedesford Road Wayne, PA 19087</p>	

Request Tracking #	32101-14001
16. Evidence Contractor's Experience & Length Of Experience Providing the Service SunGard has provided services under this contract since 12/1/2012 as required and to the satisfaction of the State.	
17. Efforts to Identify Reasonable, Competitive, Procurement Alternatives N/A – This amendment is just to transfer the contract from F&A to DGS.	
18. Justification – specifically explain why non-competitive negotiation is in the best interest of the state This amendment is just to transfer the contract from F&A to DGS.	
Agency Head Signature and Date – MUST be signed by the ACTUAL agency head as detailed on the current Signature Certification. Signature by an authorized signatory is acceptable only in documented exigent circumstances James Golden 11/7/13	



CONTRACT AMENDMENT

Agency Tracking # 31701-03064	Edison ID 33219	Contract # 33219	Amendment # 1		
Contractor Legal Entity Name SunGard Availability Services LP			Edison Vendor ID 0000013371		
Amendment Purpose & Effect(s) Update the contract to reflect the change of agency ownership from F&A to DGS					
Amendment Changes Contract End Date: <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO		End Date: July 31, 2015			
TOTAL Contract Amount INCREASE or DECREASE per this Amendment (zero if N/A):			\$ 0		
Funding —					
FY	State	Federal	Interdepartmental	Other	TOTAL Contract Amount
2013	\$115,500.00				\$115,500.00
2014	\$126,000.00				\$126,000.00
2015	\$126,000.00				\$126,000.00
2016	\$10,500.00				\$10,500.00
TOTAL:	\$378,000.00				\$378,000.00
American Recovery and Reinvestment Act (ARRA) Funding: <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO					
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>OCR USE</i>	
Speed Chart (optional)		Account Code (optional)			

**AMENDMENT ONE
OF CONTRACT 33219**

This Amendment is made and entered by and between the State of Tennessee, Department of General Services (as amended herein), hereinafter referred to as the "State" and SunGard Availability Services LP, hereinafter referred to as the "Contractor." It is mutually understood and agreed by and between said, undersigned contracting parties that the subject contract is hereby amended as follows:

1. Contract preamble is deleted in its entirety and replaced with the following:

**CONTRACT
BETWEEN THE STATE OF TENNESSEE,
DEPARTMENT OF GENERAL SERVICES
AND
SUNGARD AVAILABILITY SERVICES LP**

This Contract, by and between the State of Tennessee, **Department of General Services**, hereinafter referred to as the "State" and SunGard Availability Services LP, hereinafter referred to as the "Contractor," is for the provision of Print Services Disaster Recovery Services, as further defined in the "SCOPE OF SERVICES."

2. Contract section C.5 Invoice Requirements is deleted in its entirety and replaced with the following:

#C.5. Invoice Requirements. The Contractor shall invoice the State only for completed increments of service and for the amount stipulated in section C.3, above, and present said invoices no more often than monthly, with all necessary supporting documentation, to:

**Don Connor, Accounting Clerk
State of Tennessee- PMSD
Andrew Jackson Bldg, B-2
500 Deaderick St.
Nashville, TN 37243
Telephone: (615) 741-4199**

- 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: **Department of General Services; Print Division**
 - (5) Customer Account Number (assigned by the Contractor to the above-referenced Customer)
 - (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) Complete Itemization of Charges, which shall detail the following:
 - i. Service or Milestone Description (including name & title as applicable) of each service invoiced
 - ii. Number of Completed Units, Increments, Hours, or Days as applicable, of each service invoiced
 - iii. Applicable Payment Rate (as stipulated in Section C.3.) of each service

- invoiced
- iv. Amount Due by Service
- v. Total Amount Due for the invoice period

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

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

3. Contract section D.1. Required Approvals is deleted in its entirety and replaced with the following:

D.1. Required Approvals. The State is not bound by this Contract until it is signed by the contract parties and approved by appropriate officials in accordance with applicable Tennessee laws and regulations (depending upon the specifics of this contract, said officials may include, but are not limited to, the **Chief Procurement Officer**, the Commissioner of Human Resources, and the Comptroller of the Treasury).

4. Contract section D.2. Modification and Amendment is deleted in its entirety and replaced with the following:

D.2. Modification and Amendment. This Contract may be modified only by a written amendment signed by all parties hereto and approved by both the officials who approved the base contract and, depending upon the specifics of the contract as amended, any additional officials required by Tennessee laws and regulations (said officials may include, but are not limited to, the **Chief Procurement Officer**, the Commissioner of Human Resources, and the Comptroller of the Treasury).

5. Contract section E.2. Communications and Contacts is deleted in its entirety and replaced with the following:

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:

Jimmy Simerly
State of Tennessee- OIR
Snodgrass TN Tower
312 Rosa L Parks Ave, 1ih Floor
Nashville, TN 37243
Jimmy.Simerly@tn.gov
Telephone: (615) 532-1781
FAX: (615) 741-6164

Tammy Golden, Director
 State of Tennessee- PMSD
 Andrew Jackson Bldg, B-2
 500 Deaderick St.
 Nashville, TN 37243
 tammy.golden@tn.gov
 Telephone: (615) 741-4199

The Contractor:

SunGard Availability Services LP
 680 East Swedesford Road
 Wayne, PA 19087
 contract.admin@sungard.com
 Telephone# (484) 582-2000
 FAX# (610)225-1125

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

6. Contract section E.12. Assignment of Disaster Recovery Services is deleted in its entirety and replaced with the following:

E.12. Assignment of Disaster Recovery Services. The Department of General Services reserves the right to assign some or all of the services required by this contract to another State of Tennessee department. In the event that the State determines that such assignment is necessary or desirable, the assignment will be effected by: (1) an amendment to this Contract and/or (2) a separate contract. The Contractor shall not unreasonably contest the assignment or withhold signature.

7. The following is added as Contract section E.15. Tennessee Department of Revenue Registration.

E.15. 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.

8. Contract section Addendum 1 – A. RECOVERY SERVICES. is deleted in its entirety and replaced with the following:

A. **Recovery Services** The Contract specifies a State Location ("Location") (WR Snodgrass TN Tower, 1st Floor 312 Rosa L. Parks Ave. Nashville, TN 37243), the recovery services to be provided by Contractor to the State for that Location ("Recovery Services"), the fees to be paid by the State to Contractor for those services, and any other applicable terms.

Required Approvals. The State is not bound by this Amendment until it is signed by the contract parties and approved by appropriate officials in accordance with applicable Tennessee laws and regulations (depending upon the specifics of this contract, said officials may include, but are not limited to, the Commissioner of Finance and Administration, the Commissioner of Human Resources, and the Comptroller of the Treasury).

Amendment Effective Date. The revisions set forth herein shall be effective January 15, 2014. All other terms and conditions of this Contract not expressly amended herein shall remain in full force and effect. +

IN WITNESS WHEREOF,

SUNGARD AVAILABILITY SERVICES LP:

SIGNATURE

DATE

PRINTED NAME AND TITLE OF SIGNATORY (above)

DEPARTMENT OF GENERAL SERVICES:

ROBERT E. OGLESBY, COMMISSIONER

DATE

**CONTRACT**

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

Begin Date August 1, 2012	End Date July 31, 2015	Agency Tracking # 31701-03064	Edison Record ID 33219		
Contractor Legal Entity Name SunGard Availability Services LP			Edison Vendor ID 0000013371		
Service Caption (one line only) Print Services Disaster Recovery Services					
Subrecipient or Vendor <input type="checkbox"/> Subrecipient <input checked="" type="checkbox"/> Vendor		CFDA #			
Funding —					
FY	State	Federal	Interdepartmental	Other	TOTAL Contract Amount
2013	\$115,500.00				\$115,500.00
2014	\$126,000.00				\$126,000.00
2015	\$126,000.00				\$126,000.00
2016	\$10,500.00				\$10,500.00
TOTAL:					\$378,000.00
American Recovery and Reinvestment Act (ARRA) Funding: <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO					
Ownership/Control					
<input type="checkbox"/> African American <input type="checkbox"/> Asian <input type="checkbox"/> Hispanic <input type="checkbox"/> Native American <input type="checkbox"/> Female <input type="checkbox"/> Person w/Disability <input type="checkbox"/> Small Business <input type="checkbox"/> Government <input checked="" type="checkbox"/> NOT Minority/Disadvantaged <input type="checkbox"/> Other:					
Selection Method & Process Summary (mark the correct response to confirm the associated summary)					
<input checked="" type="checkbox"/> RFP		The procurement process was completed in accordance with the approved RFP document and associated regulations.			
<input type="checkbox"/> Competitive Negotiation		The predefined, competitive, impartial, negotiation process was completed in accordance with the associated, approved procedures and evaluation criteria.			
<input type="checkbox"/> Alternative Competitive Method		The predefined, competitive, impartial, procurement process was completed in accordance with the associated, approved procedures and evaluation criteria.			
<input type="checkbox"/> Non-Competitive Negotiation		The non-competitive contractor selection was completed as approved, and the procurement process included a negotiation of best possible terms & price.			
<input type="checkbox"/> Other		The contractor selection was directed by law, court order, settlement agreement, or resulted from the state making the same agreement with <u>all</u> interested parties or <u>all</u> parties in a predetermined "class."			
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>OCR USE - FA</i>		
					
Speed Chart (optional) FA00000223		Account Code (optional) 72203000		Contract #	



**CONTRACT
BETWEEN THE STATE OF TENNESSEE,
DEPARTMENT OF FINANCE AND ADMINISTRATION
AND
SUNGARD AVAILABILITY SERVICES LP**

This Contract, by and between the State of Tennessee, Department of Finance and Administration, hereinafter referred to as the "State" and SunGard Availability Services LP, hereinafter referred to as the "Contractor," is for the provision of Print Services Disaster Recovery Services, as further defined in the "SCOPE OF SERVICES."

The Contractor is a Limited Partnership.
Contractor Place of Incorporation or Organization: Pennsylvania
Contractor Edison Registration ID # 0000013371

A. SCOPE OF SERVICES:

- A.1. The Contractor shall provide all service and deliverables as required, described, and detailed herein and shall meet all service and delivery timelines as specified by this Contract and its incorporated documents (Contract Section E.8).
- a. Definitions.
- i. Print Services Recovery Center – a commercial disaster recovery print facility that provides the space and equipment required to provide Print Services Disaster Recovery Services, such that the State can conduct disaster recovery testing for Information Technology (IT) print operations or continue IT print operations in the event of a Print Services Disaster.
 - ii. Infrastructure Disaster – a disaster affecting the State's processing capabilities.
 - iii. Print Services Disaster – a disaster affecting the State's printing capabilities.
 - iv. Disaster Recovery Environment (a.k.a. Environment) – a particular State computing environment, which comprises common equipment (e.g. Mainframe Environment) or exists to serve a State program area (e.g. TennCare Environment).
 - v. Print Services Disaster Recovery Services – all services described in Contract Section A, Scope of Services.
- A.2. The Contractor shall provide recovery services for two types of disaster declarations - Infrastructure Disaster declaration and Print Services Disaster declaration. Depending upon the circumstances, these declarations may be declared at different times or at the same time. Infrastructure Disaster Recovery Services will be provided under a separate contract and is not addressed in this Contract. This dual-contract approach notwithstanding, the Contractor shall insure adequate coordination between the services of the two contracts, such that Infrastructure Disaster Recovery Services and Print Services Disaster Recovery Services are performed in a seamless and efficient manner. The State's Office for Information Resources will declare a Print Services Disaster declaration when service delivery capabilities for the State's printing facilities are interrupted. The need for print services may originate from systems running at the Contractor Recovery Center(s) providing Infrastructure Disaster Recovery Services to the State and/or from systems running at State facilities on the State's network. The Contractor will provide the State with access to a Print Services Recovery Center within 24 hours of Print Services Disaster declaration.
- A.3. The Contractor will provide Print Services for both Advanced Function Presentation (AFP), MetaCode and PostScript format. The Contractor will produce laser image Magnetic Ink Character Recognition (MICR) / non MICR cut sheet output. As a minimum, all continuous feed printers, utilized for State Print Services Disaster Recovery Services at the Print Services Recovery Center,



should be able to accept both Advanced Function Presentation Data Stream (AFPDS) and Intelligent Print Data Stream (IPDS) type data streams. All cut-sheet printers should be able to accept Printer Control Language (PCL), AFPDS, IPDS, PostScript, Portable Document Format (PDF), and Xerox Metacode type data streams.

- A.4. The Contractor will provide and maintain a minimum of one (1) Print Services Recovery Center from which the Print Services may be provided for a period of up to three hundred sixty-five (365) consecutive days following a Print Services Disaster declaration by the State. The Print Services Recovery Center must be at least one hundred (100) miles from Nashville, Tennessee.
- A.5. The Print Services Recovery Center must be accessible from the Contractor Recovery Center(s) providing Infrastructure Disaster Recovery Services to the State. The Contractor is responsible for all connectivity between the Contractor Recovery Center(s) and the Print Services Recovery Center; such connectivity must be secure and approved by the State.
- A.6. The Print Services Recovery Center must be accessible from the State's network, and provide real-time printing to the State's network. The Contractor is responsible for the connection between the Print Services Recovery Center and the State's network, which may be provided via site-to-site virtual private network (VPN) connection thru the Internet or from a direct circuit connection, minimum speed of T1; such connection shall be approved by the State and located at a State data center, either in Nashville or Smyrna, Tennessee, designated by the State. Unless the State agrees otherwise, the connection must be independent of the required connection in the Infrastructure Disaster Recovery Services Contract. The Contractor must provide the connectivity equipment (hardware and/or software) required at the Print Services Recovery Center to receive print files from the State's network, including the direct circuit connection, if such connection is used. The State will provide the connectivity equipment (hardware and/or software) required at the State, excluding the direct circuit connection. All costs associated with connectivity must be included in the monthly Print Recovery Services Subscription Fee. The State will not pay separate fees for Print Services Recovery Center connectivity.
- A.7. The Contractor will provide a maximum of two (2) Print Services Disaster Recovery Services tests per Contract year. Such testing shall occur on a continuous, round-the-clock basis. The State will schedule tests a minimum of sixty (60) days prior to the testing and at a time that is mutually agreeable to the Contractor and the State; the tests will likely coincide with the disaster recovery testing of an Environment covered by the Infrastructure Disaster Recovery Services Contract, but such scheduling is not required. The Print Services Recovery Center must be simultaneously available from both the Contractor Recovery Center providing Infrastructure Disaster Recovery Services to the State and the State's network during Print Services Disaster Recovery Services testing. Print Services Recovery Center usage and Print Production Services supplied during Print Services Disaster Recovery Services testing must be included in the monthly Print Services Disaster Recovery Services Subscription Fee. Print Production Services during Print Services Disaster Recovery Services testing will be limited to eight thousand (8000) print items per test. The State will compensate the Contractor for shipping sample print items, in accordance with Contract Section C.3.d, if such shipping is requested by the State.
- A.8. The State will compensate the Contractor for Print Services Disaster Recovery Services in accordance with Contract Section C.3.

B. CONTRACT PERIOD:

- B.1. Contract Term. This Contract shall be effective for the period beginning August 1, 2012, and ending on July 31, 2015 (the "Contract Term"). The Contractor hereby acknowledges and affirms that the State shall have no obligation for services rendered by the Contractor which were not performed within this specified contract period.
- B.2. Term Extension. The State reserves the right to extend this Contract for an additional period or periods of time representing increments of no more than one year and a total Contract Term of no more than five (5) years, provided that such an extension of the Contract Term is effected prior to the current, contract expiration date by means of a contract amendment. If a term extension



necessitates additional funding beyond that which was included in the original Contract, an increase of the State's Maximum Liability will also be effected through contract amendment, and shall be based upon payment rates provided in the original Contract.

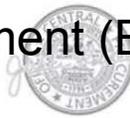
- B.3. Declared Disaster Term Extension. If the State declares a Print Services Disaster and the Contract Term would otherwise expire during the time required to recover from that Print Services Disaster, the State, at its discretion, may automatically extend the existing Print Services Disaster Recovery Services under the Contract for an additional period or periods of time, not to exceed one (1) year, at the same rates as the final contract year.

C. PAYMENT TERMS AND CONDITIONS:

- C.1. Maximum Liability. In no event shall the Maximum Liability of the State under this Contract exceed Three Hundred Seventy-Eight Thousand Dollars (\$378,000.00) [the "Maximum Liability"]. The payment rates in section C.3 shall constitute the entire compensation due the Contractor for all service and Contractor obligations hereunder regardless of the difficulty, materials or equipment required. The payment rates include, but are not limited to, all applicable taxes, fees, overheads, and all other direct and indirect costs incurred or to be incurred by the Contractor.

The Contractor is not entitled to be paid the Maximum Liability for any period under the Contract or any extensions of the Contract for work not requested by the 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 authorized by the State in a total amount not to exceed the Contract Maximum Liability established in section C.1.
- a. The Contractor's compensation shall be contingent upon the satisfactory completion of units, milestones, or increments of service defined in section A.
 - b. The Contractor shall be compensated on a monthly basis for said units, milestones, or increments of service based upon the payment rates detailed in Contract Attachment B, Print Services Catalog during Disaster testing or a Disaster event. The Print Services rates in Attachment B must include all labor, equipment and materials costs, with the exception of check stock and pre-printed forms, to produce the print. The State will provide check stock and pre-printed forms to the Contractor at no cost to the Contractor. No other compensation for print production will be paid to the Contractor.
 - c. The State will compensate the Contractor for print delivery during a Disaster event as follows:
 - i) Bulk Shipping: The Contractor will label, package and ship print to an address designated by the State at the time of the Disaster. The Contractor is responsible for providing the labor, equipment and materials required to prepare the print for shipping. The State will pay the shipping company charges directly or reimburse the Contractor for the actual shipping company charges.
 - ii) Postal Mail: The Contractor will fold, insert into envelopes and mail forms/letters to the addressee printed on the form/letter at the time of a Disaster. The Contractor is



responsible for providing the labor, equipment and materials required to prepare the forms/letters for mailing. The State will pay the postage directly or reimburse the Contractor for the actual postage charges.

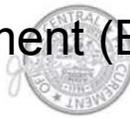
- d. The State will compensate the Contractor for print delivery during Disaster testing as follows:
 - i) **Bulk Shipping:** The State may request the Contractor to ship samples of print or enveloped forms/letters produced during a Test. The Contractor will label, package and ship the samples to the address designated by the State. The Contractor is responsible for providing the labor, equipment and materials required to prepare the samples for shipping. The State will pay the shipping company charges directly or reimburse the Contractor for the actual shipping company charges.
- e. The Contractor shall not be compensated for travel time to the primary location of service provision.

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

C.5. Invoice Requirements. The Contractor shall invoice the State only for completed increments of service and for the amount stipulated in section C.3, above, and present said invoices no more often than monthly, with all necessary supporting documentation, to:

Tricia Kitchens, Chief Technology Officer
 State of Tennessee – OIR
 Snodgrass TN Tower
 312 Rosa L Parks Ave, 16th Floor
 Nashville, TN 37243
 Telephone: (615) 741-7122

- 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: Department of Finance and Administration; Office for Information Resources
 - (5) Customer Account Number (assigned by the Contractor to the above-referenced Customer)
 - (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) Complete Itemization of Charges, which shall detail the following:
 - i. Service or Milestone Description (including name & title as applicable) of each service invoiced
 - ii. Number of Completed Units, Increments, Hours, or Days as applicable, of each service invoiced
 - iii. Applicable Payment Rate (as stipulated in Section C.3.) of each service invoiced
 - iv. Amount Due by Service
 - v. Total Amount Due for the invoice period



- b. The Contractor understands and agrees that an invoice under this Contract shall:
- (1) include only charges for service described in Contract Section A and in accordance with payment terms and conditions set forth in Contract Section C;
 - (2) only be submitted for completed service and shall not include any charge for future work;
 - (3) not include sales tax or shipping charges; and
 - (4) initiate the timeframe for payment (and any discounts) only when the State is in receipt of the invoice, and the invoice meets the minimum requirements of this section C.5.
- C.6. Payment of Invoice. A payment by the State shall not prejudice the State's right to object to or question any payment, invoice, or matter in relation thereto. 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 invoiced.
- C.7. Invoice Reductions. The Contractor's invoice shall be subject to reduction for amounts included in any invoice or payment theretofore made which are determined by the State, on the basis of audits conducted in accordance with the terms of this Contract, not to constitute proper remuneration for compensable services.
- C.8. Deductions. The 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 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 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 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).
 - 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 must agree with the Contractor's Federal Employer Identification Number or Tennessee Edison Registration ID referenced in this Contract.
- D. STANDARD TERMS AND CONDITIONS:**
- D.1. Required Approvals. The State is not bound by this Contract until it is signed by the contract parties and approved by appropriate officials in accordance with applicable Tennessee laws and regulations (depending upon the specifics of this contract, said officials may include, but are not limited to, the Commissioner of Finance and Administration, the Commissioner of Human Resources, and the Comptroller of the Treasury).
- D.2. Modification and Amendment. This Contract may be modified only by a written amendment signed by all parties hereto and approved by both the officials who approved the base contract and, depending upon the specifics of the contract as amended, any additional officials required by Tennessee laws and regulations (said officials may include, but are not limited to, the Commissioner of Finance and Administration, the Commissioner of Human Resources, and the Comptroller of the Treasury).

The State's Office for Information Resources will provide draft versions of amendments to the Comptroller's Office for their review and approval prior to the amendments being submitted to the Contractor for signature.

- D.3. Termination for Convenience. After six (6) months from the beginning of the Contract, the State may terminate this Contract without cause 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 satisfactory, authorized service 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.
- 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.
- D.5. Subcontracting. The Contractor shall not assign this Contract or enter into a subcontract for any of the services performed under this Contract without obtaining the prior written approval of the State, which shall not be unreasonably withheld. If such subcontracts are approved by the State, each shall contain, at a minimum, sections of this Contract below pertaining to "Conflicts of Interest," "Nondiscrimination," and "Records" (as identified by the section headings). Notwithstanding any use of approved subcontractors, the Contractor shall be the prime contractor and shall be responsible for all work performed.
- D.6. Conflicts of Interest. The Contractor warrants that no part of the total Contract Amount shall be paid directly or indirectly to an employee or official of the State of Tennessee as wages, compensation, or gifts in exchange for acting as an officer, agent, employee, subcontractor, or consultant to the Contractor in connection with any work contemplated or performed relative to this Contract.
- The Contractor acknowledges, understands, and agrees that this Contract shall be null and void if the Contractor is, or within the past six months has been, an employee of the State of Tennessee or if the Contractor is an entity in which a controlling interest is held by an individual who is, or within the past six months has been, an employee of the State of Tennessee.
- D.7. Nondiscrimination. The Contractor hereby agrees, warrants, and assures that no person shall be excluded from participation in, be denied benefits of, or be otherwise subjected to discrimination in the performance of this Contract or in the employment practices of the Contractor on the grounds



of handicap or disability, age, race, color, religion, sex, national origin, or any other classification protected by Federal, Tennessee State constitutional, or statutory law. The Contractor shall, upon request, show proof of such nondiscrimination and shall post in conspicuous places, available to all employees and applicants, notices of nondiscrimination.

- D.8. Prohibition of Illegal Immigrants. The requirements of *Tennessee Code Annotated*, Section 12-4-124, *et seq.*, addressing the use of illegal immigrants in the performance of any Contract to supply goods or services to the state of Tennessee, shall be a material provision of this Contract, a breach of which shall be grounds for monetary and other penalties, up to and including termination of this Contract.
- a. The Contractor hereby attests, certifies, warrants, and assures that the Contractor shall not knowingly utilize the services of an illegal immigrant in the performance of this Contract and shall not knowingly utilize the services of any subcontractor who will utilize the services of an illegal immigrant in the performance of this Contract. The Contractor shall reaffirm this attestation, in writing, by submitting to the State a completed and signed copy of the document at Attachment A, hereto, semi-annually during the period of this Contract. Such attestations shall be maintained by the Contractor and made available to state officials upon request.
 - b. Prior to the use of any subcontractor in the performance of this Contract, and semi-annually thereafter, during the period of this Contract, the Contractor shall obtain and retain a current, written attestation that the subcontractor shall not knowingly utilize the services of an illegal immigrant to perform work relative to this Contract and shall not knowingly utilize the services of any subcontractor who will utilize the services of an illegal immigrant to perform work relative to this Contract. Attestations obtained from such subcontractors shall be maintained by the Contractor and made available to state officials upon request.
 - c. The Contractor shall maintain records for all personnel used in the performance of this Contract. Said records shall be subject to review and random inspection at any reasonable time upon reasonable notice by the State.
 - d. The Contractor understands and agrees that failure to comply with this section will be subject to the sanctions of *Tennessee Code Annotated*, Section 12-4-124, *et seq.* for acts or omissions occurring after its effective date. This law requires the Commissioner of Finance and Administration to prohibit a contractor from contracting with, or submitting an offer, proposal, or bid to contract with the State of Tennessee to supply goods or services for a period of one year after a contractor is discovered to have knowingly used the services of illegal immigrants during the performance of this Contract.
 - e. For purposes of this Contract, "illegal immigrant" shall be defined as any person who is not either a United States citizen, a Lawful Permanent Resident, or a person whose physical presence in the United States is authorized or allowed by the federal Department of Homeland Security and who, under federal immigration laws and/or regulations, is authorized to be employed in the U.S. or is otherwise authorized to provide services under the Contract.
- D.9. Records. The Contractor shall maintain documentation for all charges under this Contract. The books, records, and documents of the Contractor, insofar as they relate to work performed or money received under this Contract, shall be maintained for a period of three (3) full years from the date of the final payment and shall be subject to audit at any reasonable time and upon reasonable notice by the 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. Monitoring. The Contractor's activities conducted and records maintained pursuant to this Contract shall be subject to monitoring and evaluation by the State, the Comptroller of the Treasury, or their duly appointed representatives.
- D.12. Progress Reports. The Contractor shall submit brief, periodic, progress reports to the State as requested.
- D.13. Strict Performance. Failure by any party to this Contract to insist in any one or more cases upon the strict performance of any of the terms, covenants, conditions, or provisions of this Contract shall not be construed as a waiver or relinquishment of any such term, covenant, condition, or provision. No term or condition of this Contract shall be held to be waived, modified, or deleted except by a written amendment signed by the parties hereto.
- D.14. Independent Contractor. The parties hereto, in the performance of this Contract, shall not act as employees, partners, joint venturers, or associates of one another. It is expressly acknowledged by the parties hereto that such parties are independent contracting entities and that nothing in this Contract shall be construed to create an employer/employee relationship or to allow either to exercise control or direction over the manner or method by which the other transacts its business affairs or provides its usual services. The employees or agents of one party shall not be deemed or construed to be the employees or agents of the other party for any purpose whatsoever.
- The Contractor, being an independent contractor and not an employee of the State, agrees to carry adequate public liability and other appropriate forms of insurance, including adequate public liability and other appropriate forms of insurance on the Contractor's employees, and to pay all applicable taxes incident to this Contract as required by law.
- D.15. State Liability. The State shall have no liability except as specifically provided in this Contract.
- 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.
- D.17. State and Federal Compliance. The Contractor shall comply with all applicable State and Federal laws and regulations in the performance of this Contract.
- D.18. Governing Law. This Contract shall be governed by and construed in accordance with the laws of the State of Tennessee. The Contractor agrees that it will be subject to the exclusive jurisdiction of the courts of the State of Tennessee in actions that may arise under this Contract. The Contractor acknowledges and agrees that any rights or claims against the State of Tennessee or its employees hereunder, and any remedies arising therefrom, shall be subject to and limited to those rights and remedies, if any, available under *Tennessee Code Annotated*, Sections 9-8-101 through 9-8-407.
- D.19. Completeness. This Contract is complete and contains the entire understanding between the parties relating to the subject matter contained herein, including all the terms and conditions of the parties' agreement. This Contract supersedes any and all prior understandings, representations, negotiations, and agreements between the parties relating hereto, whether written or oral.
- D.20. Severability. If any terms and conditions of this Contract are held to be invalid or unenforceable as a matter of law, the other terms and conditions hereof shall not be affected thereby and shall remain in full force and effect. To this end, the terms and conditions of this Contract are declared severable.

D.21. Headings. Section headings of this Contract are for reference purposes only and shall not be construed as part of this Contract.

E. SPECIAL TERMS AND CONDITIONS:

- E.1. Conflicting Terms and Conditions. Should any of these special terms and conditions conflict with any other terms and conditions of this Contract, these special terms and conditions shall control.
- E.2. Communications and Contacts. All instructions, notices, consents, demands, or other communications required or contemplated by this Contract shall be in writing and shall be made by certified, first class mail, return receipt requested and postage prepaid, by overnight courier service with an asset tracking system, or by EMAIL or facsimile transmission with recipient confirmation. Any such communications, regardless of method of transmission, shall be addressed to the respective party at the appropriate mailing address, facsimile number, or EMAIL address as set forth below or to that of such other party or address, as may be hereafter specified by written notice.

The State:

Jimmy Simerly
State of Tennessee – OIR
Snodgrass TN Tower
312 Rosa L Parks Ave, 17th Floor
Nashville, TN 37243
Jimmy.Simerly@tn.gov
Telephone: (615) 532-1781
FAX: (615) 741-6164

The Contractor:

SunGard Availability Services LP
680 East Swedesford Road
Wayne, PA 19087
contract.admin@sungard.com
Telephone # (484) 582-2000
FAX # (610) 225-1125

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. 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.
- 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.

E.6. 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.

The State will maintain the confidentiality of material and information provided to it by Contractor according to the terms required of the Contractor under this section E.6. This confidentiality requirement does not apply to the contract or any amendments or incorporated documents, billing



and payment information, or any other information that the State is required to disclose under the Tennessee Public Records Act, Tennessee Code Annotated section 10-7-503 et seq.

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

- E.7. HIPAA Compliance. The State and Contractor shall comply with obligations under the Health Insurance Portability and Accountability Act of 1996 (HIPAA) and its accompanying regulations.
- a. Contractor warrants to the State that it is familiar with the requirements of HIPAA and its accompanying regulations, and will comply with all HIPAA requirements applicable to the Contractor 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 HIPAA and its regulations, in the course of performance of the Contract so that both parties will be in compliance with HIPAA.
 - c. The State and the Contractor will sign documents, including but not limited to business associate agreements, as required by HIPAA and that are reasonably necessary to keep the State and Contractor in compliance with HIPAA. This provision shall not apply if information received by the State under this Contract is NOT "protected health information" as defined by HIPAA, or if HIPAA permits the State to receive such information without entering into a business associate agreement or signing another such document.
- E.8. 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 f., below);
 - b. any addenda to this Contract;
 - c. any clarifications to the Contractor's proposal seeking this Contract;
 - d. the State solicitation, as may be amended, requesting proposals in competition for this Contract;
 - e. any technical specifications provided to proposers during the procurement process to award this Contract;
 - f. the Contractor's proposal seeking this Contract.
- E.9. Limitation of Liability. The parties agree that the Contractor's liability 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, or fraudulent conduct.
- E.10. Partial Takeover. After six (6) months from the beginning of the Contract, 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

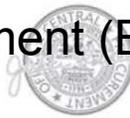
a Breach of Contract by the State. Contractor shall be given at least 30 days prior written notice of said Partial Takeover with said notice to specify the area(s) of service the State will assume and the date of said assumption. Any Partial Takeover by the State shall not alter in any way Contractor's 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.

- E.11. 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. If such disclosure was due to Contractor's breach of contract or negligence, 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. If such disclosure was due to Contractor's breach of contract or negligence, 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.
- E.12. Assignment of Disaster Recovery Services. The Department of Finance and Administration reserves the right to assign some or all of the services required by this contract to another State of Tennessee department. In the event that the State determines that such assignment is necessary or desirable, the assignment will be effected by: (1) an amendment to this Contract and/or (2) a separate contract. The Contractor shall not unreasonably contest the assignment or withhold signature.
- E.13. 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." The State may declare a partial default under subsection (a)(2) or terminate the contract for cause under subsection (a)(3) or Section D.4 only if the Contractor has committed a material breach of the contract. A material breach is of such magnitude that it deprives the State of the benefits expected under the contract. In the circumstances of this contract, this could include, but is not limited to, failure to provide print services that are accessible to the State's network in the event of a Print Services Disaster.

- 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) 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.

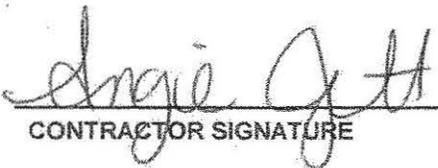
Upon partial default, the Contractor shall have no right to recover from the State any actual, general, special, incidental, consequential, or any other damages whatsoever of any description or amount. Contractor agrees to cooperate fully with the State in the event a partial default is taken.

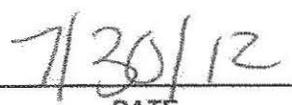
- (3) **Contract Termination**— In the event of a Breach, the State may terminate the Contract immediately or in stages. The Contractor shall be notified of the termination in writing by the State. Said notice shall hereinafter be referred to as Termination Notice. The Termination Notice may specify 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.

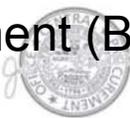
E.14. The State shall pay Contractor's invoices according to the Prompt Pay Act of 1985, Tennessee Code Annotated Sections 12-4-701 through 12-4-707.

IN WITNESS WHEREOF,

SUNGARD AVAILABILITY SERVICES LP:


CONTRACTOR SIGNATURE


DATE



Angie Lett Director of Sales SunGard

PRINTED NAME AND TITLE OF CONTRACTOR SIGNATORY (above)

DEPARTMENT OF FINANCE AND ADMINISTRATION:

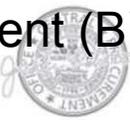
Mark A. Emkes

7-31-12

MARK A. EMKES, COMMISSIONER

MOA

DATE



ATTACHMENT A

ATTESTATION RE PERSONNEL USED IN CONTRACT PERFORMANCE

SUBJECT CONTRACT NUMBER:	
CONTRACTOR LEGAL ENTITY NAME:	SUNGARD AVAILABILITY SERVICES LP
FEDERAL EMPLOYER IDENTIFICATION NUMBER: (or Social Security Number)	23-2106195

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.

Angie Seth

CONTRACTOR SIGNATURE

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

Angie Seth Director of Sales, SunGard

PRINTED NAME AND TITLE OF SIGNATORY

7/30/12

DATE OF ATTESTATION

CONTRACT ATTACHMENT B

Print Services Disaster Recovery Services Catalog

Print Services Item	Unit	Year 1 Cost	Year 2 Cost	Year 3 Cost	Year 4 Cost	Year 5 Cost
Monthly Services						
Print Recovery Services Subscription Fee	Per Month	\$ 10,500.00	\$ 10,500.00	\$ 10,500.00	\$ 10,500.00	\$ 10,500.00
Print Production Services						
Print MICR Checks 8 1/2" X 11"	Per 1000 items	\$ 35.04	\$ 35.04	\$ 35.04	\$ 35.04	\$ 35.04
Print Simplex/Duplex Pages	Per 1000 items	\$ 30.02	\$ 30.02	\$ 30.02	\$ 30.02	\$ 30.02
Print Continuous Forms Simplex/Duplex	Per 1000 items	\$ 20.02	\$ 20.02	\$ 20.02	\$ 20.02	\$ 20.02
Fold, Insert, and Prepare to Mail Forms/Letters	Per 1000 envelopes	\$ 30.00	\$ 30.00	\$ 30.00	\$ 30.00	\$ 30.00
Label, Package and Prepare to Ship Print Items including pages, forms, and/or envelopes	Per 1000 Print Items	\$ 10.00	\$ 10.00	\$ 10.00	\$ 10.00	\$ 10.00
Disaster Event Services						
Print Services Declaration Fee	Per Incident	\$ 10,000.00	\$ 10,000.00	\$ 10,000.00	\$ 10,000.00	\$ 10,000.00
Print Services Alert Fee	Per Incident	\$ 2,000.00	\$ 2,000.00	\$ 2,000.00	\$ 2,000.00	\$ 2,000.00



Addendum 1

RECOVERY SERVICES

A. **RECOVERY SERVICES.** The Contract specifies a State Location ("Location") (901 5th Ave N. Nashville, TN), the recovery services to be provided by Contractor to the State for that Location ("Recovery Services"), the fees to be paid by the State to Contractor for those services, and any other applicable terms.

1. **DISASTER.** A "Disaster" is any unplanned event or condition that renders The State unable to use a Location or the equipment situated there for its intended computer processing and related purposes. By signing the Contract, The State warrants that the Location specified in the Contract is not at that time experiencing a Disaster. The State may declare a Disaster by having one of its designated representatives give notice to Contractor stating that a Disaster occurred, identifying the affected Location, and specifying which Recovery Services The State believes will be required. Contractor will then follow The State's reasonable declaration procedures as provided to Contractor in the Disaster Declaration Authority form.
 - (i) **Center to Center.** On-demand connectivity among Contractor recovery centers using the Contractor Global Network ("SGN") in accordance with the network connectivity described in the Contract.
 - (ii) **Dedicated Circuit.** Dedicated connectivity between The State location described in the Schedule and the Contractor facility or SGN POP (point of presence) described in the Schedule, using a dedicated circuit that is procured and installed by Contractor.
 - (iii) **IP ReDirect Services.** On-demand, point-to-point or point-to-multipoint, Internet Protocol (IP) connectivity between the IP-enabled SGN POP where The State is accessing the SGN and the IP-enabled Contractor facility described in the Schedule, with such connectivity delivered using a single Ethernet interface directly attached to a router at the The State Location.
 - (iv) **Web ReDirect Services.** On-demand access to the Internet from the Contractor facility described in the Schedule, using any of the multiple Internet service providers under contract with Contractor (which may require The State to set up domains to use the Web ReDirect Services).
 - (v) **MetroBandwidth.** On-demand access to transport infrastructure connecting two Contractor service areas within the same building or between two service areas located in separate buildings within the same metropolitan area as described in the Schedule.
 - (vi) **Telephone Line.** Analog line available for use in conjunction with
2. **SELECTED SERVICES.** Whenever The State declares a Disaster, the Recovery Services to be provided by Contractor to The State shall be the following services as selected by The State at the State's sole discretion:
 - (a) **Center-Based Recovery Services.** Immediate and exclusive use of the services described below ("Center-Based Recovery Services"), which The State may use during the period of time stated below, provided at a Contractor facility:
 - (i) **Hotsite.** An installed, fully operational computer system and networking capability ("Hotsite"), equal to or better than (in all material respects including equipment quality and processing capacity) the Hotsite Configuration described in the Contract, which The State may use for three hundred sixty-five (365) days.
 - (b) **Network Services.** Use, within two (2) hours after Contractor receives the Disaster declaration notice, of the network services described below ("Network Services"), which The State may use for six (6) weeks:



- a Dedicated Cabinet or Shelf contracted for by The State at the Contractor facility.
3. **EXTENDED USE.** During a Disaster, The State may continue to use the Center-Based Recovery Services or the Network Services beyond the periods stated in Contract Section A.4, provided that this extended use shall be subject to immediate termination if and when any other customer declares a disaster and requires use of the Recovery Resources then being utilized by The State.
 4. **COMPREHENSIVE DISASTER RECOVERY SUPPORT.** Whenever The State uses Recovery Services during a Disaster, Contractor's Support Staff (consisting of operations, communications, security, transportation, systems software and customer support personnel, as appropriate) shall provide comprehensive support to The State on a 24-hour-a-day, 7-day-a-week basis, as needed.
 5. **TESTS.** Promptly after execution of the Contract and at no additional cost to the State, Contractor shall either notify The State of available times to schedule a training workshop at a Contractor facility or provide instructions to The State to conduct a computer based training workshop. The State may use certain Recovery Services to test its disaster recovery capability ("Test") in accordance with Contract Section A.7. During each Test, Contractor's Support Staff shall provide reasonable supplies and support to The State as needed, subject to availability. In order for Contractor to provide support to The State for a scheduled Test, all Test plans must be provided to Contractor at least three (3) weeks prior to the Test date. Upon receipt of The State's Test plan, Contractor will then assign a Contractor technical coordinator to review The State's Test plan and coordinate Test support activities. Test time is available on a 24-hour-a-day, 7-day-a-week basis. All Tests shall be subject to immediate cancellation or termination by Contractor, and shall be rescheduled as soon as possible, if and when any other customer declares a disaster and requests use of the Recovery Services being tested.
 6. **E-TESTING PROGRAM.** The State may, at its option, elect to participate in Contractor's E-Testing Program. The E-Testing Program is a web-based service designed by Contractor to facilitate efficiency of pretest communications, by allowing The State to complete and submit Test plans online for any scheduled Test. The State shall use the E-Testing Program only for its own internal purposes in testing certain Recovery Services with Contractor. Periodically, in its sole discretion, Contractor may change or discontinue the E-Testing Program. Contractor shall not be liable for any damages incurred by The State as a result of The State's access to, use of, or retrieval of The State's Test plans, including damages caused by any viruses. Contractor represents that it shall not knowingly code or introduce any virus or other disabling code into the systems used to provide the E-Testing Program or The State's Test plan. Contractor shall use commercially reasonable efforts to assist The State, at no charge, in mitigating the effects of any virus that is coded or introduced into the system.
 7. **TEST SERVICES.** Contractor's testing services are designed to provide reliable and repeatable Test services for operating system, application and data restorations ("Test Services") while The State is using the Recovery Services for a Test. Whenever The State schedules a Test of the Recovery Services, the Test Services provided by Contractor to The State shall be in accordance with Contract Section A.7.
 8. **SOFTWARE.** All systems and utility software which Contractor has installed on the equipment used to provide the Recovery Services may be used by The State during a Disaster or a Test.
 9. **ACCOUNT EXECUTIVE.** Contractor shall assign an Account Executive to The State to assist in monitoring the continued viability of The State's disaster recovery capability and to facilitate ongoing communications between The State and Contractor.
 10. **HOTLINE.** Contractor shall maintain a toll-free customer support telephone service, on a 24-hour-a-day, 7-day-a-week basis, which The State may use as needed.
 11. **USER GUIDE.** The State shall receive on-line access to Contractor's current User Guide for the Recovery Services and all

applicable updates and revisions, as and when issued. Access is available at <http://www.mysungard.com>.

B. MAINTENANCE AND USE OF RECOVERY RESOURCES. The terms of this Section B are intended to ensure that the facilities, equipment, network and other resources used by Contractor to provide the Recovery Services ("Recovery Resources") are properly maintained and used, and to protect the respective interests of the parties in using the Recovery Resources.

1. **MAINTENANCE.** Contractor shall maintain vendor-specified proper operating environments at its facilities and in its vehicles used to provide the Recovery Services. Contractor shall adhere to vendor-recommended procedures and policies for proper maintenance of the Recovery Resources, including necessary remedial maintenance and regularly scheduled preventive maintenance. **Contractor warrants to The State that the Recovery Resources shall be maintained in a state of readiness at all times, consistent with Contractor's obligations under the Contract.**
 2. **AUDITS.** At any time except when the Recovery Resources are being used during a disaster or a confidential test, The State may, at its expense, audit the Recovery Resources to verify Contractor's compliance with the Contract. Contractor also shall permit any regulatory authority having jurisdiction over The State to inspect the Recovery Resources. Contractor shall, at its expense, have the Recovery Resources annually reviewed by an independent third-party auditor, whose reports shall be furnished to The State upon request.
 3. **STANDARD PROCEDURES.** Contractor shall maintain reasonable and uniform policies regarding security, safety, operations and other procedures for accessing and using the Recovery Resources during disasters and tests. In the case of network resources, these policies ("Network Policies") incorporate the policies, rules and regulations of Contractor's underlying network and Internet service providers. All of these policies are included in Contractor's on-line User Guide and in other written documents provided by Contractor to its The States from time to time. To the extent that these policies do not conflict with the terms of the Contract, both Contractor and The State shall comply with
- these policies in all material respects and shall use all Recovery Resources in accordance with manufacturer specifications.
4. **SPECIAL PROCEDURES.** If The State gives written notice to Contractor describing any special data protection or other security procedures beyond those described in the Contract, used by The State, then Contractor shall use commercially reasonable efforts to help implement those procedures whenever The State is using the Recovery Resources. The State shall be responsible for any additional expenses reasonably incurred by Contractor in implementing The State's special procedures. Such expenses not covered by rates specified in the Contract shall require amendment in accordance with Contract Section D.2. The State is responsible for the encryption of The State data when utilizing any Recovery Resources.
 5. **NETWORK RESOURCES.** Contractor shall privately manage the SGN as a protocol-independent, multi-layer network. After The State has been switched onto the SGN, the applicable Network Services will be available on a 24-hour-a-day, 7-day-a-week basis excluding downtime attributable to routine and preventative maintenance. The Network Services are provided subject to the availability of the necessary services by Contractor's underlying network and Internet service providers.

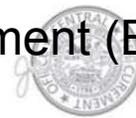
C. MULTIPLE DISASTER. The State's rights of immediate and exclusive use of the Recovery Services, as provided in the Contract, shall be subject to the possibility that one or more other customers ("other affected customers") could declare a disaster at the same time as (or before or after) The State and require use of the same Recovery Resources at the same time as The State ("Multiple Disaster"). The

following provisions are intended to avoid or minimize contention for Recovery Resources during Multiple Disasters.

1. **PRIORITY RESOURCES AND SHARED RESOURCES.** All Recovery Resources shall be available on a priority use basis ("Priority Resources") except for those designated by Contractor as available on a shared use basis ("Shared Resources"). Contractor's designations of Shared Resources shall be made in its reasonable discretion and shall be subject to change without notice.
2. **ACCESS AND USE PROCEDURES.** Access to and use of Recovery Resources during disasters shall depend upon whether the Recovery Resources are Priority Resources or Shared Resources and, with respect to Priority Resources, the order in which disasters are declared. Contractor shall maintain records of its receipt of disaster declarations, which shall be the exclusive basis for determining the order in which disasters are declared. The State will make a Disaster declaration in the form of a phone call. The Contractor will log all phone calls of Disaster declarations to determine the order in which disasters are declared by its customers. The Contractor shall acknowledge receipt of The State's Disaster declaration by issuance of a Disaster Declaration Authority form to The State.
 - (a) The State shall have priority rights of access to and use of applicable Priority Resources that are not then being used by other affected customers who previously declared disasters. Use of such Priority Resources is exclusive for as long as The State is entitled to use them under the Contract.
 - (b) The State and all other affected customers shall have equal rights of access to and use of applicable Shared Resources, irrespective of the order in which disasters occur or are declared. Use of Shared Resources may be exclusive at times, but remains subject to the possible need for shared or allocated use with other affected customers. In an effort to avoid the need for shared or allocated use of any Shared Resources, Contractor shall, to the fullest extent possible under the circumstances, take full advantage of, and provide access to, all of its other available Shared Resources.
 - (c) If applicable Priority Resources and applicable Shared Resources are both available, The State may choose which type to use.
 - (d) The State shall cooperate with Contractor and all other affected customers as reasonably required under the circumstances, including to coordinate the efficient use of Recovery Resources, to avoid or minimize the need for shared or allocated use of Shared Resources, and to implement any necessary plans for shared or allocated use of Shared Resources.
 - (e) If a Multiple Disaster is widespread or extreme, then, notwithstanding the foregoing provisions, Contractor may implement emergency procedures that are necessary, in Contractor's reasonable judgment, to allocate Recovery Resources in order to address applicable national interests and comparable concerns.
3. **MULTIPLE DISASTER PROTECTION.** To lower the probability of a Multiple Disaster, Contractor shall comply with the following terms:
 - (a) No other customer shall be granted any greater rights of access to or use of the Recovery Resources than are granted to The State under the Contract.
 - (b) No agreement to provide use of any Recovery Resources shall be entered into at a time when the customer location to be serviced is then currently experiencing a disaster.

Contractor also shall comply with the following:

 - (c) To discourage unnecessary disaster declarations, Disaster Event Services fees, as provided in Contract Attachment B, shall be charged whenever a customer declares a disaster.
4. **CRISIS MANAGEMENT.** Whenever Contractor learns of an approaching storm or other situation that might cause a Multiple Disaster, Contractor shall monitor the situation and use commercially reasonable efforts to coordinate contingency plans with all potentially affected customers.



OUTPUT RECOVERY SERVICES

A. SET UP AND STATE RESPONSIBILITIES.

1. **SET UP.** Within 45 days of execution of the Contract, the State and the Contractor shall develop a written statement setting forth the print and mailing process ("Process Statement"). The Process Statement will include:
 - (a) a sample of the State's Data to be provided to the Contractor for processing under this Contract, in the media to be used by the State. The Contractor shall write the necessary interfaces to migrate the State's Data for Print Services.
 - (b) The State's selection of a form of statement or letter for its mailings to include stock and envelopes ("State Format"). The Contractor shall provide the State with a mock-up of the selected State Format and the State must provide written approval of the State's selected State Format prior to implementation. The State acknowledges that the Contractor shall have no obligation to commence providing services until receipt of such approval.
 - (c) a written statement detailing how the State Data is to be processed for mailing;
 - (d) The State's appointed contacts who can declare a disaster on the State's behalf;
 - (e) Locations, transmission methods, network routing, etc. that the State may send data from if using their primary or disaster recovery data center; and
 - (f) The State's monthly/quarterly normal mailing schedule (including volume).
2. **State Responsibilities.** The State shall supply to the Contractor all of the data and information ("State Data") as described in the Contract to be processed by the Output Recovery Services. The State shall transmit the State Data to the Contractor by Internet, telecommunications link, magnetic tapes or diskette delivered postage prepaid and which are machine-readable by the Contractor's hardware without translation, alteration or modification, or in another manner acceptable to the Contractor. The State shall maintain copies of all source State Data and current backup copies of all State Data supplied to the Contractor. The State is responsible for the accuracy, reliability and adequacy of all State Data and other information submitted by or on behalf of the State for processing and the resulting output therefrom.

The Contractor shall have no liability for its failure to perform its obligations pertaining to Output Recovery Services in a timely manner or for any loss or damage to the extent that such loss or damage results from any of the following: (i) State changes type or method of State's media for sending State Data to the Contractor or changes its media data encoding techniques, and fails to provide sufficient advance notice; (ii) malfunctions in State's software or hardware; (iii) incorrect, incomplete, inaccurate or non-machineable State Data received from the State, including addresses not matching the national United States Postal Service ("USPS") files; (iv) State-supplied Materials do not meet machine, printing or mailing specifications or were not provided in sufficient quantities; (v) failure of USPS or other third party carriers to accept mail; (vi) requests for custom programming without sufficient advance notification; or (vii) State's failure to maintain copies of the State Data.

3. **SERVICE WARRANTY.** The Contractor warrants that the Contractor will use reasonable care in processing all State Data and following the Process Statement. The Contractor shall have no liability under this Service Warranty unless, within thirty (30) days after the applicable date of service, the Contractor receives notice from State describing a material processing error caused by the Contractor's failure to use reasonable care, together with adequate supporting documentation and data. Upon receipt of any such notice, the Contractor's only obligation under this Service Warranty is to correct the error and redo the work affected as soon as reasonably practical, or at the Contractor's

**Addendum 2**

option, to refund or credit the charges applicable to the work affected. State is responsible for auditing processing results. Notwithstanding the foregoing, any limitation of liability or warranty is subject to Contract Section E.9.

4. **MEDIA WARRANTY.** The Contractor will use commercially reasonable care in handling media provided by State which are in the Contractor's possession and on which are encoded data belonging to State. The Contractor's sole obligation under this Media Warranty is to replace or repair any tape lost or damaged as a result of the Contractor's failure to use commercially reasonable care, and to the extent possible, to regenerate any lost data from backup files maintained by the Contractor or from source data provided by State. Notwithstanding the foregoing, any limitation of liability or warranty is subject to Contract Section E.9.



STATE OF TENNESSEE
DEPARTMENT OF FINANCE AND ADMINISTRATION

**SOLICITATION # 31701-03064
FOR DISASTER RECOVERY SERVICES**

Release # 2

April 10, 2012

1. **INTRODUCTION**

The State of Tennessee, Department of Finance and Administration, hereinafter referred to as "the State," has issued this Solicitation with the intent to award a contract for Disaster Recovery Services.

This Solicitation defines minimum service requirements; solicits proposals; details proposal requirements; and, outlines the State's process for evaluating proposals and selecting a contractor to provide the required service. Through this Solicitation, the State seeks to buy the best services at the most favorable, competitive prices and to give ALL qualified businesses, including those owned by minorities, women, and persons with a handicap or disability as well as small business enterprises, opportunity to do business with the state as contractors and sub-contractors.

The State intends to award two separate contracts through this Solicitation:

- (1) a contract in which the Contractor shall make available a Recovery Center and Cold Site of adequate size for the State that will provide an effective means of minimizing the potential impact of a major disaster affecting the State's processing capabilities (Infrastructure Disaster Recovery Services); and
- (2) a contract in which the Contractor shall make available a Print Services Recovery Center of adequate size for the State that will provide an effective means of minimizing the potential impact of a major disaster affecting the State's printing capabilities (Print Services Disaster Recovery Services).

Both contracts will be awarded to the same prime Contractor to ensure coordination of services during a disaster.

The Contractor shall provide the computer configurations or equivalent equipment specified in Solicitation Attachment 6.6 at a Contractor Recovery Center for a period of up to forty-two (42) consecutive days following an Infrastructure Disaster Declaration by the State. ("Equivalent equipment or technology" is defined as "compatible equipment or technology capable of supporting the State's applications without modification.") The Contractor will provide and maintain a minimum of two (2) Recovery Centers from which such configurations may be provided.

The Contractor shall provide the necessary facilities and equipment to support the Print Services specified in Solicitation Attachment 6.3 and Solicitation Attachment 6.6 at a Contractor Print Services Recovery Center for a period of up to three hundred sixty-five (365) consecutive days following a Print Services Disaster Declaration by the State. The Contractor will provide and maintain a minimum of one (1) Print Services Recovery Center from which Print Services may be provided.

1.1. **Scope of Service, Contract Period, & Required Terms and Conditions.** Solicitation Attachment 6.4, *Pro Forma* Contract details the State's:

- Scope of Services and Deliverables in Section A;
- Contract Period in Section B;
- Payment Terms in Section C;
- Standard Terms and Conditions in Section D; and,

- Special Terms and Conditions in Section E.

The Solicitation includes a contract negotiation phase prior to proposal submission. The State will consider changes and additions to the *Pro Forma* Contract during this time as detailed in Solicitation Section 5, Contract Negotiation Process.

- 1.2. **Nondiscrimination.** No person shall be excluded from participation in, be denied benefits of, or be otherwise subjected to discrimination in the performance of a Contract pursuant to this Solicitation or in the employment practices of the Contractor on the grounds of handicap or disability, age, race, color, religion (subject to *Tennessee Code Annotated*, Section 4–21–405), sex, national origin, or any other classification protected by federal, Tennessee state constitutional, or statutory law. The Contractor pursuant to this Solicitation shall post in conspicuous places, available to all employees and applicants, notices of nondiscrimination.
- 1.3. **Solicitation Communications.** Reference **Solicitation # 31701-03064**, in all communications relating to this Solicitation, and direct any such communications to the following person designated as the Solicitation Coordinator.

Travis Johnson
 Department of Finance and Administration
 17th Floor, William Snodgrass Tennessee Tower
 312 Rosa L. Parks Avenue
 Nashville, TN 37243
 Phone: (615) 741-5727
 Fax: (615) 741-6164
Travis.Johnson@tn.gov

Unauthorized contact about this Solicitation with other employees or officials of the State of Tennessee may result in disqualification from consideration under this procurement process.

Notwithstanding the foregoing, potential proposers may also contact the following as appropriate:

- staff of the Governor's Office of Diversity Business Enterprise for assistance available to minority-owned, women-owned, and small businesses as well as general, public information relating to this Solicitation; and
- the following individual designated by the State to coordinate compliance with the nondiscrimination requirements of the State of Tennessee, Title VI of the Civil Rights Act of 1964, the Americans with Disabilities Act of 1990, and associated federal regulations:

Greg Spradley
 Senior Management Consultant
 Tennessee Department of Finance & Administration
 Office of Consulting Services
 312 Rosa L. Parks Avenue, Suite 1200
 Nashville, Tennessee 37243
 Phone: (615) 253-8703
 Fax: (615) 532-1892
Greg.Spradley@tn.gov
http://www.state.tn.us/finance/rds/consulting_services_home.html

- 1.4. **Proposer Required Review & Waiver of Objections.** Each Proposer must carefully review this Solicitation and all attachments, including but not limited to the *pro forma* contract, for comments, questions, defects, objections, or any other matter requiring clarification or correction (collectively called "comments"). Comments concerning Solicitation objections must be made in writing and received by the State no later than the Written Comments Deadline detailed in the Solicitation

Section 2, Schedule of Events. This will allow issuance of any necessary amendments and help prevent the opening of defective proposals upon which contract award could not be made.

Protests based on any objection shall be considered waived and invalid if these comments/objections have not been brought to the attention of the State, in writing, by the Written Comments Deadline.

1.5. Pre-Proposal Conference

A Pre-Proposal Conference will be held at the time and date detailed in the Solicitation Section 2, Schedule of Events. Pre-Proposal Conference attendance is not mandatory, and potential proposers may be limited to a maximum number of attendees depending upon overall attendance and space limitations.

The conference will be held at:

Montgomery Room
OIR Training Area/North Conference Center
3rd Floor, Snodgrass TN Tower
312 Rosa L. Parks Avenue
Nashville, TN 37243

The purpose of the conference is to discuss the Solicitation scope of services. The State will entertain questions, however potential proposers must understand that the State's response to any question at the Pre-Proposal Conference shall be tentative and non-binding. Potential proposers should submit questions concerning the Solicitation in writing and must submit them prior to the Written Comments Deadline date detailed in the Solicitation Section 2, Schedule of Events. The State will send the official response to questions to potential proposers as indicated in Solicitation Section 1.4 and on the date detailed in the Solicitation Section 2, Schedule of Events.

2. SCHEDULE OF EVENTS

The following Solicitation Schedule of Events represents the State's best estimate for this Solicitation. The state reserves the right, at its sole discretion, to adjust the Schedule of Events or to otherwise amend this Solicitation at any time. The State reserves the right, at its sole discretion, to cancel or to cancel and reissue this Solicitation in accordance with applicable laws and regulations.

EVENT	TIME (central time zone)	DATE (all dates are state business days)
1. Solicitation Issued		3/5/2012
2. Pre-Proposal Conference	2:00 p.m.	3/19/2012
3. Written Comments Deadline		3/26/2012
4. State Responds to Written Comments		4/10/2012
5. Initial Draft Contract Deadline	2:00 p.m.	4/17/2012
6. Verbal Negotiation Window		4/18/2012 – 5/16/2012
7. Contract Negotiation Deadline	2:00 p.m.	5/17/2012

8. Proposal Deadline	2:00 p.m.	5/24/2012
9. Qualifications Evidence Evaluations Completed		5/31/2012
10. Cost Proposals Opened and Lowest Cost Identified	2:00 p.m.	6/1/2012
11. Award Notice and Solicitation Files Opened for Public Inspection	2:00 p.m.	6/6/2012
12. Contract Signing		6/18/2012
13. Contractor Signature Deadline	2:00 p.m.	6/25/2012

3. PROPOSAL REQUIREMENTS

The Proposer will submit the Proposal after the completion of the Contract Negotiations described in Solicitation Section 5, below.

- 3.1. **Two Part Proposal.** A proposal in response to this Solicitation must respond only as required by this Solicitation document (including all attachments) as may be amended. It must consist of two parts: Qualifications Evidence (including any supporting documentation) and a Cost Proposal.

The State may determine a proposal to be non-responsive and ineligible for contract award if the Proposer fails to address all proposal items, organize and properly reference the Qualifications Evidence, or complete the Cost Proposal exactly as provided and required below. A Proposer is liable for any and all proposal errors or omissions.

- 3.1.1. Qualifications Evidence – The *Qualifications Evidence Guide* (Attachment 6.2. of this Solicitation) details specific mandatory requirements for making a proposal in response to this Solicitation. A Proposer must duplicate and use Solicitation Attachment 6.2., completed with proposal page numbers, to cover (as a table of contents), organize, reference, and complete the Qualifications Evidence portion of the proposal. All information and documentation included within a proposal must address a specific requirement of Solicitation Attachment 6.2. and must be clearly referenced. The State will deem any information not meeting these criteria to be extraneous and will not review it.

NOTICE: DO NOT include any pricing or cost information in any part of the Qualifications Evidence. If a Proposer includes any pricing or cost information amount of any type (even pricing relating to other projects) within the Qualifications Evidence, the state will deem the proposal non-responsive and reject it.

- 3.1.2. Cost Proposal – A Proposer must use an exact duplicate of Solicitation Attachment 6.3., the *Cost Proposal Guide*, to record ONLY the proposed cost EXACTLY as indicated. The Cost Proposal must incorporate ALL costs for ALL services under the contract for the total contract period. A Proposer must NOT record any other rates, amounts, or information except that which is specifically required.

A Proposer must sign and date the completed Cost Proposal.

NOTICE: The state will deem the proposal non-responsive and reject it if a Proposer fails

to submit a Cost Proposal exactly as required.

3.2. **Proposal Delivery.** A Proposer must ensure that both proposal components offered in response to this Solicitation, the Qualifications Evidence and the Cost Proposal, meet all form and content requirements detailed within this Solicitation, including but not limited to, required signatures. Further, the Proposer must submit the two proposal components as specified below. A proposal failing to meet delivery requirements may be deemed non-responsive and ineligible for contract award.

3.2.1. Packaging

3.2.1.1. The Proposer must present one (1) original Qualifications Evidence document (covered by and addressing Solicitation Attachment 6.2.) labeled:

QUALIFICATIONS EVIDENCE – Solicitation # 31701-03064

and six (6) copies in the form of one (1) digital document in “PDF” format properly recorded on its own, otherwise blank, standard CD-R recordable disc labeled:

COPY – QUALIFICATIONS EVIDENCE – Solicitation # 31701-03064

The Qualifications Evidence document and digital copies must be placed in a sealed package labeled:

DO NOT OPEN – QUALIFICATIONS EVIDENCE – Solicitation # 31701-03064

PROPOSER: [PROPOSER LEGAL ENTITY NAME]

NOTE: Any discrepancy between the document and digital copies may result in the State rejecting the proposal as non-responsive.

3.2.1.2. The Proposer must present one (1) Cost Proposal document (using an exact duplicate of Solicitation Attachment 6.3.) labeled:

COST PROPOSAL – Solicitation # 31701-03064

and placed in a separate, sealed package that is labeled:

DO NOT OPEN – COST PROPOSAL – Solicitation # 31701-03064

PROPOSER: [PROPOSER LEGAL ENTITY NAME]

3.2.1.3. If the Proposer encloses the separate, sealed Qualifications Evidence and Cost Proposal components in a larger package for mailing or delivery, the Proposer must label the outermost package:

SEPARATELY SEALED QUALIFICATIONS EVIDENCE & COST PROPOSAL

Solicitation # 31701-03064

PROPOSER: [PROPOSER LEGAL ENTITY NAME]

3.2.1.4. The Proposer must submit a proposal, as required, to the following address:

Travis Johnson
Department of Finance and Administration
17th Floor, Snodgrass TN Tower
312 Rosa L. Parks Avenue

Nashville, TN 37243
Ph: 615-741-5727

- 3.3. **Proposal Deadline.** A Proposer must ensure that the State receives a proposal no later than the Proposal Deadline time and date detailed in the Solicitation Section 2, Schedule of Events. The State will not accept late proposals, and a Proposer's failure to submit a proposal before the deadline will result in disqualification of the proposal.

Each Proposer shall assume the risk of the method of dispatching any proposal to the State. The State assumes no responsibility for delays or delivery failures resulting from the method of dispatch. Actual or electronic "postmarking" of a proposal to the State by a deadline date shall not substitute for actual receipt of a proposal by the State.

3.4. **Proposer and Proposal Prohibitions:**

- A Proposer may NOT alter or revise proposal documents after the Proposal Deadline unless such is formally requested, in writing, by the State.
- A proposal must NOT include the Proposer's own contract terms and conditions unless such terms and conditions were agreed to by the State during Contract Negotiation and included in Solicitation Attachment 6.7 Proposer Contracts.
- A proposal must NOT restrict the rights of the State or otherwise qualify either the offer to deliver services as required by this Solicitation or the Cost Proposal.
- A Cost Proposal must NOT result from any collusion between Proposers.
- A Proposer must NOT provide, for consideration in this Solicitation process or subsequent contract negotiations, incorrect information that the Proposer knew or should have known was materially incorrect.
- A proposal must comply with all of the terms of this Solicitation and all applicable State laws and regulations. The State may reject any proposal that does not comply with all of the terms, conditions, and performance requirements of this Solicitation and any alternative contract agreed to by the State during Contract Negotiation. The State may consider any proposal that does not meet the requirements of this Solicitation and any alternative contract agreed to by the State during Contract Negotiation to be non-responsive, and the State may reject such a proposal.

4. **GENERAL INFORMATION & REQUIREMENTS**

4.1. **Conflict of Interest.** This Solicitation shall not result in a contract with:

- an individual who is, or within the past six months has been, an employee of the State of Tennessee or who is a volunteer member of a State board or commission that votes for, lets out, overlooks, or any manner superintends the services being procured in this Solicitation;
- a company, corporation, or any other contracting entity in which an ownership of two percent (2%) or more is held by an individual who is, or within the past six months has been, an employee of the State of Tennessee (this will not apply either to financial interests that have been placed into a "blind trust" arrangement pursuant to which the employee does not have knowledge of the retention or disposition of such interests or to the ownership of publicly traded stocks or bonds where such ownership constitutes less than 2% of the total outstanding amount of the stocks or bonds of the issuing entity);
- a company, corporation, or any other contracting entity which employs an individual who is, or within the past six months has been, an employee of the State of Tennessee in a position that would allow the direct or indirect use or disclosure of information, which was obtained through or in connection with his or her employment and not made available to the general public, for the purpose of furthering the private interest or personal profit of any person; or,

- any individual, company, or other entity involved in assisting the State in the development, formulation, or drafting of this Solicitation or its scope of services (such person or entity being deemed by the State as having information that would afford an unfair advantage over other Proposers).

For the purposes of applying the requirements of this subsection, the State will deem an individual to be an employee of the State of Tennessee until such time as all compensation for salary, termination pay, and annual leave has been paid, but the term “employee of the State of Tennessee” shall not include individuals performing volunteer services for the State of Tennessee.

- 4.2. **State Right of Rejection.** Subject to applicable laws and regulations, the State reserves the right to reject, at its sole discretion, any and all proposals.

The State may deem as non-responsive and reject any proposal that does not comply with all terms, conditions, and performance requirements of this Solicitation and any alternative contract agreed to by the State during Contract Negotiation. Notwithstanding the foregoing, the State reserves the right to waive, at its sole discretion, a proposal’s minor variances from full compliance with this Solicitation. If the State waives variances in a proposal, such waiver shall not modify the Solicitation requirements or excuse the Proposer from full compliance with such, and the State may hold any resulting Contractor to strict compliance with this Solicitation and any alternative contract agreed to by the State during Contract Negotiation.

- 4.3. **State Right to Refuse Personnel.** The State reserves the right to refuse, at its sole discretion and notwithstanding any prior approval, any personnel of the prime contractor or a subcontractor providing service in the performance of a contract resulting from this Solicitation. The State will document in writing the reason(s) for any rejection of personnel.

4.4. **Disclosure of Proposal Contents**

- 4.4.1. Each proposal and all materials submitted to the State in response to this Solicitation become the property of the State of Tennessee. Selection or rejection of a proposal does not affect this right. By submitting a proposal, a Proposer acknowledges and accepts that the full proposal contents and associated documents will become open to public inspection in accordance with the laws of the State of Tennessee.
- 4.4.2. The State will hold all proposal information in confidence during the evaluation process. Notwithstanding the foregoing, a list of actual Proposers submitting timely proposals may be available to the public, upon request, after the Proposal Deadline detailed in the Solicitation Section 2, Schedule of Events.
- 4.4.3. Proposals and associated materials will be open for review by the public in accordance with *Tennessee Code Annotated*, Section 10-7-504(a)(7), after the State completes proposal evaluations and issues an Evaluation Notice.

4.5. **Severability**

If any provision of this Solicitation is declared by a court to be illegal or in conflict with any law, said decision will not affect the validity of the remaining Solicitation terms and provisions, and the rights and obligations of the State and Proposers will be construed and enforced as if the Solicitation did not contain the particular provision held to be invalid.

5. **CONTRACT NEGOTIATION PROCESS (PRIOR TO PROPOSAL SUBMISSION)**

Prior to Proposal submission, the State intends to negotiate contract terms that are acceptable to both the State and the potential Proposer, referred to hereafter as the potential Proposer. To

preserve the competitive nature of the process, the names of the potential Proposers will not be released until after the Proposal Deadline detailed in Solicitation Section 2, Schedule of Events.

The basis for these negotiations is Attachment 6.4, *Pro Forma* Contracts. The negotiations will be conducted with each potential Proposer separately and will include verbal discussion with written documentation of changes and additions to the *Pro Forma* Contracts. Note that this process will most likely result in different contracts for the potential Proposers. The services and the State's fundamental terms and conditions will be the same; however, one potential Proposer's negotiated contract may differ in specifics from another potential Proposer's negotiated contract.

The agreed-to contract for a potential Proposer will become Attachment 6.7, Proposer Contracts for the potential Proposer.

A potential Proposer will not be allowed to see draft versions or the agreed-to version of another potential Proposer's contract prior to the Evaluation Notice date detailed in Section 2, Schedule of Events.

The negotiation period will be fixed and each potential Proposer will have the same pre-defined amount of time in which to reach an agreement with the State. Potential Proposers must not construe the State's willingness to accept some potential Proposer contract terms/contractual language as any form of commitment to resolve all issues to the satisfaction of the potential Proposer. The State will disqualify any potential Proposer with whom it cannot agree on a contract by the Contract Negotiation Deadline time and date detailed in the Solicitation Section 2, Schedule of Events.

- 5.1. Attachment 6.4, *Pro Forma* Contracts, as the contracts appear after Section 2, Schedule of Events, State Responds to Written Comments, will be the basis and beginning point for the agreed-to contracts. Each potential Proposer must review and make requested changes and/or additions **directly to the *Pro Forma* Contracts**, creating initial drafts of the Proposer Contracts. All proposed changes and/or additions to the *Pro Forma* Contracts must be text specific. The potential Proposer may not state an objection to contract terms/contractual language without providing alternative language for negotiation.

The State will not accept a potential Proposer's standard contract or general terms agreement in place of modified Solicitation Attachment 6.4, *Pro Forma* Contracts. All general contract terms and contractual language requested by the potential Proposer must be integrated into the *Pro Forma* Contracts and must be not submitted as an attachment. Existing contract terms and contractual language should be modified in the current location within the *Pro Forma* Contracts. Additional contract terms should be added to Contract Sections B, C, D, and E as appropriate.

The State will allow the potential Proposer to submit Disaster Recovery services related agreement(s) as requested attachment(s) to the Contracts. The potential Proposer must identify whether the Disaster Recovery services related agreement(s) are proposed as attachments to the Infrastructure Disaster Recovery Services Contract, the Print Services Disaster Recovery Services Contract, or both contracts

The State will also allow the potential Proposer to request the inclusion of contract terms/contractual language from current contract(s) that the potential Proposer has with State agency(ies). Such contract terms/contractual language may be in the body of the contract(s) or in attachment(s) to the contract(s). The potential Proposer must provide printed and/or scanned copy(ies) of the State contract(s) with the State's Edison contract number(s) and the potential Proposer's requested contract terms/contractual language clearly identified. The potential Proposer must identify whether the existing State contract terms/contractual language are proposed for inclusion in the Infrastructure Disaster Recovery Services Contract, the Print Services Disaster Recovery Services Contract, or both contracts.

If the potential Proposer wishes to request existing State contract terms/contractual language or submit its own Disaster Recovery services related agreement(s), the following provisions apply:

- Any such contract terms/contractual language and/or agreement(s) shall, if accepted by the State, be “in addition to” and not “in lieu of” the State’s *Pro Forma* Contracts and shall not supersede the agreed-to contracts based on the State’s *Pro Forma* Contracts.
- Any such contract terms/contractual language and/or agreement(s) must be identified and submitted for the State’s consideration at the same time the Proposer submits the initial drafts of the Proposer Contracts prior to the start of negotiations.
- The State reserves the right to modify such contract terms/contractual language and/or agreement(s) before acceptance in the appropriate Proposer Contracts, if the State deems this necessary to meet state legal or business requirements.
- Any such contract terms/contractual language and/or agreement(s), if accepted by the State, will be incorporated directly into and/or as Contract Attachments to the appropriate Proposer Contracts. The State will not sign any documents other than the agreed-to Proposer Contracts of the successful Proposer.

- 5.2. To equally evaluate all proposals and preserve the competitive nature of the procurement, the services and unit rates must be the same for all Proposers. Therefore, State **will not consider and will reject** any requested changes or additions to the following areas of the *Pro Forma* Contracts during contract negotiations, unless such change or addition is considered in the best interest of the State and can be made for all potential Proposers:

Infrastructure Disaster Recovery Services Contract:

Section A, Scope of Services

Section C, Payment Terms and Conditions

Attachment B: Infrastructure Disaster Recovery Services Catalog

Print Services Recovery Services Contract:

Section A, Scope of Services

Section C, Payment Terms and Conditions

Attachment B: Print Services Disaster Recovery Services Catalog

The State strongly prefers to receive and will consider changes and additions to these sections prior to contract negotiations if requested in writing by the Written Comments Deadline detailed in the Solicitation Section 2, Schedule of Events.

Any changes or additions will be made by amendment to the Solicitation and will apply to all Proposers.

- 5.3. The State is committed to a fair and flexible procurement process that will allow potential Proposers the opportunity to have input into the terms and conditions of the contract. The goal is to arrive at a business arrangement that is in the best interests of the State and the awarded Contractor.

However, the State is bound by its Constitution and statutes to certain terms and conditions which would not necessarily apply to private business. Such restrictions upon the State include, but are not limited to, the items set forth in Solicitation Attachment 6.5 Contract Language Restrictions and Non-Negotiable Contractual Language. This attachment is to inform potential Proposers in advance that these issues are among those that may arise during contract

negotiations. Potential Proposers should review and consider the information in this attachment carefully before requesting changes or additions to the *Pro Forma* Contracts.

- 5.4. The potential Proposer must include **ALL** requested changes and additions to the *Pro Forma* Contracts, including Disaster Recovery services related agreement(s) attachment(s), in the initial draft of the Proposer Contract. During contract negotiations, the State will not consider changes or additions to contract terms that the potential Proposer did not request changes in or additions to in the initial draft of the Proposer Contracts, unless such changes are deemed by the State to be in the State's best interest. The State will not consider the inclusion of Disaster Recovery services related agreement(s) that the potential Proposer did not provide with the initial draft of the Proposer Contracts unless such inclusion is deemed by the State to be in the State's best interest.
- 5.5. The initial drafts of the Proposer Contracts are due to the State by the Initial Draft Contract Deadline time and date detailed in the Solicitation Section 2, Schedule of Events. The initial draft Contracts, including any requested Disaster Recovery services related agreement(s), must be delivered in Microsoft Word and all requested changes or additions must be easily identifiable and clearly marked using Word's "change tracking" feature. The potential Proposer must deliver the document to the Solicitation Coordinator specified in Solicitation Section 1.3 Delivery can be in the form of a CD or email attachment.

The State must be able to edit the delivered document(s). Once the State receives the initial drafts of the Proposer Contracts, unless the State specifically directs the potential Proposer otherwise, the State will make all changes and additions to the draft Proposer Contracts during negotiations. The potential Proposer may submit alternative contractual language in writing during negotiations; however, the State will integrate any accepted language into the Contracts.

Failure to submit the initial drafts of the Proposer Contracts, including any requested Disaster Recovery services related agreement(s), by the deadline will forfeit the potential Proposer's right to negotiate contract terms/contractual language with the State. If the potential Proposer misses the deadline, the potential Proposer must accept the terms and conditions set forth in Solicitation Attachment 6.4, *Pro Forma* Contracts without changes or additional attachments. In this case, the Solicitation Attachment 6.4, *Pro Forma* Contracts without changes will become Solicitation Attachment 6.7, Proposer Contracts for the potential Proposer.

- 5.6. The State will review the initial drafts of the Proposer Contracts and:
- accept the changes and additions that are acceptable to the State
 - reject the changes and additions that are legally unacceptable to the State or contrary to the State's business requirements
 - suggest alternative contractual language for negotiation
 - submit updated draft Proposer Contracts to the potential Proposer for review

At this point, the potential Proposer may accept the language in the draft Proposer Contracts, submit alternative contractual language, and/or schedule verbal negotiations via face-to-face meetings or conference calls. During verbal negotiations, the potential Proposer's negotiation team must be comprised of individuals capable of negotiating in good faith and making commitments on behalf of the potential Proposer.

- 5.7. Verbal negotiations requested by vendors in accordance with Solicitation Section 5.6 will be scheduled on a first-come-first-served basis, and must occur during the Verbal Negotiation Window detailed in Solicitation Section 2. Negotiations must be completed during this time frame.

1. Initial Negotiations – To establish the fundamental positions of the parties and identify areas where compromise may be possible, in accordance with State law, rules, regulations, and policies.
2. Final Negotiations – To finalize all language and produce the Final Pro-Forma Contracts for each potential Proposer. This does not imply that the State will be able to address or satisfy all of the vendor's contractual concerns.
3. Comptroller of the Treasury Approval – After the Final Negotiations are complete and prior to submitting the negotiated contracts to the potential Proposers, the Office for Information Resources (OIR) will submit the Final Pro-Forma Contracts to the Comptroller of the Treasury for final approval. It is possible that the Comptroller will request further modifications to the Contract, in which case the State will re-open negotiations with the affected potential Proposer(s) only for the modified items. Upon receiving the Comptroller's final approval, the State will send the Final Pro-Forma Contracts to each potential Proposer for inclusion in their Technical Proposals.

All face-to-face meetings and conference calls will be scheduled during State business hours (8:00 a.m. to 4:30 p.m. Central Time) and must occur within the Verbal Negotiation Window detailed in Solicitation Section 2. Face-to-face meetings will be held at State facilities.

The State will make the same amount of negotiation time available to all potential Proposers. As necessary to accommodate the number of interested potential Proposers, the State may amend the Schedule of Events for additional negotiation time.

6. **PROPOSAL EVALUATION & CONTRACT AWARD**

The Solicitation Coordinator will review each proposal for compliance with all general Solicitation requirements. Then, a Proposal Evaluation Team of at least three contracting agency employees will review the Qualifications Evidence and any supporting documentation for each compliant proposal. For a proposal in response to this Solicitation to be acceptable and eligible for contract award, all evaluators must determine that the Qualifications Evidence documents that the Proposer meets the mandatory qualifications and experience requirements and is otherwise, at least, minimally acceptable as a contractor for the subject services. The State will document, in writing, any determination (and the specific reasons therefore) that a Proposer's Qualification Evidence failed to adequately address and document compliance with mandatory requirements and acceptability for contract award.

The State reserves the right, at its sole discretion, to request Proposer clarification of a Technical Proposal or to conduct clarification discussions with any or all Proposers. Any such clarification or discussion shall be limited to specific sections of the proposal identified by the State. The subject Proposer shall put any resulting clarification in writing as may be required by the State.

After the evaluation of Qualifications Evidence is completed, the Solicitation Coordinator will review the Cost Proposal submitted by each Proposer deemed acceptable for contract award. The Solicitation Coordinator will assess whether each Cost Proposal complies with Solicitation requirements without qualification. The Solicitation Coordinator will document, in writing, any determination (and the specific reasons therefore) that a Cost Proposal is non-compliant with requirements such that the Proposer is non-responsive to the Solicitation.

The Solicitation Coordinator will identify the responsive, responsible Cost Proposal indicating the lowest cost to the state, and in the best interests of the state, said Proposer will be selected for contract award. In the event that two or more Proposers offer the same lowest cost, the Solicitation Coordinator will request a Best and Final Cost Proposal from the tied Proposers. Should a second tie result, the State will award the contract to one of the tied Proposers by chance.

PROPOSAL STATEMENT OF CERTIFICATIONS AND ASSURANCES

An individual legally empowered to contractually bind the Proposer must sign and complete the *Proposal Statement of Certifications and Assurances* below as required, and this signed statement must be included with the proposal as required by the Solicitation Attachment 6.2.

The Proposer does, hereby, expressly affirm, declare, confirm, certify, and assure ALL of the following:

1. The Proposer will comply with all of the provisions and requirements of the Solicitation.
2. The Proposer will provide, for the total contract period, all services defined in the Scope of Services specified by the *Pro Forma Contract* attached to the Solicitation.
3. The Proposer accepts and agrees, without qualification, to all terms and conditions set out by either the *Pro Forma Contracts* attached to the Solicitation or the State approved, Proposer-specific, negotiated contracts.
4. The Proposer acknowledges and agrees that a contract resulting from the Solicitation shall incorporate, by reference, all proposal responses as a part of the contract.
5. The Proposer will comply, as applicable, with:
 - (a) the laws of the State of Tennessee;
 - (b) Title VI of the federal Civil Rights Act of 1964;
 - (c) Title IX of the federal Education Amendments Act of 1972;
 - (d) the Equal Employment Opportunity Act and the regulations issued there under by the federal government; and,
 - (e) the Americans with Disabilities Act of 1990 and the regulations issued there under by the federal government.
6. To the knowledge of the undersigned, the information detailed within the proposal submitted in response to the Solicitation is accurate.
7. The proposal submitted in response to the Solicitation was independently prepared, without collusion, under penalty of perjury.
8. No amount shall be paid directly or indirectly to an employee or official of the State of Tennessee as wages, compensation, or gifts in exchange for acting as an officer, agent, employee, subcontractor, or consultant to the Proposer in connection with the Solicitation or any resulting contract.

By signature below, the signatory certifies legal authority to bind the proposing entity to the provisions of this Solicitation and any contract awarded pursuant to it. The State may, at its sole discretion and at any time, require evidence documenting the signatory's authority to legally bind the proposing entity.

PROPOSER SIGNATURE & DATE:

PRINTED NAME & TITLE:

PROPOSER LEGAL ENTITY NAME:

PROPOSER FEIN or SSN:

QUALIFICATIONS EVIDENCE GUIDE

The Proposer must address all items detailed below and provide, in sequence, the information and documentation as required (referenced with the associated item references). The Proposer must also detail the proposal page number for each item in the appropriate space below, and use this guide to cover the Qualifications Evidence section of the proposal (as its table of contents).

Prior to State evaluation of Qualifications Evidence, the Solicitation Coordinator will review each proposal for compliance with all Solicitation requirements, including but not limited to:

- The proposal must be delivered to the State no later than the Proposal Deadline.
- The Qualifications Evidence and the Cost Proposal must be packaged separately as required.
- The Qualifications Evidence must NOT contain cost or pricing information of any type.
- The proposal must NOT contain any qualification, limitation, or other restrictions.

The Proposal Evaluation Team will, then, review the Qualifications Evidence to determine if the mandatory requirement items are addressed as required and that it documents that the Proposer meets each mandatory qualification and experience requirement and is otherwise, at least, minimally acceptable as a contractor for the subject services.

PROPOSER LEGAL ENTITY NAME:		
Proposal Page # (Proposer completes)	Item Ref.	QUALIFICATIONS EVIDENCE
	6.2.1.	Detail the name, e-mail address, mailing address, telephone number, and facsimile number of the person the State should contact regarding the proposal.
	6.2.2.	Provide the Solicitation Attachment 6.1., <i>Proposal Statement of Certifications and Assurances</i> completed and signed by an individual empowered to bind the Proposer to the provisions of this Solicitation and any resulting contract. The document must be signed without exception or qualification.
	6.2.3.	Provide a statement, based upon reasonable inquiry, of whether the Proposer or any individual who shall perform work under the contract has a possible conflict of interest (e.g., employment by the State of Tennessee) and, if so, the nature of that conflict. <i>Any questions of conflict of interest shall be solely within the discretion of the State, and the State reserves the right to reject any proposal or cancel any award.</i>
	6.2.4.	Provide a statement of whether the Proposer or, to the Proposer's knowledge, any of the Proposer's employees, agents, independent contractors, or subcontractors, proposed to provide work on a contract pursuant to this Solicitation, have been convicted of, pled guilty to, or pled <i>nolo contendere</i> to any felony. If so, include an explanation providing relevant details. <i>Any issues relating to such a matter shall be solely within the discretion of the State, and the State reserves the right to reject any proposal or cancel any award.</i>
	6.2.5.	Provide a statement of whether there is any material, pending litigation against the Proposer that the Proposer should reasonably believe could adversely affect its ability to meet contract requirements pursuant to this Solicitation or is likely to have a material adverse effect on the Proposer's financial condition. If such exists, list each separately, explain the relevant details, and attach the opinion of counsel addressing whether and to what extent it would impair the Proposer's performance in a contract pursuant to this Solicitation. <i>Any issues relating to such a matter shall be solely within the discretion of the State, and the State reserves the right to reject any proposal or cancel any award.</i> <i>All persons, agencies, firms, or other entities that provide legal opinions regarding the Proposer must be properly licensed to render such opinions. The</i>

PROPOSER LEGAL ENTITY NAME:		
Proposal Page # (Proposer completes)	Item Ref.	QUALIFICATIONS EVIDENCE
		<i>State may require the Proposer to submit proof of such licensure detailing the state of licensure and licensure number for each person or entity that renders such opinions.</i>
	6.2.6.	<p>Provide a statement confirming that the Proposer can meet the following Recovery Center requirements for the State's Infrastructure Disaster Recovery Services with already established and functioning facilities. The response must include the city and state locations and the establishment dates of the Recovery Centers from which the State's Infrastructure Disaster Recovery Services will be provided.</p> <p>a) The Proposer has at least two (2) established Recovery Centers of adequate size to provide the State's computer configurations or equivalent equipment, including the Mainframe and TennCare Environments defined in Solicitation Attachment 6.6 Initial Environment Configurations and Print Volumes;</p> <p>AND</p> <p>b) The Proposer's Recovery Centers named above are at least one hundred (100) miles from Nashville, TN;</p> <p>AND</p> <p>c) The Proposer's Recovery Centers named above are more than fifty (50) miles from each other.</p> <p>Note: The Recovery Center requirements for Infrastructure Disaster Recovery Services cannot be met using a Sub-Contractor facility.</p>
	6.2.7.	<p>Provide a statement confirming that the Proposer can meet the following Print Services Recovery Center requirements for the State's Print Services Disaster Recovery Services with an already established and functioning facility. The response must include the city and state location(s) and the establishment date(s) of the Print Services Recovery Center(s) from which the State's Print Services Disaster Recovery Services will be provided.</p> <p>a) The Proposer or its Sub-Contractor has at least one (1) established Print Services Recovery Center of adequate size to provide the State's annual estimated print services requirements defined in Solicitation Attachment 6.6 Initial Environment Configurations and Print Volumes;</p> <p>AND</p> <p>b) The Proposer's or its Sub-Contractor's Print Services Recovery Center(s) named above is (are) at least one hundred (100) miles from Nashville, TN.</p> <p>Note: Infrastructure Disaster Recovery Services and Print Services Disaster Recovery Services may be provided from the same Contractor facility.</p>
	6.2.8.	<p>Provide a statement confirming that the Proposer will supply an IBM 2094 or later IBM model to support the Mainframe Environment, defined in Solicitation Attachment 6.6. If an IBM model other than an IBM 2094 will be used, the Proposer must identify the IBM model. The State may seek clarification and/or disqualify the Proposer if the State deems the proposed IBM model not to be equivalent to an IBM 2094.</p>
	6.2.9.	<p>Provide a statement confirming that each of the Proposer's Recovery Centers, identified in Item 6.2.6 above, contain a minimum of twenty (20) STK T9840C tape drives to support the Mainframe Environment, defined in Solicitation Attachment 6.6.</p>
	6.2.10.	<p>Provide a statement as to whether Sun SPARC Enterprise M8000 equipment or equivalent</p>

PROPOSER LEGAL ENTITY NAME:		
Proposal Page # (Proposer completes)	Item Ref.	QUALIFICATIONS EVIDENCE
		equipment will be used to support the TennCare Environment, defined in Solicitation Attachment 6.6. If equivalent equipment will be used, the Proposer must identify such equipment. The State may seek clarification and/or disqualify the Proposer if the State deems the proposed equipment not to be equivalent to the Sun SPARC Enterprise M8000 equipment.
	6.2.11.	Provide a statement as to whether Sun SPARC Enterprise T5120 equipment or equivalent equipment will be used to support the TennCare Environment, defined in Solicitation Attachment 6.6. If equivalent equipment will be used, the Proposer must identify such equipment. The State may seek clarification and/or disqualify the Proposer if the State deems the proposed equipment not to be equivalent to the Sun SPARC Enterprise T5120 equipment.

COST PROPOSAL GUIDE

NOTICE: THE COST PROPOSAL MUST BE COMPLETED EXACTLY AS REQUIRED

COST PROPOSAL SCHEDULE – The Cost Proposal, detailed below, shall indicate the proposed price for all services, during the entire contract period, as set forth in the *Pro Forma Contract* attached to the Solicitation. The Cost Proposal shall remain valid for at least 120 days subsequent to the date of the Cost Proposal opening and thereafter in accordance with any contract resulting from this Solicitation. All monetary amounts shall be in U.S. currency and limited to two (2) places to the right of the decimal point.

The provision of Disaster Recovery services necessarily requires complex hardware and software environments, as well as a suite of specialized services. The hardware, software, and services are, in many cases, integrated to such an extent that it not practical to separately itemize them in the Cost Proposal table below. Nevertheless, the successful vendor must provide all Disaster Recovery Services described in the *pro forma* contracts Scope of Services for all environment configurations (and subsequent amendments thereto) described in Solicitation Attachment 6.6. If there are any costs that the vendor intends to recover that are not separately listed in the Cost Proposal table, the vendor must include such costs within one or more of the existing line items; the vendor may not modify the Cost Proposal or add additional line items to the Cost Proposal to recover such costs.

The Evaluation Factor associated with each cost item is for evaluation purposes only. The evaluation factors do NOT and should NOT be construed as any type of volume guarantee or minimum purchase quantity. The evaluation factors shall NOT create rights, interests, or claims of entitlement in the Proposer.

<i>This Cost Proposal must be signed by an individual empowered to legally bind the proposing entity to the provisions of this Solicitation and any contract awarded pursuant to it. The State may, at its sole discretion and at any time, require evidence documenting the signatory's authority to contractually bind the proposing entity.</i>	
PROPOSER SIGNATURE & DATE:	
PRINTED NAME & TITLE:	
PROPOSER LEGAL ENTITY NAME:	

Cost Item Description	Unit	Proposed Cost					State Use Only		
		Year 1	Year 2	Year 3	Year 4	Year 5	Sum	Eval. Factor	Evaluation Cost (cost x factor)
Monthly Services - Mainframe Components									
1 Gartner MIP	Each Per Month	\$	\$	\$	\$	\$	\$	27600	
1 Gigabyte (GB) Main Storage	Each Per	\$	\$	\$	\$	\$	\$	384	

Cost Item Description	Unit	Proposed Cost					State Use Only		
		Year 1	Year 2	Year 3	Year 4	Year 5	Sum	Eval. Factor	Evaluation Cost (cost x factor)
	Month								
1 Terabyte (TB) DASD Useable formatted – Not Raw Space; non-SATA	Each Per Month	\$	\$	\$	\$	\$	\$	30	
Open Systems Adapter (OSA)	Each Per Month	\$	\$	\$	\$	\$	\$	48	
z Integrated Information Processor (zIIP)	Each Per Month	\$	\$	\$	\$	\$	\$	12	
Crypto Express2	Each Per Month	\$	\$	\$	\$	\$	\$	48	
9840C Tape Drive	Each Per Month	\$	\$	\$	\$	\$	\$	240	
STK Silo (must support 9840C Tape Drives)	Each Per Month	\$	\$	\$	\$	\$	\$	12	
Monthly Services - Server Components									
Sun SPARC Enterprise M8000 8 quad core processors, 128 GB RAM	Each Per Month	\$	\$	\$	\$	\$	\$	12	
Sun SPARC Enterprise M8000 4 quad core processors, 80 GB RAM	Each Per Month	\$	\$	\$	\$	\$	\$	12	
Sun SPARC Enterprise M8000 2 quad core processors, 40 GB RAM	Each Per Month	\$	\$	\$	\$	\$	\$	24	
Sun SPARC Enterprise T5120 1 quad core processor, 8 GB RAM	Each Per Month	\$	\$	\$	\$	\$	\$	12	
HP ProLiant DL580 G7 4 quad core processors, 64 GB	Each Per	\$	\$	\$	\$	\$	\$	48	

Cost Item Description	Unit	Proposed Cost					State Use Only		
		Year 1	Year 2	Year 3	Year 4	Year 5	Sum	Eval. Factor	Evaluation Cost (cost x factor)
RAM	Month								
HP ProLiant DL580 G7 2 quad core processors, 24 GB RAM	Each Per Month	\$	\$	\$	\$	\$	\$	96	
HP ProLiant DL580 G7 1 quad core processor, 6 GB RAM	Each Per Month	\$	\$	\$	\$	\$	\$	24	
1 TB SAN Storage (usable formatted space with RAID 5 configuration – not raw space)	Each Per Month	\$	\$	\$	\$	\$	\$	35	
L700 Tape Library	Each Per Month	\$	\$	\$	\$	\$	\$	12	
LTO-3 Tape Drives	Each Per Month	\$	\$	\$	\$	\$	\$	240	
On-Request Services									
Additional Testing Time	Each Per Eight (8) Hour Increment	\$	\$	\$	\$	\$	\$	20	
Equipment Cabinet	Each Per Month	\$	\$	\$	\$	\$	\$	60	
Additional 1U (24) port CAT6 (giga-speed) or higher Patch Panel	Each Per Month	\$	\$	\$	\$	\$	\$	60	
Additional 1U Wire Manager	Each Per Month	\$	\$	\$	\$	\$	\$	60	
Single-mode Fiber in quantities of 6 strands (3 pair)	Each Per Month	\$	\$	\$	\$	\$	\$	96	
Single-mode Fiber in quantities	Each Per	\$	\$	\$	\$	\$	\$	96	

Cost Item Description	Unit	Proposed Cost					State Use Only		
		Year 1	Year 2	Year 3	Year 4	Year 5	Sum	Eval. Factor	Evaluation Cost (cost x factor)
of 12 strands (6 pair)	Month								
Single-mode Fiber in quantities of 24 strands (12 pair)	Each Per Month	\$	\$	\$	\$	\$	\$	96	
Multi-mode Fiber in quantities of 6 strands (3 pair)	Each Per Month	\$	\$	\$	\$	\$	\$	96	
Multi-mode Fiber in quantities of 12 strands (6 pair)	Each Per Month	\$	\$	\$	\$	\$	\$	96	
Multi-mode Fiber in quantities of 24 strands (12 pair)	Each Per Month	\$	\$	\$	\$	\$	\$	96	
Single Phase 120v, 20amp Power	Redundant Pair Per Month	\$	\$	\$	\$	\$	\$	48	
Single Phase 120v, 30amp Power	Redundant Pair Per Month	\$	\$	\$	\$	\$	\$	48	
Single Phase 208v, 20amp Power	Redundant Pair Per Month	\$	\$	\$	\$	\$	\$	48	
Single Phase 208v, 30amp Power	Redundant Pair Per Month	\$	\$	\$	\$	\$	\$	48	
Three Phase 208v, 20amp Power	Redundant Pair Per Month	\$	\$	\$	\$	\$	\$	48	
Three Phase 208v, 30amp Power	Redundant Pair Per Month	\$	\$	\$	\$	\$	\$	48	
Three Phase 208v, 50amp Power	Redundant Pair Per	\$	\$	\$	\$	\$	\$	48	

Cost Item Description	Unit	Proposed Cost					State Use Only		
		Year 1	Year 2	Year 3	Year 4	Year 5	Sum	Eval. Factor	Evaluation Cost (cost x factor)
	Month								
Connectivity									
Recovery Center Connectivity	Per Month	\$	\$	\$	\$	\$	\$	12	
Professional Services									
Mainframe Senior Operating System Support Specialist	Per Hour	\$	\$	\$	\$	\$	\$	20	
Mainframe Operating System Support Specialist	Per Hour	\$	\$	\$	\$	\$	\$	20	
Mainframe Senior System Software Specialist	Per Hour	\$	\$	\$	\$	\$	\$	20	
Mainframe System Software Specialist	Per Hour	\$	\$	\$	\$	\$	\$	20	
Mainframe Senior Operations Specialist	Per Hour	\$	\$	\$	\$	\$	\$	20	
Mainframe Operations Specialist	Per Hour	\$	\$	\$	\$	\$	\$	40	
Mainframe Tape Librarian	Per Hour	\$	\$	\$	\$	\$	\$	40	
Mainframe Tape Handler	Per Hour	\$	\$	\$	\$	\$	\$	40	
Network/Security Specialist	Per Hour	\$	\$	\$	\$	\$	\$	65	
System Administrator	Per Hour	\$	\$	\$	\$	\$	\$	65	
Windows Specialist	Per Hour	\$	\$	\$	\$	\$	\$	65	
Unix/Linux Specialist	Per Hour	\$	\$	\$	\$	\$	\$	65	
Infrastructure Disaster Items									
Infrastructure Declaration Fee	Per Incident	\$	\$	\$	\$	\$	\$	1	
Infrastructure Alert Fee	Per Incident	\$	\$	\$	\$	\$	\$	1	

Cost Item Description	Unit	Proposed Cost					State Use Only		
		Year 1	Year 2	Year 3	Year 4	Year 5	Sum	Eval. Factor	Evaluation Cost (cost x factor)
Infrastructure Recovery Center Usage Fee – Days 1 thru 30	Per Day Per Environment	\$	\$	\$	\$	\$	\$	6	
Infrastructure Recovery Center Usage Fee – Days 31 thru 42	Per Day Per Environment	\$	\$	\$	\$	\$	\$	3	
Infrastructure Cold Site Usage Fee	Per Day Per Environment	\$	\$	\$	\$	\$	\$	37	
Print Services Cost Items									
Print Recovery Services Subscription Fee	Per Month	\$	\$	\$	\$	\$	\$	12	
Print MICR Checks 8 ½" X 11"	Per 1000 items	\$	\$	\$	\$	\$	\$	1100	
Print Simplex/Duplex Pages	Per 1000 items	\$	\$	\$	\$	\$	\$	1600	
Print Continuous Forms Simplex/Duplex	Per 1000 items	\$	\$	\$	\$	\$	\$	6900	
Fold, Insert, and Prepare to Mail Forms/Letters	Per 1000 envelopes	\$	\$	\$	\$	\$	\$	6720	
Label, Package and Prepare to Ship Print Items including pages, forms, and/or envelopes	Per 1000 Print Items	\$	\$	\$	\$	\$	\$	2880	
Print Services Declaration Fee	Per Incident	\$	\$	\$	\$	\$	\$	1	
Print Services Alert Fee	Per Incident	\$	\$	\$	\$	\$	\$	1	

Cost Item Description	Unit	Proposed Cost					State Use Only		
		Year 1	Year 2	Year 3	Year 4	Year 5	Sum	Eval. Factor	Evaluation Cost (cost x factor)
EVALUATION COST AMOUNT (sum of evaluation costs above): <i>The state will use this sum to determine the Cost Proposal reflecting the lowest cost to the state. All calculations will use and result in numbers rounded to two (2) places to the right of the decimal point.</i>									

PRO FORMA CONTRACTS

The *pro forma* contracts detailed in following pages of this exhibit contains some “blanks” (signified by field descriptions in capital letters) that will be completed with appropriate information in the final contract resulting from the Solicitation.

CONTRACT
BETWEEN THE STATE OF TENNESSEE,
DEPARTMENT OF FINANCE AND ADMINISTRATION
AND
CONTRACTOR NAME

This Contract, by and between the State of Tennessee, Department of Finance and Administration, hereinafter referred to as the "State" and **Contractor Legal Entity Name**, hereinafter referred to as the "Contractor," is for the provision of Infrastructure Disaster Recovery Services, as further defined in the "SCOPE OF SERVICES."

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 and deliverables as required, described, and detailed herein and shall meet all service and delivery timelines as specified by this Contract.
- a. Definitions.
- i. Recovery Center (a.k.a. Hotsite) – a commercial disaster recovery facility that provides adequate space and the required equipment for the State to continue Information Technology (IT) operations in the event of a disaster.
 - ii. Cold Site (a.k.a. Coldsite) – a commercial disaster recovery facility that provides adequately powered and cooled space for the State to install and operate the equipment needed to continue IT operations in the event of a disaster.
 - iii. Infrastructure Disaster – a major disaster affecting the State's IT processing capabilities
 - iv. Print Services Disaster – a major disaster affecting the State's printing capabilities
- A.2. The State will reconfigure Disaster Recovery Environments in accordance with Contract Section E.12. The State will remove Disaster Recovery Environments in accordance with Contract Section E.13. The State will compensate the Contractor for Infrastructure Disaster Recovery Services on a monthly basis in accordance with Contract Section C.3.b and the rates listed for the specific items that make up each configuration, as detailed in Contract Attachment B.
- A.3. The Contractor shall provide Recovery Services for two types of Disaster Declarations - Infrastructure Disaster Declaration and Print Services Disaster Declaration. Depending upon the circumstances, these declarations may be declared at different times or at the same time. Print Services Disaster Recovery Services will be provided under a separate Contract and is not addressed in this Contract. This dual-contract approach notwithstanding, the Contractor shall insure adequate coordination between the services of the two contracts, such that Disaster Recovery Services are performed in a seamless and efficient manner. The State's Office for Information Resources will declare an Infrastructure Disaster Declaration by Environment(s) when service delivery capabilities for the Environment(s) are interrupted. The Contractor will provide the State with access to a Recovery Center within 24 hours of an Infrastructure Disaster Declaration.
- A.4. The Contractor will provide and maintain a minimum of two (2) Recovery Centers from which the Infrastructure Recovery Services may be provided. The Recovery Centers must be at least one hundred (100) miles from Nashville and more than fifty (50) miles from each other.
- A.5. The Contractor will provide up to eighty (80) hours Disaster Recovery testing, maximum of two (2) tests per Contract year, per State-configured Disaster Recovery Environment. The State will schedule Disaster Recovery testing for a Disaster Recovery Environment a minimum of sixty (60)

days prior to the testing. Such Disaster Recovery testing will be included in the Monthly Services fees for the Disaster Recovery Environment. The State will compensate the Contractor for additional testing hours during a contract year per Disaster Recovery Environment, in eight (8) hour blocks, in accordance with Contract Section C.3.b.

- A.6. The State recognizes that equivalent equipment may be substituted at the Recovery Center to meet the State's Disaster Recovery Environment requirements. ("Equivalent equipment or technology" is defined as "compatible equipment or technology capable of supporting the State's applications without modification.") Such substitutions will require approval of the State. If usage of equivalent equipment results in extended set up and configuration time during Disaster Recovery testing, such that the remaining scheduled hours are not sufficient for the State to complete the planned Disaster Recovery testing, the Contractor will either extend the scheduled time to accommodate the planned testing, at no cost to the State, or will allow the State to reschedule the test and will not deduct the scheduled hours or test from the State's allotted hours and tests, as defined in Contract Section A.5, for the associated Disaster Recovery Environment.
- A.7. The Contractor shall make available a Recovery Center (a.k.a. Hotsite) for up to forty two (42) days and a Cold Site (a.k.a. Coldsite) for up to six (6) months, of adequate size, that will provide an effective means of minimizing the potential impact of a major Disaster affecting the State's processing facilities and communications network.
- A.8. The Contractor will work with the State to develop a plan to provide the State access to a Cold Site in time to adequately transition from the Recovery Center to the Cold Site within the forty two (42) days allotted at the Recovery Center. The State will be responsible for the purchase and installation of equipment at the Cold Site. At the request of the State, the Contractor will assist with equipment installation. The State will compensate the Contractor for such installation in accordance with Contract Section C.3.b.
- A.9. The State will have the right to place State-owned equipment in the Recovery Center for dedicated State Disaster Recovery purposes. Such equipment will be purchased from State equipment contracts and shipped to the Contractor for installation. The Contractor shall provide cabinets compatible with the following specifications to house State-owned equipment at a per Equipment Cabinet price:
- a. Width 29.53 inches (750 mm)
Depth 42.13 inches (1070 mm)
Caged Rail Horizontal Spacing 19 inches
Rack Height 48U
Secure, Lockable Door
Caged Nuts and Screws
 - b. One (1) 1U (24) port CAT6 (giga-speed) or higher patch panel
 - c. One (1) 1U wire manager
- Additional patch panels and wire managers will be available on a per item basis. The State will provide power strips with the equipment. The Contractor will supply redundant power in each Equipment Cabinet such that at least two (2) power strips will be on different power circuits. All fiber will be supplied in pairs and terminated in the patch panel with LC connector. The State will specify the fiber strand quantities and power requirements on an as needed basis. The State will compensate the Contractor for equipment installation and facility usage in accordance with Contract Section C.3.b.
- A.10. The Contractor will provide a secure connection between the Recovery Center and the State's network via site-to-site virtual private network (VPN) connection thru the Internet or from a direct circuit connection, minimum speed of 50Mbps; such connection shall be approved by the State and located at a State Data Center, either in Nashville or Smyrna, Tennessee, designated by the State. The connection to the State's network must be able to be shared between multiple Contractor Recovery Centers if necessary. Unless the State agrees otherwise, the connection must be independent of the required connection in the Print Services Disaster Recovery Services

Contract. The Contractor must provide the connectivity equipment (hardware and/or software) required at the Recovery Center to connect to the State's network, including the direct circuit connection, if such connection is used. The State will provide the connectivity equipment (hardware and/or software) installed at the State, excluding the direct circuit connection, if such connection is used.

- A.11. The Contractor will provide the required connectivity to send print files from the Recovery Center to the Contractor's Print Services Center during Disaster Recovery testing and during a Disaster event; such connectivity shall be secure and approved by the State.
- A.12. The Contractor will provide the required connectivity to transmit print files from the Recovery Center to the State's network during Disaster Recovery testing and during a Disaster event. The Contractor must provide the connectivity equipment (hardware and/or software) required at the Recovery Center to transmit print files to the State's network, using the secure connection identified in Contract Sections A.10. The State will provide the connectivity equipment (hardware and/or software) installed at the State, excluding the direct circuit connection, if such connection is used.
- A.13. The Contractor will provide the following during Disaster Recovery testing and during a Disaster event at no additional cost to the State:
- a. testing support including technical support assistance
 - b. pre-load operating system(s) to State's specifications
 - c. Public Internet access
 - d. Remote System Console (mainframe)
 - e. access to the Recovery Center
 - f. after Recovery Center usage, erase all State data from Contractor systems with multiple passes via a data destruction utility compliant with the United States Department of Defense (DOD) Drive Disposition Standards and confirm in writing (email is sufficient)
- A.14. At the request of the State, the Contractor will provide professional services to support Disaster Recovery related services at the Recovery Center, using the Disaster Recovery Professional Services Job Classifications defined in Contract Attachment C. The State will compensate the Contractor for these services in accordance with Contract Section C.3.b.

B. CONTRACT PERIOD:

- B.1. Contract Term. This Contract shall be effective for the period beginning August 1, 2012 and ending on July 31, 2015. The Contractor hereby acknowledges and affirms that the State shall have no obligation for services rendered by the Contractor which were not performed within this specified contract period.
- B.2. Term Extension. The State reserves the right to extend this Contract for an additional period or periods of time representing increments of no more than one year and a total contract term of no more than five (5) years, provided that such an extension of the contract term is effected prior to the current, contract expiration date by means of a contract amendment. If a term extension necessitates additional funding beyond that which was included in the original Contract, an increase of the State's maximum liability will also be effected through contract amendment, and shall be based upon payment rates provided in the original Contract.
- B.3. Declared Disaster Term Extension. If the State declares a Disaster, the State, at its discretion, may automatically extend the existing Infrastructure Disaster Recovery Services under the Contract for an additional period or periods of time, not to exceed one (1) year, at the same rates as the final contract year.

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)**. The payment rates in section C.3 shall constitute the entire compensation due the Contractor for all service and Contractor obligations hereunder regardless of the difficulty, materials or equipment required. The payment rates include, but are not limited to, all applicable taxes, fees, overheads, and all other direct and indirect costs incurred or to be incurred by the Contractor.

The Contractor is not entitled to be paid the maximum liability for any period under the Contract or any extensions of the Contract for work not requested by the 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 on a monthly basis based on the payment rates herein for units of service authorized by the State in a total amount not to exceed the Contract Maximum Liability established in section C.1.
- a. The Contractor's compensation shall be contingent upon the satisfactory completion of units, milestones, or increments of service defined in section A.
 - b. The Contractor shall be compensated for said units, milestones, or increments of service based upon the payment rates detailed in Contract Attachment B, Infrastructure Disaster Recovery Services Catalog.
 - c. One (1) Infrastructure Declaration Fee will be paid to cover all Environments (one or more) declared simultaneously.
 - d. One (1) Infrastructure Alert Fee will be paid to cover all Environments (one of more) alerted simultaneously.
 - e. Infrastructure Recovery Center Usage Fee – Days 1 thru 30, Infrastructure Recovery Center Usage Fee – Days 31 thru 42, and Infrastructure Cold Site Usage Fee will be paid on a per day per Environment basis.
 - f. The Contractor shall not be compensated for travel time to the primary location of service provision.
- C.4. Travel Compensation. The Contractor shall not be compensated or reimbursed for travel, meals, or lodging.
- C.5. Invoice Requirements. The Contractor shall invoice the State only for completed increments of service and for the amount stipulated in section C.3, above, and present said invoices no more often than monthly, with all necessary supporting documentation, to:

Bruce Priddy
Chief Systems Architect

State of Tennessee – OIR
Snodgrass TN Tower
312 Rosa L Parks Ave
Nashville, TN 37243
Telephone: (615) 253-5634

- 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: Department of Finance and Administration; Office for Information Resources
 - (5) Customer Account Number (assigned by the Contractor to the above-referenced Customer)
 - (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) Complete Itemization of Charges, with a separately labeled section for each Disaster Recovery environment provided by the Contractor. The itemization shall comply with the following requirements:
 - i. The itemization shall be in the form of a spreadsheet, which will detail every hardware, software, and professional services item used in providing Infrastructure Disaster Recovery Services to the State.
 - ii. The spreadsheet will contain accurate counts for each item, the applicable payment rate for each item (as detailed in Contract Attachment B), and an extended cost based on the line item count and payment rate.
 - iii. Total Amount Due for the invoice period, which will be the sum of the cost for all items, as described 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.
- 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 matter in relation thereto. 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 invoiced.
- C.7. Invoice Reductions. The Contractor's invoice shall be subject to reduction for amounts included in any invoice or payment theretofore made which are determined by the State, on the basis of

audits conducted in accordance with the terms of this Contract, not to constitute proper remuneration for compensable services.

- C.8. Deductions. The 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 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 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 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).
 - 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 must agree with the Contractor's Federal Employer Identification Number or Tennessee Edison Registration ID referenced in this Contract.

D. STANDARD TERMS AND CONDITIONS:

- D.1. Required Approvals. The State is not bound by this Contract until it is signed by the contract parties and approved by appropriate officials in accordance with applicable Tennessee laws and regulations (depending upon the specifics of this contract, said officials may include, but are not limited to, the Commissioner of Finance and Administration, the Commissioner of Human Resources, and the Comptroller of the Treasury).
- D.2. Modification and Amendment. This Contract may be modified only by a written amendment signed by all parties hereto and approved by both the officials who approved the base contract and, depending upon the specifics of the contract as amended, any additional officials required by Tennessee laws and regulations (said officials may include, but are not limited to, the Commissioner of Finance and Administration, the Commissioner of Human Resources, and the Comptroller of the Treasury).

The State's Office for Information Resources will provide draft versions of amendments to the Comptroller's Office for their review and approval prior to the amendments being submitted to the Contractor for signature.

- D.3. Termination for Convenience. The State may terminate this Contract without cause 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 satisfactory, authorized service 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.
- 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 immediately terminate the Contract and withhold payments in excess of fair compensation for completed services. Notwithstanding the above, the Contractor shall not be relieved of liability to the State for damages sustained by virtue of any breach of this Contract by the Contractor.

D.5. Subcontracting. The Contractor shall not assign this Contract or enter into a subcontract for any of the services performed under this Contract without obtaining the prior written approval of the State. If such subcontracts are approved by the State, each shall contain, at a minimum, sections of this Contract below pertaining to "Conflicts of Interest," "Nondiscrimination," and "Records" (as identified by the section headings). Notwithstanding any use of approved subcontractors, the Contractor shall be the prime contractor and shall be responsible for all work performed.

D.6. Conflicts of Interest. The Contractor warrants that no part of the total Contract Amount shall be paid directly or indirectly to an employee or official of the State of Tennessee as wages, compensation, or gifts in exchange for acting as an officer, agent, employee, subcontractor, or consultant to the Contractor in connection with any work contemplated or performed relative to this Contract.

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

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

D.8. Prohibition of Illegal Immigrants. The requirements of *Tennessee Code Annotated*, Section 12-4-124, *et seq.*, addressing the use of illegal immigrants in the performance of any Contract to supply goods or services to the state of Tennessee, shall be a material provision of this Contract, a breach of which shall be grounds for monetary and other penalties, up to and including termination of this Contract.

a. The Contractor hereby attests, certifies, warrants, and assures that the Contractor shall not knowingly utilize the services of an illegal immigrant in the performance of this Contract and shall not knowingly utilize the services of any subcontractor who will utilize the services of an illegal immigrant in the performance of this Contract. The Contractor shall reaffirm this attestation, in writing, by submitting to the State a completed and signed copy of the document at Attachment A, hereto, semi-annually during the period of this Contract. Such attestations shall be maintained by the Contractor and made available to state officials upon request.

b. Prior to the use of any subcontractor in the performance of this Contract, and semi-annually thereafter, during the period of this Contract, the Contractor shall obtain and retain a current, written attestation that the subcontractor shall not knowingly utilize the services of an illegal immigrant to perform work relative to this Contract and shall not knowingly utilize the services of any subcontractor who will utilize the services of an illegal immigrant to perform work relative to this Contract. Attestations obtained from such subcontractors shall be maintained by the Contractor and made available to state officials upon request.

c. The Contractor shall maintain records for all personnel used in the performance of this Contract. Said records shall be subject to review and random inspection at any reasonable time upon reasonable notice by the State.

- d. The Contractor understands and agrees that failure to comply with this section will be subject to the sanctions of *Tennessee Code Annotated*, Section 12-4-124, *et seq.* for acts or omissions occurring after its effective date. This law requires the Commissioner of Finance and Administration to prohibit a contractor from contracting with, or submitting an offer, proposal, or bid to contract with the State of Tennessee to supply goods or services for a period of one year after a contractor is discovered to have knowingly used the services of illegal immigrants during the performance of this Contract.
- e. For purposes of this Contract, "illegal immigrant" shall be defined as any person who is not either a United States citizen, a Lawful Permanent Resident, or a person whose physical presence in the United States is authorized or allowed by the federal Department of Homeland Security and who, under federal immigration laws and/or regulations, is authorized to be employed in the U.S. or is otherwise authorized to provide services under the Contract.
- D.9. Records. The Contractor shall maintain documentation for all charges under this Contract. The books, records, and documents of the Contractor, insofar as they relate to work performed or money received under this Contract, shall be maintained for a period of three (3) full years from the date of the final payment and shall be subject to audit at any reasonable time and upon reasonable notice by the 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. Monitoring. The Contractor's activities conducted and records maintained pursuant to this Contract shall be subject to monitoring and evaluation by the State, the Comptroller of the Treasury, or their duly appointed representatives.
- D.12. Progress Reports. The Contractor shall submit brief, periodic, progress reports to the State as requested.
- D.13. Strict Performance. Failure by any party to this Contract to insist in any one or more cases upon the strict performance of any of the terms, covenants, conditions, or provisions of this Contract shall not be construed as a waiver or relinquishment of any such term, covenant, condition, or provision. No term or condition of this Contract shall be held to be waived, modified, or deleted except by a written amendment signed by the parties hereto.
- D.14. Independent Contractor. The parties hereto, in the performance of this Contract, shall not act as employees, partners, joint venturers, or associates of one another. It is expressly acknowledged by the parties hereto that such parties are independent contracting entities and that nothing in this Contract shall be construed to create an employer/employee relationship or to allow either to exercise control or direction over the manner or method by which the other transacts its business affairs or provides its usual services. The employees or agents of one party shall not be deemed or construed to be the employees or agents of the other party for any purpose whatsoever.
- The Contractor, being an independent contractor and not an employee of the State, agrees to carry adequate public liability and other appropriate forms of insurance, including adequate public liability and other appropriate forms of insurance on the Contractor's employees, and to pay all applicable taxes incident to this Contract.
- D.15. State Liability. The State shall have no liability except as specifically provided in this Contract.

- 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.
- D.17. State and Federal Compliance. The Contractor shall comply with all applicable State and Federal laws and regulations in the performance of this Contract.
- D.18. Governing Law. This Contract shall be governed by and construed in accordance with the laws of the State of Tennessee. The Contractor agrees that it will be subject to the exclusive jurisdiction of the courts of the State of Tennessee in actions that may arise under this Contract. The Contractor acknowledges and agrees that any rights or claims against the State of Tennessee or its employees hereunder, and any remedies arising therefrom, shall be subject to and limited to those rights and remedies, if any, available under *Tennessee Code Annotated*, Sections 9-8-101 through 9-8-407.
- D.19. Completeness. This Contract is complete and contains the entire understanding between the parties relating to the subject matter contained herein, including all the terms and conditions of the parties' agreement. This Contract supersedes any and all prior understandings, representations, negotiations, and agreements between the parties relating hereto, whether written or oral.
- D.20. Severability. If any terms and conditions of this Contract are held to be invalid or unenforceable as a matter of law, the other terms and conditions hereof shall not be affected thereby and shall remain in full force and effect. To this end, the terms and conditions of this Contract are declared severable.
- D.21. Headings. Section headings of this Contract are for reference purposes only and shall not be construed as part of this Contract.

E. SPECIAL TERMS AND CONDITIONS:

- E.1. Conflicting Terms and Conditions. Should any of these special terms and conditions conflict with any other terms and conditions of this Contract, these special terms and conditions shall control.
- E.2. Communications and Contacts. All instructions, notices, consents, demands, or other communications required or contemplated by this Contract shall be in writing and shall be made by certified, first class mail, return receipt requested and postage prepaid, by overnight courier service with an asset tracking system, or by EMAIL or facsimile transmission with recipient confirmation. Any such communications, regardless of method of transmission, shall be addressed to the respective party at the appropriate mailing address, facsimile number, or EMAIL address as set forth below or to that of such other party or address, as may be hereafter specified by written notice.

The State:

Bruce Priddy
Chief Systems Architect
State of Tennessee – OIR
Snodgrass TN Tower
312 Rosa L Parks Ave
Nashville, TN 37243
Telephone: (615) 253-5634
FAX: (615) 741-6164

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. 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.
- 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.

- E.6. 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.

- E.7. HIPAA Compliance. The State and Contractor shall comply with obligations under the Health Insurance Portability and Accountability Act of 1996 (HIPAA) and its accompanying regulations.
- a. Contractor warrants to the State that it is familiar with the requirements of HIPAA and its accompanying regulations, and will comply with all applicable HIPAA 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 HIPAA and its regulations, in the course of performance of the Contract so that both parties will be in compliance with HIPAA.
 - c. The State and the Contractor will sign documents, including but not limited to business associate agreements, as required by HIPAA and that are reasonably necessary to keep the State and Contractor in compliance with HIPAA. This provision shall not apply if information received by the State under this Contract is NOT "protected health information" as defined by HIPAA, or if HIPAA permits the State to receive such information without entering into a business associate agreement or signing another such document.
- E.8. 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.
- E.9. Limitation of Liability. The parties agree that the Contractor's liability 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, or fraudulent conduct.
- E.10. 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.
- E.11. 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.
- E.12. Reconfiguration of Disaster Recovery Environment(s). During the term of the Contract, the State, at its sole discretion, may reconfigure existing Disaster Recovery Environments using the itemized list of hardware, software, and services that is detailed in Contract Attachment B, Infrastructure Disaster Recovery Services Catalog, with a minimum thirty (30) day prior written notice to the Contractor. The Contractor shall have thirty (30) days, upon receipt of the written notice, to address the reconfigured Disaster Recovery Environments. The Contract will be amended to update Contract Attachment B, Infrastructure Disaster Recovery Services Catalog only when new cost items which are not already included in the catalog are required to reconfigure a Disaster Recovery Environment.
- E.13. Removal of Disaster Recovery Environment(s). After six (6) months from the beginning of the Contract, the State may remove entire Disaster Recovery Environment(s) from the Contract at its sole discretion. The Contractor will be given a minimum thirty (30) day prior written notice of the removal with said notice to specify the removed Environment(s) and the date after which the Contractor is no longer obligated to provide services for the Environment(s). The removal of Environment(s) by the State will not alter in any way the Contractor's obligations to the remaining Disaster Recovery Environment(s) under this Contract. The State will discontinue payment of all fees associated with the removed Environment(s) and the Contractor will have no right to recover from the State any amount for the removal of the Environment(s).

E.14. Assignment of Disaster Recovery Services. The Department of Finance and Administration reserves the right to assign some or all of the services required by this contract to another State of Tennessee department. In the event that the State determines that such assignment is necessary or desirable, the assignment will be effected by: (1) an amendment to this Contract and/or (2) a separate contract. The Contractor shall not unreasonably withhold consent to the assignment.

IN WITNESS WHEREOF,

CONTRACTOR LEGAL ENTITY NAME:

CONTRACTOR SIGNATURE **DATE**

PRINTED NAME AND TITLE OF CONTRACTOR SIGNATORY (above)

DEPARTMENT OF FINANCE AND ADMINISTRATION:

MARK A. EMKES, COMMISSIONER **DATE**

CONTRACT ATTACHMENT A

ATTESTATION RE PERSONNEL USED IN CONTRACT PERFORMANCE

SUBJECT CONTRACT NUMBER:	
CONTRACTOR LEGAL ENTITY NAME:	
FEDERAL EMPLOYER IDENTIFICATION NUMBER: (or Social Security Number)	

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

CONTRACTOR SIGNATURE

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

PRINTED NAME AND TITLE OF SIGNATORY

DATE OF ATTESTATION

CONTRACT ATTACHMENT B

Infrastructure Disaster Recovery Services Catalog

[The following costs will be transcribed from the Cost Proposal, prior to Contract approval.]

Infrastructure Disaster Recovery Item	Unit	Year 1 Cost	Year 2 Cost	Year 3 Cost	Year 4 Cost	Year 5 Cost
Monthly Services						
1 Gartner MIP	Each Per Month	\$ Number				
1 (Gigabyte) GB Main Storage	Each Per Month	\$ Number				
1 (Terabyte) TB DASD Useable formatted – not raw space; non-SATA	Each Per Month	\$ Number				
Open Systems Adapter (OSA)	Each Per Month	\$ Number				
z Integrated Information Processor (zIIP)	Each Per Month	\$ Number				
Crypto Express2	Each Per Month	\$ Number				
9840C Tape Drive	Each Per Month	\$ Number				
STK Silo (must support 9840C Tape Drives)	Each Per Month	\$ Number				
Sun SPARC Enterprise M8000 8 quad core processors, 128 GB RAM	Each Per Month	\$ Number				
Sun SPARC Enterprise M8000 4 quad core processors, 80 GB RAM	Each Per Month	\$ Number				
Sun SPARC Enterprise M8000 2 quad core processors, 40 GB RAM	Each Per Month	\$ Number				
Sun SPARC Enterprise T5120 1 quad core processor, 8 GB RAM	Each Per Month	\$ Number				

HP ProLiant DL580 G7 4 quad core processors, 64 GB RAM	Each Per Month	\$ Number				
HP ProLiant DL580 G7 2 quad core processors, 24 GB RAM	Each Per Month	\$ Number				
HP ProLiant DL580 G7 1 quad core processor, 6 GB RAM	Each Per Month	\$ Number				
1 TB SAN Storage (usable formatted space with RAID 5 configuration – not raw space)	Per Month	\$ Number				
L700 Tape Library	Each Per Month	\$ Number				
LTO-3 Tape Drives	Each Per Month	\$ Number				
Recovery Center Connectivity	Per Month	\$ Number				
On-Request Services						
Additional Testing Time	Each Per Eight (8) Hour Increment	\$ Number				
Equipment Cabinet	Each Per Month	\$ Number				
Additional 1U (24) port CAT6 (giga-speed) or higher Patch Panel	Each Per Month	\$ Number				
Additional 1U Wire Manager	Each Per Month	\$ Number				
Single-mode Fiber in quantities of 6 strands (3 pair)	Each Per Month	\$ Number				
Single-mode Fiber in quantities of 12 strands (6 pair)	Each Per Month	\$ Number				
Single-mode Fiber in quantities of 24 strands (12 pair)	Each Per Month	\$ Number				
Multi-mode Fiber in	Each Per	\$ Number				

quantities of 6 strands (3 pair)	Month					
Multi-mode Fiber in quantities of 12 strands (6 pair)	Each Per Month	\$ Number				
Multi-mode Fiber in quantities of 24 strands (12 pair)	Each Per Month	\$ Number				
Single Phase 120v, 20amp Power	Redundant Pair Per Month	\$ Number				
Single Phase 120v, 30amp Power	Redundant Pair Per Month	\$ Number				
Single Phase 208v, 20amp Power	Redundant Pair Per Month	\$ Number				
Single Phase 208v, 30amp Power	Redundant Pair Per Month	\$ Number				
Three Phase 208v, 20amp Power	Redundant Pair Per Month	\$ Number				
Three Phase 208v, 30amp Power	Redundant Pair Per Month	\$ Number				
Three Phase 208v, 50amp Power	Redundant Pair Per Month	\$ Number				
Disaster Recovery Professional Services						
Mainframe Senior Operating System Support Specialist	Per Hour	\$ Number				
Mainframe Operating System Support Specialist	Per Hour	\$ Number				
Mainframe Senior System Software Specialist	Per Hour	\$ Number				
Mainframe System Software Specialist	Per Hour	\$ Number				
Mainframe Senior Operations Specialist	Per Hour	\$ Number				
Mainframe Operations Specialist	Per Hour	\$ Number				
Mainframe Tape Librarian	Per Hour	\$ Number				

Mainframe Tape Handler	Per Hour	\$ Number				
Network/Security Specialist	Per Hour	\$ Number				
System Administrator	Per Hour	\$ Number				
Windows Specialist	Per Hour	\$ Number				
Unix/Linux Specialist	Per Hour	\$ Number				
Disaster Event Services						
Infrastructure Declaration Fee	Per Incident	\$ Number				
Infrastructure Alert Fee	Per Incident	\$ Number				
Infrastructure Recovery Center Usage Fee – Days 1 thru 30	Per Day Per Environment	\$ Number				
Infrastructure Recovery Center Usage Fee – Days 31 thru 42	Per Day Per Environment	\$ Number				
Infrastructure Cold Site Usage Fee	Per Day Per Environment	\$ Number				

CONTRACT ATTACHMENT C

Disaster Recovery Professional Services Job Classifications

ROLE	KNOWLEDGE	EXPERIENCE
Mainframe Senior Operating System Support Specialist	Expert in Operating systems capable of performing system setup tasks, systems support (installs and maintenance), system tuning, problem determination for zOS, LPARS, and JES2. Must have experience with zOS, JES2, RACF, CICS, HSM, DB2, IMS, VSAM, JCL, TSO, and COBOL. Must be able to work unsupervised.	Minimum 5 years experience with large mainframe environment.
Mainframe Operating System Support Specialist	Works under general supervision of the Senior Operating System Specialist. Working knowledge with operating systems capable of performing system setup tasks, systems support (installs and maintenance), system tuning, problem determination for zOS, LPARS, and JES2. Must have experience with zOS, JES2, RACF, CICS, HSM, DB2, IMS, VSAM, JCL, TSO, and COBOL. Must be able to work with minimal supervision.	Minimum 2 years experience with large mainframe environment.
Mainframe Senior System Software Specialist	Expert knowledge with a variety of third party system software products. Capable of performing system setup tasks, systems support (installs and maintenance), software tuning, and problem determination. Familiarity with mainframe software products from vendors such as BMC, CA, IBM, LRS, Compuware, and ASG. Must have expert knowledge with JCL, TSO, and zOS.	Minimum 5 years experience with large mainframe environment.
Mainframe System Software Specialist	Working knowledge with a variety of third party system software products. Capable of performing system setup tasks, systems support (installs and maintenance), software tuning, and problem determination. Familiarity with mainframe software products from vendors such as BMC, CA, IBM, LRS, Compuware, and ASG. Must have expert knowledge with JCL, TSO, and zOS. Must work with minimal supervision.	Minimum 2 years experience with large mainframe environment.
Mainframe Senior Operations Specialist	Expert knowledge of the day to day operations of a mainframe data center. This includes in depth operating command knowledge with software such zOS, JES2, CA7, DB2, CICS, IMS, CA applications. Must be capable of scheduling jobs, submitting and restarting jobs, and know JCL. Must be able to work unsupervised.	Minimum 5 years experience with large mainframe environment.

ROLE	KNOWLEDGE	EXPERIENCE
Mainframe Operations Specialist	Familiarity with the day to day operations of a mainframe data center. This includes general operating command knowledge with software such as zOS, JES2, CA7, DB2, CICS, IMS, CA applications. Must be capable of scheduling jobs, submitting and restarting jobs, and know JCL. Must be able to work with minimal supervision.	Minimum 2 years experience with large mainframe environment.
Mainframe Tape Librarian	Expert knowledge of the operation of a tape library, tape silo software and hardware, and capable of supervising tape handlers in the day to day tasks of operating a tape library. This includes the loading and unloading of the silo, manage the tape management system. Must have working knowledge with Tape Management Software.	Minimum 2 years experience with large mainframe environment.
Mainframe Tape Handler	This includes personnel to handle the loading and unloading of tapes from the tape library (silo).	Minimum 1 year experience with large mainframe environment.
Network/Security Specialist	Expert knowledge and skills to configure routers, switches, firewalls, and load balancers from factory settings to meet the configurations for the State. This includes hands-on experience in the configuration of Cisco routers, Juniper and Check Point Firewalls, F5 LTM and GTM load balancers and secure socket layer accelerators.	Minimum 5 years experience with related network/security hands-on operations.
System Administrator	Expert knowledge in building and installing/racking physical servers, including cable and fiber installations and connections. Good understanding of security issues on Internet-facing web infrastructures; knowledge of DNS and related protocols and networking technologies as well as limited knowledge of database administration	Minimum 2 years experience with related hands-on system administration.
Windows Specialist	Expert knowledge of Microsoft Windows servers and workstations and related software products. Capable of performing system setup tasks, systems support (installs and maintenance), software tuning, and problem determination. Extensive knowledge of physical networking and network protocols, services and security including: TCP-IP, Switching, Routing, VLAN's, DNS, DHCP, LDAP, NFS. Knowledgeable of a range of operating systems including Mac/Linux/UNIX and how they interoperate. Capable of working with minimal supervision.	Minimum 5 years experience with related hands-on Windows workstation and server operations.
Unix/Linux Specialist	Expert knowledge and understanding of the Linux/Unix environment. Capable of installing and supporting many Linux distributions. Extensive knowledge of standard system tools with the ability to use them to automate complex system tasks. Extensive knowledge of physical networking and network protocols, services and security including: TCP-IP, Switching, Routing, VLAN's, DNS, DHCP, LDAP, NFS. Knowledgeable of a range of operating	Minimum 5 years experience with related hands-on Unix/Linux server operations.

ROLE	KNOWLEDGE	EXPERIENCE
	systems including Windows server/Mac/Unix and how they interoperate.	

**CONTRACT
BETWEEN THE STATE OF TENNESSEE,
DEPARTMENT OF FINANCE AND ADMINISTRATION
AND
CONTRACTOR NAME**

This Contract, by and between the State of Tennessee, Department of Finance and Administration, hereinafter referred to as the 'State' and **Contractor Legal Entity Name**, hereinafter referred to as the "Contractor," is for the provision of Print Services Disaster Recovery Services, as further defined in the "SCOPE OF SERVICES."

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 and deliverables as required, described, and detailed herein and shall meet all service and delivery timelines as specified by this Contract.
- a. Definitions.
- i. Print Services Recovery Center – a commercial print facility that provides the required equipment and materials for the State to continue print operations in the event of a disaster.
 - ii. Infrastructure Disaster – a major disaster affecting the State's processing capabilities
 - iii. Print Services Disaster – a major disaster affecting the State's printing capabilities
- A.2. The Contractor shall provide Recovery Services for two types of Disaster Declarations - Infrastructure Disaster Declaration and Print Services Disaster Declaration. Depending upon the circumstances, these declarations may be declared at different times or at the same time. Infrastructure Disaster Recovery will be provided under a separate Contract and is not addressed in this Contract. This dual-contract approach notwithstanding, the Contractor shall insure adequate coordination between the services of the two contracts, such that Disaster Recovery Services are performed in a seamless and efficient manner. The State's Office for Information Resources will declare a Print Services Disaster Declaration when service delivery capabilities for the State's printing facilities are interrupted. The Contractor will provide the State with access to a Print Services Recovery Center within 24 hours of Print Services Disaster Declaration.
- A.3. The Contractor will provide Print Services for both Advanced Function Presentation (AFP), Metacode and PostScript format. The Contractor will produce laser image Magnetic Ink Character Recognition (MICR) / non MICR cut sheet output. As a minimum, all continuous feed printers, utilized for State Print Services Recovery Services at the Print Services Recovery Center, should be able to accept both Advanced Function Presentation Data Stream (AFPDS) and Intelligent Print Data Stream (IPDS) type data streams. All cut-sheet printers should be able to accept Printer Control Language (PCL), AFPDS, IPDS, PostScript, Portable Document Format (PDF), and Xerox Metacode type data streams.
- A.4. The Contractor will provide and maintain a minimum of one (1) Print Services Recovery Center from which the Print Services may be provided for a period of up to three hundred sixty-five (365) consecutive days following a Print Services Disaster Declaration by the State. The Print Services Recovery Center must be at least one hundred (100) miles from Nashville.
- A.5. The Print Services Recovery Center must be accessible from the Contractor Recovery Center(s) providing Infrastructure Disaster Recovery Services to the State. The Contractor is responsible for all connectivity between the Contractor Recovery Center(s) and the Print Recovery Center; such connectivity must be secure and approved by the State.

- A.6. The Print Recovery Center must be accessible from the State's network, and provide real-time printing to the State's network. The Contractor is responsible for the connection between the Print Recovery Center and the State's network, which may be provided via site-to-site virtual private network (VPN) connection thru the Internet or from a direct circuit connection, minimum speed of T1; such connection shall be approved by the State and located at a State Data Center, either in Nashville or Smyrna, Tennessee, designated by the State. Unless the State agrees otherwise, the connection must be independent of the required connection in the Infrastructure Disaster Recovery Services Contract. The Contractor must provide the connectivity equipment (hardware and/or software) required at the Print Recovery Center to receive print files from the State's network, including the direct circuit connection, if such connection is used. The State will provide the connectivity equipment (hardware and/or software) required at the State, excluding the direct circuit connection. All costs associated with connectivity must be included in the monthly Print Services Recovery Center Subscription Fee. The State will not pay separate fees for Print Recovery Center connectivity.
- A.7. The Contractor will provide a maximum of two (2) Print Services Disaster Recovery tests per Contract year. The State will schedule tests a minimum of sixty (60) days prior to the testing; the tests will likely coincide with the Disaster Recovery testing of an Environment covered by the Infrastructure Disaster Recovery Contract, but such scheduling is not required. The Print Recovery Center must be simultaneously available from both the Contractor Recovery Center and State's network during Print Services Disaster Recovery testing. Print Services Recovery Center usage and Print Production Services supplied during Print Services Disaster Recovery testing must be included in the monthly Print Services Recovery Center Subscription Fee. Print Production Services during Print Services Disaster Recovery testing will be limited to eight thousand (8000) Print Items per test. The State will compensate the Contractor for shipping sample Print Items, in accordance with Contract Section C.3.d, if such shipping is requested by the State.
- A.8. The State will compensate the Contractor for Print Services Disaster Recovery Services in accordance with Contract Section C.3.

B. CONTRACT PERIOD:

- B.1. Contract Term. This Contract shall be effective for the period beginning August 1, 2012, and ending on July 31, 2015. The Contractor hereby acknowledges and affirms that the State shall have no obligation for services rendered by the Contractor which were not performed within this specified contract period.
- B.2. Term Extension. The State reserves the right to extend this Contract for an additional period or periods of time representing increments of no more than one year and a total contract term of no more than five (5) years, provided that such an extension of the contract term is effected prior to the current, contract expiration date by means of a contract amendment. If a term extension necessitates additional funding beyond that which was included in the original Contract, an increase of the State's maximum liability will also be effected through contract amendment, and shall be based upon payment rates provided in the original Contract.
- B.3. Declared Disaster Term Extension. If the State declares a Disaster, the State, at its discretion, may automatically extend the existing Print Services Disaster Recovery Services under the Contract for an additional period or periods of time, not to exceed one (1) year, at the same rates as the final contract year.

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)**. The payment rates in section C.3 shall constitute the entire compensation due the Contractor for all service and Contractor obligations hereunder regardless of the difficulty, materials or equipment required. The payment rates include, but are not limited to, all applicable taxes, fees, overheads, and all other direct and indirect costs incurred or to be incurred by the Contractor.

The Contractor is not entitled to be paid the maximum liability for any period under the Contract or any extensions of the Contract for work not requested by the 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 authorized by the State in a total amount not to exceed the Contract Maximum Liability established in section C.1.
- a. The Contractor's compensation shall be contingent upon the satisfactory completion of units, milestones, or increments of service defined in section A.
 - b. The Contractor shall be compensated on a monthly basis for said units, milestones, or increments of service based upon the payment rates detailed in Contract Attachment B, Print Services Catalog during Disaster testing or a Disaster event. The Print Services rates in Attachment B must include all labor, equipment and materials costs, with the exception of check stock and pre-printed forms, to produce the print. The State will provide check stock and pre-printed forms to the Contractor at no cost to the Contractor. No other compensation for print production will be paid to the Contractor.
 - c. The State will compensate the Contractor for print delivery during a Disaster event as follows:
 - i) Bulk Shipping: The Contractor will label, package and ship print to an address designated by the State at the time of the Disaster. The Contractor is responsible for providing the labor, equipment and materials required to prepare the print for shipping. The State will pay the shipping company charges directly or reimburse the Contractor for the actual shipping company charges.
 - ii) Postal Mail: The Contractor will fold, insert into envelopes and mail forms/letters to the addressee printed on the form/letter at the time of a Disaster. The Contractor is responsible for providing the labor, equipment and materials required to prepare the forms/letters for mailing. The State will pay the postage directly or reimburse the Contractor for the actual postage charges.
 - d. The State will compensate the Contractor for print delivery during Disaster testing as follows:
 - i) Bulk Shipping: The State may request the Contractor to ship samples of print or enveloped forms/letters produced during a Test. The Contractor will label, package and ship the samples to the address designated by the State. The Contractor is responsible for providing the labor, equipment and materials required to prepare the samples for shipping. The State will pay the shipping company charges directly or reimburse the Contractor for the actual shipping company charges.
 - e. The Contractor shall not be compensated for travel time to the primary location of service provision.
- C.4. Travel Compensation. The Contractor shall not be compensated or reimbursed for travel, meals, or lodging.

C.5. Invoice Requirements. The Contractor shall invoice the State only for completed increments of service and for the amount stipulated in section C.3, above, and present said invoices no more often than monthly, with all necessary supporting documentation, to:

Bruce Priddy
Chief Systems Architect
State of Tennessee – OIR
Snodgrass TN Tower
312 Rosa L Parks Ave
Nashville, TN 37243
Telephone: (615) 253-5634

- 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: Department of Finance and Administration; Office for Information Resources
 - (5) Customer Account Number (assigned by the Contractor to the above-referenced Customer)
 - (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) Complete Itemization of Charges, which shall detail the following:
 - i. Service or Milestone Description (including name & title as applicable) of each service invoiced
 - ii. Number of Completed Units, Increments, Hours, or Days as applicable, of each service invoiced
 - iii. Applicable Payment Rate (as stipulated in Section C.3.) of each service invoiced
 - iv. Amount Due by Service
 - v. Total Amount Due for the invoice period
- b. The Contractor understands and agrees that an invoice under this Contract shall:
- (1) include only charges for service described in Contract Section A and in accordance with payment terms and conditions set forth in Contract Section C;
 - (2) only be submitted for completed service and shall not include any charge for future work;
 - (3) not include sales tax or shipping charges; and
 - (4) initiate the timeframe for payment (and any discounts) only when the State is in receipt of the invoice, and the invoice meets the minimum requirements of this section C.5.

C.6. Payment of Invoice. A payment by the State shall not prejudice the State's right to object to or question any payment, invoice, or matter in relation thereto. 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 invoiced.

C.7. Invoice Reductions. The Contractor's invoice shall be subject to reduction for amounts included in any invoice or payment theretofore made which are determined by the State, on the basis of audits conducted in accordance with the terms of this Contract, not to constitute proper remuneration for compensable services.

- C.8. Deductions. The 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 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 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 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).
 - 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 must agree with the Contractor's Federal Employer Identification Number or Tennessee Edison Registration ID referenced in this Contract.

D. STANDARD TERMS AND CONDITIONS:

- D.1. Required Approvals. The State is not bound by this Contract until it is signed by the contract parties and approved by appropriate officials in accordance with applicable Tennessee laws and regulations (depending upon the specifics of this contract, said officials may include, but are not limited to, the Commissioner of Finance and Administration, the Commissioner of Human Resources, and the Comptroller of the Treasury).
- D.2. Modification and Amendment. This Contract may be modified only by a written amendment signed by all parties hereto and approved by both the officials who approved the base contract and, depending upon the specifics of the contract as amended, any additional officials required by Tennessee laws and regulations (said officials may include, but are not limited to, the Commissioner of Finance and Administration, the Commissioner of Human Resources, and the Comptroller of the Treasury).

The State's Office for Information Resources will provide draft versions of amendments to the Comptroller's Office for their review and approval prior to the amendments being submitted to the Contractor for signature.

- D.3. Termination for Convenience. The State may terminate this Contract without cause 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 satisfactory, authorized service 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.
- 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 immediately terminate the Contract and withhold payments in excess of fair compensation for completed services. Notwithstanding the above, the Contractor shall not be relieved of liability to the State for damages sustained by virtue of any breach of this Contract by the Contractor.
- D.5. Subcontracting. The Contractor shall not assign this Contract or enter into a subcontract for any of the services performed under this Contract without obtaining the prior written approval of the State. If such subcontracts are approved by the State, each shall contain, at a minimum, sections of this Contract below pertaining to "Conflicts of Interest," "Nondiscrimination," and "Records" (as

identified by the section headings). Notwithstanding any use of approved subcontractors, the Contractor shall be the prime contractor and shall be responsible for all work performed.

- D.6. Conflicts of Interest. The Contractor warrants that no part of the total Contract Amount shall be paid directly or indirectly to an employee or official of the State of Tennessee as wages, compensation, or gifts in exchange for acting as an officer, agent, employee, subcontractor, or consultant to the Contractor in connection with any work contemplated or performed relative to this Contract.

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

- D.7. Nondiscrimination. The Contractor hereby agrees, warrants, and assures that no person shall be excluded from participation in, be denied benefits of, or be otherwise subjected to discrimination in the performance of this Contract or in the employment practices of the Contractor on the grounds of handicap or disability, age, race, color, religion, sex, national origin, or any other classification protected by Federal, Tennessee State constitutional, or statutory law. The Contractor shall, upon request, show proof of such nondiscrimination and shall post in conspicuous places, available to all employees and applicants, notices of nondiscrimination.
- D.8. Prohibition of Illegal Immigrants. The requirements of *Tennessee Code Annotated*, Section 12-4-124, *et seq.*, addressing the use of illegal immigrants in the performance of any Contract to supply goods or services to the state of Tennessee, shall be a material provision of this Contract, a breach of which shall be grounds for monetary and other penalties, up to and including termination of this Contract.

- a. The Contractor hereby attests, certifies, warrants, and assures that the Contractor shall not knowingly utilize the services of an illegal immigrant in the performance of this Contract and shall not knowingly utilize the services of any subcontractor who will utilize the services of an illegal immigrant in the performance of this Contract. The Contractor shall reaffirm this attestation, in writing, by submitting to the State a completed and signed copy of the document at Attachment A, hereto, semi-annually during the period of this Contract. Such attestations shall be maintained by the Contractor and made available to state officials upon request.
- b. Prior to the use of any subcontractor in the performance of this Contract, and semi-annually thereafter, during the period of this Contract, the Contractor shall obtain and retain a current, written attestation that the subcontractor shall not knowingly utilize the services of an illegal immigrant to perform work relative to this Contract and shall not knowingly utilize the services of any subcontractor who will utilize the services of an illegal immigrant to perform work relative to this Contract. Attestations obtained from such subcontractors shall be maintained by the Contractor and made available to state officials upon request.
- c. The Contractor shall maintain records for all personnel used in the performance of this Contract. Said records shall be subject to review and random inspection at any reasonable time upon reasonable notice by the State.
- d. The Contractor understands and agrees that failure to comply with this section will be subject to the sanctions of *Tennessee Code Annotated*, Section 12-4-124, *et seq.* for acts or omissions occurring after its effective date. This law requires the Commissioner of Finance and Administration to prohibit a contractor from contracting with, or submitting an offer, proposal, or bid to contract with the State of Tennessee to supply goods or services for a period of one year after a contractor is discovered to have knowingly used the services of illegal immigrants during the performance of this Contract.

- e. For purposes of this Contract, "illegal immigrant" shall be defined as any person who is not either a United States citizen, a Lawful Permanent Resident, or a person whose physical presence in the United States is authorized or allowed by the federal Department of Homeland Security and who, under federal immigration laws and/or regulations, is authorized to be employed in the U.S. or is otherwise authorized to provide services under the Contract.
- D.9. Records. The Contractor shall maintain documentation for all charges under this Contract. The books, records, and documents of the Contractor, insofar as they relate to work performed or money received under this Contract, shall be maintained for a period of three (3) full years from the date of the final payment and shall be subject to audit at any reasonable time and upon reasonable notice by the 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. Monitoring. The Contractor's activities conducted and records maintained pursuant to this Contract shall be subject to monitoring and evaluation by the State, the Comptroller of the Treasury, or their duly appointed representatives.
- D.12. Progress Reports. The Contractor shall submit brief, periodic, progress reports to the State as requested.
- D.13. Strict Performance. Failure by any party to this Contract to insist in any one or more cases upon the strict performance of any of the terms, covenants, conditions, or provisions of this Contract shall not be construed as a waiver or relinquishment of any such term, covenant, condition, or provision. No term or condition of this Contract shall be held to be waived, modified, or deleted except by a written amendment signed by the parties hereto.
- D.14. Independent Contractor. The parties hereto, in the performance of this Contract, shall not act as employees, partners, joint venturers, or associates of one another. It is expressly acknowledged by the parties hereto that such parties are independent contracting entities and that nothing in this Contract shall be construed to create an employer/employee relationship or to allow either to exercise control or direction over the manner or method by which the other transacts its business affairs or provides its usual services. The employees or agents of one party shall not be deemed or construed to be the employees or agents of the other party for any purpose whatsoever.
- The Contractor, being an independent contractor and not an employee of the State, agrees to carry adequate public liability and other appropriate forms of insurance, including adequate public liability and other appropriate forms of insurance on the Contractor's employees, and to pay all applicable taxes incident to this Contract.
- D.15. State Liability. The State shall have no liability except as specifically provided in this Contract.
- 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.
- D.17. State and Federal Compliance. The Contractor shall comply with all applicable State and Federal laws and regulations in the performance of this Contract.
- D.18. Governing Law. This Contract shall be governed by and construed in accordance with the laws of the State of Tennessee. The Contractor agrees that it will be subject to the exclusive jurisdiction of the courts of the State of Tennessee in actions that may arise under this Contract. The Contractor acknowledges and agrees that any rights or claims against the State of

Tennessee or its employees hereunder, and any remedies arising therefrom, shall be subject to and limited to those rights and remedies, if any, available under *Tennessee Code Annotated*, Sections 9-8-101 through 9-8-407.

- D.19. Completeness. This Contract is complete and contains the entire understanding between the parties relating to the subject matter contained herein, including all the terms and conditions of the parties' agreement. This Contract supersedes any and all prior understandings, representations, negotiations, and agreements between the parties relating hereto, whether written or oral.
- D.20. Severability. If any terms and conditions of this Contract are held to be invalid or unenforceable as a matter of law, the other terms and conditions hereof shall not be affected thereby and shall remain in full force and effect. To this end, the terms and conditions of this Contract are declared severable.
- D.21. Headings. Section headings of this Contract are for reference purposes only and shall not be construed as part of this Contract.

E. SPECIAL TERMS AND CONDITIONS:

- E.1. Conflicting Terms and Conditions. Should any of these special terms and conditions conflict with any other terms and conditions of this Contract, these special terms and conditions shall control.
- E.2. Communications and Contacts. All instructions, notices, consents, demands, or other communications required or contemplated by this Contract shall be in writing and shall be made by certified, first class mail, return receipt requested and postage prepaid, by overnight courier service with an asset tracking system, or by EMAIL or facsimile transmission with recipient confirmation. Any such communications, regardless of method of transmission, shall be addressed to the respective party at the appropriate mailing address, facsimile number, or EMAIL address as set forth below or to that of such other party or address, as may be hereafter specified by written notice.

The State:

Bruce Priddy
 Chief Systems Architect
 State of Tennessee – OIR
 Snodgrass TN Tower
 312 Rosa L Parks Ave
 Nashville, TN 37243
 Telephone: (615) 253-5634
 FAX: (615) 741-6164

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. 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.
- 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.
- E.6. 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.

- E.7. HIPAA Compliance. The State and Contractor shall comply with obligations under the Health Insurance Portability and Accountability Act of 1996 (HIPAA) and its accompanying regulations.
- a. Contractor warrants to the State that it is familiar with the requirements of HIPAA and its accompanying regulations, and will comply with all applicable HIPAA 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 HIPAA and its regulations, in the course of performance of the Contract so that both parties will be in compliance with HIPAA.
 - c. The State and the Contractor will sign documents, including but not limited to business associate agreements, as required by HIPAA and that are reasonably necessary to keep the State and Contractor in compliance with HIPAA. This provision shall not apply if information received by the State under this Contract is NOT "protected health information" as defined by HIPAA, or if HIPAA permits the State to receive such information without entering into a business associate agreement or signing another such document.
- E.8. 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.
- E.9. Limitation of Liability. The parties agree that the Contractor's liability 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, or fraudulent conduct.
- E.10. 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.

- E.11. 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.
- E.12. Assignment of Disaster Recovery Services. The Department of Finance and Administration reserves the right to assign some or all of the services required by this contract to another State of Tennessee department. In the event that the State determines that such assignment is necessary or desirable, the assignment will be effected by: (1) an amendment to this Contract and/or (2) a separate contract. The Contractor shall not unreasonably contest the assignment or withhold signature.

IN WITNESS WHEREOF,

CONTRACTOR LEGAL ENTITY NAME:

CONTRACTOR SIGNATURE

DATE

PRINTED NAME AND TITLE OF CONTRACTOR SIGNATORY (above)

DEPARTMENT OF FINANCE AND ADMINISTRATION:

MARK A. EMKES, COMMISSIONER

DATE

ATTACHMENT A

ATTESTATION RE PERSONNEL USED IN CONTRACT PERFORMANCE

SUBJECT CONTRACT NUMBER:	
CONTRACTOR LEGAL ENTITY NAME:	
FEDERAL EMPLOYER IDENTIFICATION NUMBER: (or Social Security Number)	

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

CONTRACTOR SIGNATURE

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

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

CONTRACT ATTACHMENT B

Print Services Disaster Recovery Services Catalog

[The following costs will be transcribed from the Cost Proposal, prior to Contract approval.]

Print Services Item	Unit	Year 1 Cost	Year 2 Cost	Year 3 Cost	Year 4 Cost	Year 5 Cost
Monthly Services						
Print Recovery Services Subscription Fee	Per Month	\$ Number				
Print Production Services						
Print MICR Checks 8 ½" X 11"	Per 1000 items	\$ Number				
Print Simplex/Duplex Pages	Per 1000 items	\$ Number				
Print Continuous Forms Simplex/Duplex	Per 1000 items	\$ Number				
Fold, Insert, and Prepare to Mail Forms/Letters	Per 1000 envelopes	\$ Number				
Label, Package and Prepare to Ship Print Items including pages, forms, and/or envelopes	Per 1000 Print Items	\$ Number				
Disaster Event Services						
Print Services Declaration Fee	Per Incident	\$ Number				
Print Services Alert Fee	Per Incident	\$ Number				

Contract Language Restrictions and Non-Negotiable Contractual Language

1. Limitation of Liability This includes language relating to hold harmless, indemnification, and disclaimer of warranty clauses. We recognize that Proposers have an interest in limiting liability that may arise under the contract. Historically, the State of Tennessee was not allowed to accept any limitations of liability or warranty since this was considered surrendering the rights of the citizens of the State. The Tennessee General Assembly granted some relief from this doctrine with the passage (and later revision) of Tennessee Code Annotated section 12-4-119, which allows the State to accept certain limitations of liability.

However, this statute does not allow the State to limit the liability of a contractor below twice the value of the contract without the express written permission from the State's Chief Procurement Officer. The statute also does not allow the State to limit liability for intentional torts, criminal acts, or fraudulent conduct. Any limitation or disclaimer that the State agrees to, including a limitation of liability for consequential damages, must fit within this statutory framework.

2. Confidentiality. We recognize that Proposers consider it important to restrict distribution of proprietary information. The State of Tennessee, like most government entities, is subject to an open records statute. The Tennessee statute, T.C.A. 10-7-504, has been interpreted by the courts to require that all State records be open unless there is an express exemption in a statute, and the State cannot avoid this obligation by contract.

The General Assembly has granted an exemption that provides some protection to procurements of this type. Specifically, Section 10-7-504(a)(18) provides:

Computer programs, software, software manuals, and other types of information manufactured or marketed by persons or entities under legal right and sold, licensed, or donated to Tennessee state boards, agencies, or higher education institutions shall not be open to public inspection, provided that computer programs, software, software manuals, and other types of information produced by state or higher education employees at state expense shall be available for inspection as part of an audit or legislative review process.

However, this language may be inconsistent with confidentiality language in some Proposers' form contracts.

3. Remedies. Many Proposers ask their customers to agree to certain forms of relief for breaches of contract which the State cannot agree to. Tennessee Constitution Article I, Section 17, provides that the State can only surrender its sovereign immunity in circumstances permitted by the Tennessee General Assembly. In the case of State contracts, the State has consented to be sued in the Tennessee Claims Commission under T.C.A. 9-8-307 et seq. The Claims Commission can award money damages against the State and provides for appeal to the Tennessee court system. However, the State cannot agree to many forms of remedy which Proposers often request, such as injunctive relief, binding arbitration or mediation, jurisdiction in any court outside Tennessee, or the payment of court costs and attorney fees.
4. Restrictions on Use of Work Product. Many information technology contractors request that the State place limitations on its use of products supplied or developed under the contract. Such arrangements are scrutinized carefully by State government regulators due to concerns that the State is placing unwarranted burdens on its right to use its own property. Another concern is that a set of complicated restrictions on use will be burdensome to enforce for a product that will be used for many purposes over many years by a large government organization. The language on use of work products in the State pro forma contract has been developed based on considerable experience in dealing with information technology contractors. We are open to suggestions on amendments to this language but any negotiations must take the State's concerns into account.
5. Records. The Records clause is specifically required by Departmental regulations. This is mandatory due to the strong public interest in monitoring government spending and preventing improper use of public funds.

6. Prohibition of Illegal Immigrants. This provision tracks the wording in T.C.A. 12-4-124 et. seq. and Executive Order 41 under the Bredesen Administration, and cannot be substantively changed without a change to Tennessee law.
7. Nondiscrimination. The standard Nondiscrimination provision is required by F&A Rule 620-3-3.05(5), and cannot be changed.

Initial Environment Configurations and Print Volumes

The following tables provide information regarding the initial environments that will be included in the Infrastructure Disaster Recovery Services Contract and the Print Services Disaster Recovery Services Contract.

Mainframe Environment

IBM 2094 1579A S08
Z9 EC 508
32 GB memory
24 TB of usable DASD configurable as 3390 MOD-3, MOD-9, and MOD-27s (non-SATA)
20 STK T9840C tape drives
22 ports FICON Express LX - FC#2319
16 ports Express4 4 KM LX - FC#3324
64 ports ESCON (# of ports, 4 per FC #2324)
4 ports OSA Express GbE SX - FC#2365
2 ports OSA Express GbE SX - FC#1365
4 ports OSA Express2 1000BASE-T Ethernet - FC#3366 (2 ports per FC)
4 ports Crypto Express2 - FC#0863 (2 ports per FC)
1 z Integrated Information Processor (zIIP)
Operating System z/OS 1.12 and above
2273 MIPS

TennCare Environment

Qty	Server Description	Domain	Server Usage	Operating System
1	Sun SPARC Enterprise M8000	Domain 0	InterChange / Information Management / AutoSys	Sun Solaris 10
	8 quad core 2.4 GHz SPARC64-VII processors			
	128 GB RAM			
	Dual-port HBA - 4 GB/sec Fibre Channel			
	Quad Ethernet NIC - 10 GB/sec			
	146 GB SAS Internal Drive			
	Internal DVD-R Drive			
1	Sun SPARC Enterprise M8000	Domain 1	InterChange / Information Management / AutoSys	Sun Solaris 10
	4 quad core 2.4 GHz SPARC64-VII processors			
	80 GB RAM			
	Dual-port HBA - 4 GB/sec Fibre Channel			
	Quad Ethernet NIC - 10 GB/sec			
	146 GB SAS Internal Drive			
	Internal DVD-R Drive			

Qty	Server Description	Domain	Server Usage	Operating System
1	Sun SPARC Enterprise M8000	Domain 2	InterChange / Information Management / AutoSys	Sun Solaris 10
	2 quad core 2.4 GHz SPARC64-VII processors			
	40 GB RAM			
	Dual-port HBA - 4 GB/sec Fibre Channel			
	Quad Ethernet NIC - 10 GB/sec			
	146 GB SAS Internal Drive			
	Internal DVD-R Drive			
1	Sun SPARC Enterprise M8000	Domain 3	InterChange / Information Management / AutoSys	Sun Solaris 10
	2 quad core 2.4 GHz SPARC64-VII processors			
	40 GB RAM			
	Dual-port HBA - 4 GB/sec Fibre Channel			
	Quad Ethernet NIC - 10 GB/sec			
	146 GB SAS Internal Drive			
	Internal DVD-R Drive			
1	Sun SPARC Enterprise T5120	Domain 3	SFTP	Sun Solaris 10
	1 quad core 1.2 GHz UltraSPARC T2 processor			
	8 GB RAM			
	146 GB SAS Internal Drive			
	Dual-port HBA - 4 GB/sec Fibre Channel			
	Ethernet NIC - 1 GB/sec min			
	Internal DVD-R Drive			
4	HP ProLiant DL580 G7	Domain 3	ESX Servers; Citrix, Business Objects, Siebel, iC Web, ProLaw, Abacus, FileNet P8, CMOD, Future Growth	Windows Server 2003 64-bit
	4 quad core Intel Xeon E7520 1.85 GHz processors			
	64 GB RAM			
	Dual-port HBA - 4 GB/sec Fibre Channel			
	Quad Ethernet NIC - 10 GB/sec			
	146 TB GB SAS Internal Drive			
	Internal DVD-R Drive			
8	HP ProLiant DL380 G7	Domain 3	EDIFECS	Windows Server 2008

Qty	Server Description	Domain	Server Usage	Operating System
	2 quad core Intel Xeon E5640 2.66 GHz processors		MailMerge	64-bit
	24 GB RAM			
	Ethernet NIC - 1 GB/sec min			
	4 146 TB GB SAS Internal Drive (3 RAID5 + 1 spare)			
	RAID Array Controller			
	Internal DVD-R Drive			
	2 Dual-port HBA (configure only two machines) - 4 GB/sec Fibre Channel min			
2	HP ProLiant DL380 G7	Domain 3	interChange Web	Windows Server 2003 32-bit
	1 quad core Intel Xeon E5620 2.40 GHz processor			
	6 GB RAM			
	Ethernet NIC - 1 GB/sec min			
	4 146 TB GB SAS Internal Drive (3 RAID5 + 1 spare)			
	RAID Array Controller			
	Internal DVD-R Drive			

Tape Requirements:

One (1) L700 Tape Library

Twenty (20) LT0-3 Tape Drives

Storage Area Network (SAN) requirements:

Total – thirty (30) Terabytes (TB)

Sun servers – eighteen (18) TB

HP servers – twelve (12) TB

Print Environment

The State prints approximately 56,702,000 documents annually in the following estimated breakout:

8.5x11 White <ul style="list-style-type: none"> o RollFeed 29,463,564 o CutSheet 1,326,169 	8.5x11 White Perforated <ul style="list-style-type: none"> o RollFeed 3,790,217 o CutSheet 1,135,705
11x9.5 FanFold <ul style="list-style-type: none"> o RollFeed 9,271,322 	
Checks <ul style="list-style-type: none"> o CutSheet 5,489,127 	Special Forms <ul style="list-style-type: none"> o BoxFeed 1,067,713 o CutSheet 5,158,078

Approximately seventy percent (70%) of these documents must be prepared for mailing.

Network Requirements

Virtual Private Network (VPN) must be compatible with Cisco Adaptive Security Appliance (ASA).

Network switches must be Cisco.

Load balancers must be F5 Local Traffic Manager (LTM).

PROPOSER CONTRACTS

This is a placeholder for the agreed-to Proposer Contracts, which will be inserted after contract negotiations and prior to Proposal submission. Each responsive Proposer that has successfully passed through the Contract negotiation phase will have two (2) contracts in this section (Infrastructure Disaster Recovery Services Contract and Print Services Disaster Recovery Services Contract), and the Proposer will base its Technical and Cost Proposals on the services described in the pertinent contract below.