

## Fiscal Review Committee Redaction Cover Sheet

**Contract Number:** RFS 335.01-191004 Commerce and Insurance (Tennessee Assn of B...

  X   No redactions required  
       Redactions applied

**Contractor/Service Provider Identity** *(this includes addresses, phone numbers, service provider contact or officer information, and other information that could be used to identify the contractor or service provider)*

           Federal Employee Identification Number (FEIN)  
           Contractor/Vendor Name

**Purpose for Contractor/Vendor Name Redaction** (if applicable)

**Technology Details** *(this includes database, operating system, development code, and any other information that would identify an area of weakness or an attack vector)*

           Product Name  
           Associated Technology  
           Other

**Other Description:** \_\_\_\_\_



**STATE OF TENNESSEE**  
**DEPARTMENT OF COMMERCE AND INSURANCE**  
500 JAMES ROBERTSON PARKWAY  
NASHVILLE, TENNESSEE 37243  
(615) 741-9730

January 18, 2019

Fiscal Review Committee  
8<sup>th</sup> Floor Rachel Jackson Building  
Nashville, Tennessee 37243

Re: Tennessee Association of Broadcasters Sole Source Contract – RFS #33501-190104

Dear Fiscal Review Committee:

The following information is provided in support of the sole source contract submitted for consideration and approval of the Fiscal Review Committee.

**Procurement Purpose**

Under Tenn. Code Ann. § 47-18-5002, the Department of Commerce and Insurance “(Department”) is responsible for promoting consumer education and informing the public of policies, decisions, and legislation affecting consumers. The Department’s Fire Prevention, Securities, and Insurance Divisions previously individually contracted with the Tennessee Association of Broadcasters (TAB) to secure airtime from various television and radio stations across Tennessee to broadcast consumer education and protection messages. The proposed contract would centralize TAB’s services under one, large contract while allowing the Department to expand services to include consumer education for four (4) divisions - Fire Prevention, Insurance, Securities, and Consumer Affairs.

**Justification for Proposed Sole Source Contract**

The Public Education Program (PEP) is specifically intended to help government agencies and nonprofit organizations deliver important public service announcements effectively and affordably. Under the PEP, radio and television stations donate airtime to each state’s broadcasters trade association for these public service announcements. In Tennessee, radio and television stations donate the airtime to TAB, who makes the airtime available, in exchange for grant funding, to nonprofits and government agencies that do not have a history of buying advertising time or space. The time is provided on a multiplier basis; meaning that for every dollar of grant funding, TAB delivers an increased airtime value. For example, a one dollar grant donation (\$1) would deliver three dollars (\$3) of airtime value. In addition, the messages will air on commercial, noncommercial, college, and religious radio stations throughout the state, ensuring that the education messages reach consumers across Tennessee.

Under the PEP, TAB possesses the unique and singular technical qualifications and capabilities to meet the Department’s needs for these specific professional services. TAB is the only entity that is available to the State to get this type of public service announcement time from Tennessee television and radio stations. TAB has been established for almost seventy (70) years and has provided services to State entities for years, including the Tennessee Bureau of Investigation’s Amber Alert system and the Department of Tourist Development. Because of these previous contracts, TAB also has an

extraordinary familiarity with the State and its entities. If the Department had to procure this type of broadcast on its own, it would be extremely expensive and unworkable.

Please advise if you have any questions or the Committee requires any additional information.

Respectfully,

*Laura Hartsfield*

Laura Hartsfield  
Assistant General Counsel  
(615) 532-6308  
Laura.Hartsfield@tn.gov

Supplemental Documentation Required for  
Fiscal Review Committee

*Contact Name:	Stephanie Crenshaw	*Contact Phone:	(615) 741-9730
*Presenter's name(s):	Kevin Walters, Communications Director		
Edison Contract Number: <i>(if applicable)</i>	TBD	RFS Number: <i>(if applicable)</i>	33501-191004
*Original or Proposed Contract Begin Date:	June 1, 2019	*Current or Proposed End Date:	May 31, 2022
Current Request Amendment Number: <i>(if applicable)</i>	N/A		
Proposed Amendment Effective Date: <i>(if applicable)</i>	N/A		
*Department Submitting:	Department of Commerce and Insurance		
*Division:	Insurance, Securities, Consumer Affairs, and Fire Prevention		
*Date Submitted:	January 17, 2019		
*Submitted Within Sixty (60) days:	Yes		
<i>If not, explain:</i>			
*Contract Vendor Name:	Tennessee Association of Broadcasters		
*Current or Proposed Maximum Liability:	\$ 1,000,000.00		
*Estimated Total Spend for Commodities:	\$ 1,000,000.00 (for services)		
<b>*Current or Proposed Contract Allocation by Fiscal Year: (as Shown on Most Current Fully Executed Contract Summary Sheet)</b>			
FY:2020	FY:2021	FY:2022	FY: FY: FY:
\$333,333.33	\$333,333.34	\$333,333.33	
<b>*Current Total Expenditures by Fiscal Year of Contract: (attach backup documentation from Edison)</b>			
FY:	FY:	FY:	FY: FY: FY:
N/A	N/A	N/A	N/A N/A N/A
<b>IF</b> Contract Allocation has been greater than Contract Expenditures, please give the reasons and explain where surplus funds were spent:	N/A		
<b>IF</b> surplus funds have been carried forward, please give the reasons and provide the authority for the carry forward provision:	N/A		
<b>IF</b> Contract Expenditures exceeded Contract Allocation, please give the reasons and explain how funding	N/A		

Supplemental Documentation Required for  
Fiscal Review Committee

was acquired to pay the overage:			
*Contract Funding Source/Amount:			
State:	100%	Federal:	
<i>Interdepartmental:</i>		<i>Other:</i>	
If “ <i>other</i> ” please define:			
If “ <i>interdepartmental</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>	
N/A		N/A	
Method of Original Award: <i>(if applicable)</i>		Non-Competitive Negotiation	
*What were the projected costs of the service for the entire term of the contract prior to contract award? How was this cost determined?		N/A	
*List number of other potential vendors who could provide this good or service; efforts to identify other competitive procurement alternatives; and the reason(s) a sole-source contract is in the best interest of the State.		This proposed Contractor possesses the unique and singular technical qualifications and capabilities to meet the Department’s needs for these specific professional services. If the Department had to procure this type of broadcast on its own, it would be extremely expensive and unworkable. Central to the proposed Contractor’s exclusive capability to provide these services is the proposed Contractor’s extraordinary familiarity with relevant Tennessee entities. The proposed Contractor is the only entity that is available to the State to get this type of public service announcement time from Tennessee television stations at a low rate. The proposed Contractor seeks and solicits blocks of air time at greatly reduced rates.	

# Special Contract Request

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

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

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

<b>APPROVED</b>	<b>APPROVED</b>
CHIEF PROCUREMENT OFFICER	COMPTROLLER OF THE TREASURY
DATE	DATE

<b>Request Tracking #</b>	<b>33501-191004</b>
<b>1. Contracting Agency</b>	Department of Commerce and Insurance (the Department)
<b>2. Type of Contract or Procurement Method</b>	<input type="checkbox"/> No Cost <input type="checkbox"/> Revenue <input checked="" type="checkbox"/> Sole Source <input type="checkbox"/> Proprietary <input type="checkbox"/> Competitive Negotiation <input type="checkbox"/> Other _____
<b>3. Requestor Contact Information</b>	Stephanie Crenshaw 615-741-9730 <a href="mailto:Stephanie.Crenshaw@tn.gov">Stephanie.Crenshaw@tn.gov</a>
<b>4. Brief Goods or Services Caption</b>	Provision of television air time for public service announcements
<b>5. Description of the Goods or Services to be Acquired</b>	The Contractor shall solicit and secure airtime from various television stations across Tennessee in order to broadcast consumer education and protection messages on behalf of the Insurance, Securities, Consumer Affairs, and Fire Prevention Divisions of the Department.
<b>6. Proposed Contractor</b>	Tennessee Association of Broadcasters (TAB)
<b>7. Name &amp; Address of the Contractor's principal owner(s)</b> <i>- NOT required for a TN state education institution</i>	Whit Adamson Two International Plaza Dr. Suite 902 Nashville, TN 37217

<b>Request Tracking #</b>	<b>33501-191004</b>
<b>8. Proposed Contract Period</b> – with ALL options to extend exercised <i>The proposed contract start date shall follow the approval date of this request.</i>	60 months
<b>9. Strategic Technology Solutions (“STS”) Pre-Approval Endorsement Request</b> – information technology (N/A to THDA)	<input checked="" type="checkbox"/> <b>Not Applicable</b> <input type="checkbox"/> <b>Attached</b>
<b>10. eHealth Pre-Approval Endorsement Request</b> – health-related professional, pharmaceutical, laboratory, or imaging	<input checked="" type="checkbox"/> <b>Not Applicable</b> <input type="checkbox"/> <b>Attached</b>
<b>11. Human Resources Pre-Approval Endorsement Request</b> – contracts with an individual, state employee training, or services related to the employment of current or prospective state employees	<input checked="" type="checkbox"/> <b>Not Applicable</b> <input type="checkbox"/> <b>Attached</b>
<b>12. Are these goods or services currently available on a statewide contract? If YES, please explain why the current statewide contract is not being used for this procurement.</b>	<input checked="" type="checkbox"/> <b>NO</b> <input type="checkbox"/> <b>YES</b>
<b>13. Maximum Contract Cost</b> – with ALL options to extend exercised	\$ 1,000,000
<b>14. Was there an initial government estimate? If so, what amount?</b>	<input checked="" type="checkbox"/> <b>NO</b> <input type="checkbox"/> <b>YES, \$</b>
<b>15. Cost Determination Used-</b> How did agency arrive at the estimate of expected costs?	The proposed cost is consistent with what the Contractor has charged the Department in prior contracts. Previously, the Department’s Assistant Director of Communications and Marketing and the Assistant Commissioner for Insurance arrived at this amount after reviewing prior services provided and the needs of the program.
<b>16. Explanation of Fair and Reasonable Price-</b> Explain how agency determined that price is fair and reasonable	This Contractor is the only entity that is available to the State to get this type of public service announcement time from Tennessee television stations at a low rate. The Contractor seeks and solicits blocks of air time at greatly reduced rates.
<b>17. Documentation of Discussions with Contractor-</b> How did agency document discussions with Contractor? Attach documentation to this request as applicable.	The Department’s Assistant Director of Communications and Marketing contacted TAB to inquire about these services after learning about TAB’s relationships with other state entities such as the TBI and the Department of Tourism.
<b>18. Explanation of Need for or requirement placed on the State to acquire the goods or services</b>	The Department’s mission focuses on serving Tennessee citizens in the areas of community, safety and service. Outreach, a consumer-oriented service, is part of the Department’s mission to increase consumer education in the prevention of fraud and consumer protection in the community.

<b>Request Tracking #</b>	<b>33501-191004</b>
<b>19. Proposed contract impact on current State operations</b>	Increasing consumer protection awareness and education in the prevention of fraud and fires will serve to enhance the Department's work in protecting the citizens of Tennessee from fraud, theft, and fire dangers.
<b>20. Justification</b> – Specifically explain why the goods or services should be acquired through the procurement method or contract type selected.	<p>This proposed Contractor possesses the unique and singular technical qualifications and capabilities to meet the Department's needs for these specific professional services. This Contractor is the only entity that is available to the State to get this type of public service announcement time from Tennessee television stations. If the Department had to procure this type of broadcast on its own, it would be extremely expensive and unworkable. Central to the Contractor's exclusive capability to provide these services is the Contractor's extraordinary familiarity with relevant Tennessee entities.</p> <p>Additionally, the Department intended on using the statewide contract to continue services with the proposed Contractor. However, since the statewide contract with this Contractor has been postponed, a Department-wide agency contract is an efficient alternative due to the Department's frequent use of the proposed Contractor's services.</p>
<b>For No Cost and Revenue Contracts Only</b>	
<b>21. What costs will the State incur as a result of this contract? If any, please explain.</b>	
<b>22. What is the total estimated revenue that the State would receive as a result of this contract?</b>	
<b>23. Could the State also contract with other parties interested in entering substantially the same agreement? Please explain.</b>	<input type="checkbox"/> NO <input type="checkbox"/> YES
<b>24. Summary of State responsibilities under proposed contract</b>	
<b>For Sole Source and Proprietary Procurements Only</b>	
<b>25. Evidence of Contractor's experience &amp; length of experience providing the goods or services to be procured.</b>	TAB has been established for almost 70 years. It has provided services to state entities for decades including services to TBI through the Amber alert system and with the Tennessee Department of Tourism. Additionally, TAB has provided this specific service for the Office of the State Fire Marshal and accomplished the intended goal of increasing community safety awareness.

<b>Request Tracking #</b>	<b>33501-191004</b>
<b>26. Has the contracting agency procured the subject goods or services before? If yes, provide the method used to purchase the goods or services and the name and address of the contractor.</b>	<input type="checkbox"/> <b>NO</b> <input checked="" type="checkbox"/> <b>YES</b> <b>Method:</b> Sole Source <b>Name/Address:</b> Whit Adamson Two International Plaza Dr., Suite 902 Nashville, TN 37217
<b>27. Contractor selection process and efforts to identify reasonable, competitive, procurement alternatives</b>	TAB was selected because there are no other Contractors that secure blocks of broadcasting PSA time for non-profits.
<b>Signature Required for all Special Contract Requests</b>	
<p><b>Signature of Agency head or authorized designee, title of signatory, and date</b> (the authorized designee may sign his or her own name if indicated on the Signature Certification and Authorization document)</p>          <p>Signature: _____ Date: _____</p>	



# CONTRACT

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

<b>Begin Date</b> June 1, 2019	<b>End Date</b> May 31, 2022	<b>Agency Tracking #</b> 33501-191004	<b>Edison Record ID</b>
<b>Contractor Legal Entity Name</b> Tennessee Association of Broadcasters (TAB)			<b>Edison Vendor ID</b> 91215

**Goods or Services Caption** (one line only)  
Broadcasting of Public Service Announcements via television and radio

<b>Contractor</b> <input checked="" type="checkbox"/> Contractor	<b>CFDA #</b>
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<b>Funding —</b>					
<b>FY</b>	<b>State</b>	<b>Federal</b>	<b>Interdepartmental</b>	<b>Other</b>	<b>TOTAL Contract Amount</b>
2020	\$333,333.33				\$333,333.33
2021	\$333,333.34				\$333,333.34
2022	\$333,333.33				\$333,333.33
<b>TOTAL:</b>	<b>\$1,000,000</b>				<b>\$1,000,000</b>

**Contractor Ownership Characteristics:**

Minority Business Enterprise (MBE):  
 African American  Asian American  Hispanic American  Native American

Woman Business Enterprise (WBE)

Tennessee Service Disabled Veteran Enterprise (SDVBE)

Disabled Owned Business (DSBE)

Tennessee Small Business Enterprise (SBE): \$10,000,000.00 averaged over a three (3) year period or employs no more than ninety-nine (99) employees.

Government  Non-Minority/Disadvantaged  Other:

**Selection Method & Process Summary** (mark the correct response to confirm the associated summary)

Competitive Selection

Other  
 This selection was made as a sole source procurement pursuant to an approved Special Contract Request in accordance with Tenn. Comp. R. & Regs. 0690-03-01-.05(6).

**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.

<b>Speed Chart</b> (optional)	<b>Account Code</b> (optional)
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**CONTRACT  
BETWEEN THE STATE OF TENNESSEE,  
DEPARTMENT OF COMMERCE AND INSURANCE  
AND  
TENNESSEE ASSOCIATION OF BROADCASTERS**

This Contract, by and between the State of Tennessee, Department of Commerce and Insurance ("State") and Tennessee Association of Broadcasters ("Contractor"), is for the provision of non-commercial airtime to broadcast announcements via radio and/or television for the State, as further defined in the "SCOPE." State and Contractor may be referred to individually as a "Party" or collectively as the "Parties" to this Contract.

The Contractor is a non-profit corporation.  
Contractor Place of Incorporation or Organization: Tennessee  
Contractor Edison Registration ID # 91215

**A. SCOPE:**

- A.1. The Contractor shall provide all goods or services and deliverables as required, described, and detailed below and shall meet all service and delivery timelines as specified by this Contract.
- A.2. The Contractor has established a "Program" defined as participating television stations voluntarily donating airtime and related services to the Contractor with the intent that the Contractor may make available such airtime to Federal, State and local governmental entities and non-profit entities for the broadcast of Non-commercial Sustaining/Public Education Program ("NCSA/PEP") announcements.
- A.3. The State shall purchase program airtime from the Contractor in order for the State's education and related program announcements to be broadcast for the Divisions of Insurance, Securities, Consumer Affairs, and Fire Prevention.
- A.4. The State's announcements shall be in television or radio broadcast medium.
- A.5. The State's announcements shall be a minimum of thirty (30) seconds and a maximum of sixty (60) seconds in length.
- A.6. Participating television and radio stations are not parties to this Contract and there is no agency, representative, joint venture or partnership relationship between the Contractor and such stations as relates to the transactions contemplated under this Contract and nothing in this contract shall be construed or interpreted to the contrary.
- A.7. This Contract shall only apply to the State's announcements delivered to the Contractor by or on behalf of the State.
- A.8. The Contractor shall provide to the State adequate proof of broadcast of the announcements, which may be by a summary report, station affidavit or other documentation.
- A.9. The Contractor shall use such efforts as are usual and customary for its program to achieve statewide coverage of the State's announcements on a value ratio of at least two (2) spot announcements to one (1) such spot at each participating station's then current general market rate. The Contractor, at no additional cost to the State, shall distribute the State's announcements to all broadcast stations within the State for airing at times of day which each participating station believes will be reasonably effective and during the period(s) set forth on Schedule A hereto, on the condition that the State's announcements are received by the Contractor on a timely basis, in agreed upon maximum length(s), and in adequate quantities of broadcast quality master or duplicate compact discs, audio cassettes, reel to reel tapes or video tape cassettes, as specified in Schedule A hereto. Any special Contractor/station requirements are identified in Schedule A hereto.

- A.10. The decision of a station to air or not air the State's announcements belongs solely to the station and therefore the airing of such announcements may be refused, suspended or terminated by any station at any time for any or no reason. In the event of an unexcused failure of performance (as defined herein) by the Contractor, the Contractor shall use its usual and customary efforts to cause a reasonably adequate number of "make goods" of the State's announcements to be aired over the stations then participating in this program. For purposes of this Contract, the term "unexcused failure of performance" shall mean the failure to achieve at least a two (2) to one (1) value ratio measured over such term of this Contract, unless such failure reflects the good faith belief by the Contractor and/or the stations that the State's announcements raise a significant concern under any of the State's representations, warranties or covenants set forth in this Contract. Nothing in this Contract shall prevent the Contractor from communicating with a station with respect to the subject matter of this Contract.
- A.11. The State and the Contractor shall comply, in all material respects, with all laws applicable to them relating to the subject of this Contract. The State represents and covenants (a) that solely through this Contract the Contractor and each station participating under this NCSA/PEP Program have and will continue to have all licenses, sublicenses, assignments, permissions, waivers and other rights and clearances necessary or appropriate for the Contractor and for each participating station to broadcast, to retransmit, and/or to allow the retransmission of, the Sponsor's NCSA Announcements, via broadcast, cable, satellite, the Internet, cell phone, smartphone or any other former, present or future technology or device including, but not limited to, "podcasting" and "streaming" over the Internet, without causing the Contractor or any such station participating in this NCSA/PEP Program to incur any past, present or future fee, cost, expense or liability in connection with such broadcasts or retransmissions including, but not limited to, "podcasting" and "streaming" within the terms of this Contract; and (b) that none of the State's announcements will contain any material (i) which violates the Communications Act of 1934, as amended (the "Act"), the rules, regulations or policies of the Federal Communications Commission ("FCC's Rules"), the Lanham Act or the Copyright Act, (ii) which violates or infringes upon any copyright, patent, trademark, trade secret or other proprietary right or right of privacy of any person or entity, (iii) which creates any obligation of any station to provide a response, or any right of response in favor of any person or entity, including, without limitation, a candidate for public office, (iv) which is defamatory, (v) which is not covered by a duly issued synchronization license(s) or (vi) which includes any music which is neither in the public domain nor licensed by either ASCAP, BMI or SESAC.
- A.12. The State's announcements will contain the closed captioning of the verbal contents of the announcements as required by Section 711 of the Act and the sponsorship identification tag required by the FCC's Rules and such tag shall be in a format that is understandable/readable to the average listener/viewer. The Contractor and the State acknowledge and agree that the following tag, which the State shall include on all of the State's announcements, complies with Section 73.1212 of the FCC's Rules: "**Sponsored by the Tennessee Department of Commerce and Insurance, and aired in cooperation with the Tennessee Association of Broadcasters and this Station.**" The State shall cause the radio tag to be aural and the television tag to be at least visual.
- A.13. The State acknowledges and agrees that it has no objection to and consents to any station participating in this Program now or in the future broadcasting or retransmitting the State's announcements, or allowing the retransmission of the State's announcements, via broadcast, cable, satellite, the Internet, cell phone, smartphone or any other former, present or future technology or device including, but not limited to, "podcasting" or "streaming" over the Internet, and that the State hereby grants irrevocably for the Term (as defined) any and all permission necessary or appropriate for such broadcasts and retransmissions including, but not limited to, "podcasting" and "streaming" by participating stations without any past, present or future fee, cost, expense or liability either to the Contractor or to any such stations in connection with such broadcasts and retransmissions including, but not limited to, "podcasting" and "streaming." The parties acknowledge and agree that the stations participating are relying upon the representations, warranties and covenants of the State contained in this Section and throughout this Contract.

- A.14. The State and the Contractor shall cooperate fully with each other in taking any actions necessary or helpful to accomplish fully the transactions contemplated by this Contract; provided, however, that no party shall be required to take any action which would have a material adverse effect upon it or any affiliated entity. The State shall not take, and shall avoid taking, any action which will likely adversely affect the willingness of stations to voluntarily participate or to continue to voluntarily participate in this Program.
- A.15. The Contractor shall notify in writing those stations participating in this program to cease airing and/or streaming the State's announcements not later than the earlier of (a) the so-called the "Flight End Date" set forth in Schedule A hereto, (b) any so-called "Kill Date" identified on each audio and video cassette containing the State's announcements, or (c) the end of the Term of this Agreement.
- A.16. Warranty. Contractor represents and warrants that the term of the warranty ("Warranty Period") shall be the greater of the Term of this Contract or any other warranty generally offered by Contractor, its suppliers, or manufacturers to customers of its goods or services. The goods or services provided under this Contract shall conform to the terms and conditions of this Contract throughout the Warranty Period. Any nonconformance of the goods or services to the terms and conditions of this Contract shall constitute a "Defect" and shall be considered "Defective." If Contractor receives notice of a Defect during the Warranty Period, then Contractor shall correct the Defect, at no additional charge.

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

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

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

- A.17. Inspection and Acceptance. The State shall have the right to inspect all goods or services provided by Contractor under this Contract. If, upon inspection, the State determines that the goods or services are Defective, the State shall notify Contractor, and Contractor shall re-deliver the goods or provide the services at no additional cost to the State. If after a period of thirty (30) days following delivery of goods or performance of services the State does not provide a notice of any Defects, the goods or services shall be deemed to have been accepted by the State.

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

- B.1. This Contract shall be effective on June 1, 2019, ("Effective Date") and extend for a period of thirty-six (36) months after the Effective Date ("Term"). The State shall have no obligation for goods or services provided by the Contractor prior to the Effective Date.
- B.2. Renewal Options. This Contract may be renewed upon satisfactory completion of the Term. The State reserves the right to execute up to two (2) renewal options under the same terms and conditions for a period not to exceed twelve (12) months each by the State, at the State's sole option. In no event, however, shall the maximum Term, including all renewals or extensions, exceed a total of sixty (60) months.

## **C. PAYMENT TERMS AND CONDITIONS:**

- C.1. Maximum Liability. In no event shall the maximum liability of the State under this Contract exceed one million dollars (\$1,000,000) ("Maximum Liability"). This Contract does not grant the

Contractor any exclusive rights. The State does not guarantee that it will buy any minimum quantity of goods or services under this Contract. Subject to the terms and conditions of this Contract, the Contractor will only be paid for goods or services provided under this Contract after a purchase order is issued to Contractor by the State or as otherwise specified by this Contract.

C.2. Compensation Firm. The payment methodology in Section C.3. of this Contract shall constitute the entire compensation due the Contractor for all goods or services provided under this Contract regardless of the difficulty, materials or equipment required. The payment methodology includes all applicable taxes, fees, overhead, and all other direct and indirect costs incurred or to be incurred by the Contractor.

C.3. Payment Methodology. The Contractor shall be compensated based on the payment methodology for goods or services authorized by the State in a total amount as set forth in Section C.1.

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

<b>Goods or Services Description</b>	<b>Amount</b> (per compensable increment)
Block of airtime secured by the Contractor in order to broadcast the State's announcements	\$ 16,667.00 per month

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

C.5. Invoice Requirements. The Contractor shall invoice the State only for goods delivered and accepted by the State or services satisfactorily provided at the amounts stipulated in Section C.3., above. Contractor shall submit invoices and necessary supporting documentation, no more frequently than once a month, and no later than thirty (30) days after goods or services have been provided to the following address:

Tennessee Department of Commerce and Insurance  
 Attention: Accounts Payable  
 500 James Robertson Parkway  
 Nashville, TN 37243  
[ciaccounts.payable@tn.gov](mailto:ciaccounts.payable@tn.gov)

- a. Each invoice, on Contractor's letterhead, shall clearly and accurately detail all of the following information (calculations must be extended and totaled correctly):
  - (1) Invoice number (assigned by the Contractor);
  - (2) Invoice date;
  - (3) Contract number (assigned by the State);
  - (4) Customer account name: Department of Commerce and Insurance, Divisions of Insurance, Securities, Consumer Affairs, and Fire Prevention;
  - (5) Customer account number (assigned by the Contractor to the above-referenced Customer);
  - (6) Contractor name;
  - (7) Contractor Tennessee Edison registration ID number;
  - (8) Contractor contact for invoice questions (name, phone, or email);
  - (9) Contractor remittance address;
  - (10) Description of delivered goods or services provided and invoiced, including identifying information as applicable;
  - (11) Number of delivered or completed units, increments, hours, or days as applicable, of each good or service invoiced;

- (12) Applicable payment methodology (as stipulated in Section C.3.) of each good or service invoiced;
- (13) Amount due for each compensable unit of good or service; and
- (14) Total amount due for the invoice period.

b. Contractor's invoices shall:

- (1) Only include charges for goods delivered or services provided as described in Section A and in accordance with payment terms and conditions set forth in Section C;
- (2) Only be submitted for goods delivered or services completed and shall not include any charge for future goods to be delivered or services to be performed;
- (3) Not include Contractor's taxes, which includes without limitation Contractor's sales and use tax, excise taxes, franchise taxes, real or personal property taxes, or income taxes; and
- (4) Include shipping or delivery charges only as authorized in this Contract.

c. The timeframe for payment (or any discounts) begins only when the State is in receipt of an invoice that meets the minimum requirements of this Section C.5.

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

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

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

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

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

**D. MANDATORY TERMS AND CONDITIONS:**

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

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

The State:

Kevin Walters, Communications Director  
Department of Commerce and Insurance  
500 James Robertson Parkway  
Nashville, TN 37243  
Email Address: kevin.walters@tn.gov  
Telephone # 615- 253-8941

The Contractor:

Whit Adamson, President  
Tennessee Association of Broadcasters  
Two International Plaza Drive, Suite 902  
Nashville, TN 37217  
Telephone # 615-365-1840  
Fax # 615-365-1842  
Email Address: whit@tabtn.org

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

- D.3. Modification and Amendment. This Contract may be modified only by a written amendment signed by all Parties and approved by all applicable State officials. The State's exercise of a valid Renewal Option or Term Extension does not constitute an amendment so long as there are no other changes to the Contract's terms and conditions.
- D.4. Subject to Funds Availability. The Contract is subject to the appropriation and availability of State or federal funds. In the event that the funds are not appropriated or are otherwise unavailable, the State reserves the right to terminate this Contract upon written notice to the Contractor. The State's exercise of its right to terminate this Contract shall not constitute a breach of Contract by the State. Upon receipt of the written notice, the Contractor shall cease all work associated with the Contract. If the State terminates this Contract due to lack of funds availability, the Contractor shall be entitled to compensation for all conforming goods requested and accepted by the State and for all satisfactory and authorized services completed as of the termination date. Should the State exercise its right to terminate this Contract due to unavailability of funds, the Contractor shall have no right to recover from the State any actual, general, special, incidental, consequential, or any other damages of any description or amount.
- D.5. Termination for Convenience. The State may terminate this Contract for convenience without cause and for any reason. The State shall give the Contractor at least thirty (30) days written notice before the termination date. The Contractor shall be entitled to compensation for all conforming goods delivered and accepted by the State or for satisfactory, authorized services completed as of the termination date. In no event shall the State be liable to the Contractor for compensation for any goods neither requested nor accepted by the State or for any services neither requested by the State nor satisfactorily performed by the Contractor. In no event shall the State's exercise of its right to terminate this Contract for convenience relieve the Contractor of any liability to the State for any damages or claims arising under this Contract.
- D.6. Termination for Cause. If the Contractor fails to properly perform its obligations under this Contract in a timely or proper manner, or if the Contractor materially violates any terms of this

Contract ("Breach Condition"), the State shall have the right to immediately terminate the Contract and withhold payments in excess of compensation for completed services or provided goods. Notwithstanding the above, the Contractor shall not be relieved of liability to the State for damages sustained by virtue of any Breach Condition and the State may seek other remedies allowed at law or in equity for breach of this Contract.

D.7. Assignment and Subcontracting. The Contractor shall not assign this Contract or enter into a subcontract for any of the goods or services provided under this Contract without the prior written approval of the State. Notwithstanding any use of the approved subcontractors, the Contractor shall be the prime contractor and responsible for compliance with all terms and conditions of this Contract. The State reserves the right to request additional information or impose additional terms and conditions before approving an assignment of this Contract in whole or in part or the use of subcontractors in fulfilling the Contractor's obligations under this Contract.

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

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

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

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

a. The Contractor agrees that the Contractor shall not knowingly utilize the services of an illegal immigrant in the performance of this Contract and shall not knowingly utilize the services of any subcontractor who will utilize the services of an illegal immigrant in the performance of this Contract. The Contractor shall reaffirm this attestation, in writing, by submitting to the State a completed and signed copy of the document at Attachment A, semi-annually during the Term. If the Contractor is a party to more than one contract with the State, the Contractor may submit one attestation that applies to all contracts with the State. All Contractor attestations shall be maintained by the Contractor and made available to State officials upon request.

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

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

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

to two (2) times the Maximum Liability amount detailed in Section C.1. and as may be amended, PROVIDED THAT in no event shall this Section limit the liability of the Contractor for: (i) intellectual property or any Contractor indemnity obligations for infringement for third-party intellectual property rights; (ii) any claims covered by any specific provision in the Contract providing for liquidated damages; or (iii) any claims for intentional torts, criminal acts, fraudulent conduct, or acts or omissions that result in personal injuries or death.

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

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

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

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

- D.21. Tennessee Consolidated Retirement System. Subject to statutory exceptions contained in Tenn. Code Ann. §§ 8-36-801, *et seq.*, the law governing the Tennessee Consolidated Retirement System ("TCRS"), provides that if a retired member of TCRS, or of any superseded system administered by TCRS, or of any local retirement fund established under Tenn. Code Ann. §§ 8-35-101, *et seq.*, accepts State employment, the member's retirement allowance is suspended during the period of the employment. Accordingly and notwithstanding any provision of this Contract to the contrary, the Contractor agrees that if it is later determined that the true nature of the working relationship between the Contractor and the State under this Contract is that of

“employee/employer” and not that of an independent contractor, the Contractor, if a retired member of TCRS, may be required to repay to TCRS the amount of retirement benefits the Contractor received from TCRS during the Term.

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

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

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

- D.25. State and Federal Compliance. The Contractor shall comply with all applicable state and federal laws and regulations in the performance of this Contract.
- D.26. Governing Law. This Contract shall be governed by and construed in accordance with the laws of the State of Tennessee, without regard to its conflict or choice of law rules. The Tennessee Claims Commission or the state or federal courts in Tennessee shall be the venue for all claims, disputes, or disagreements arising under this Contract. The Contractor acknowledges and agrees that any rights, claims, or remedies against the State of Tennessee or its employees arising under this Contract shall be subject to and limited to those rights and remedies available under Tenn. Code Ann. §§ 9-8-101 - 408.
- D.27. Entire Agreement. This Contract is complete and contains the entire understanding between the Parties relating to its subject matter, including all the terms and conditions of the Parties' agreement. This Contract supersedes any and all prior understandings, representations, negotiations, and agreements between the Parties, whether written or oral.
- D.28. Severability. If any terms and conditions of this Contract are held to be invalid or unenforceable as a matter of law, the other terms and conditions of this Contract shall not be affected and shall remain in full force and effect. The terms and conditions of this Contract are severable.
- D.29. Headings. Section headings of this Contract are for reference purposes only and shall not be construed as part of this Contract.
- D.30. Incorporation of Additional Documents. Each of the following documents is included as a part of this Contract by reference. In the event of a discrepancy or ambiguity regarding the Contractor's duties, responsibilities, and performance under this Contract, these items shall govern in order of precedence below:
- a. any amendment to this Contract, with the latter in time controlling over any earlier amendments;
  - b. this Contract with any attachments or exhibits (excluding the items listed at subsections c. through f., below), which includes Attachment A;
  - c. any clarifications of or addenda to the Contractor's proposal seeking this Contract;
  - d. the State solicitation, as may be amended, requesting responses in competition for this Contract;
  - e. any technical specifications provided to proposers during the procurement process to award this Contract; and
  - f. the Contractor's response seeking this Contract.
- D.31. Iran Divestment Act. The requirements of Tenn. Code Ann. § 12-12-101, *et seq.*, addressing contracting with persons as defined at Tenn. Code Ann. §12-12-103(5) that engage in investment activities in Iran, shall be a material provision of this Contract. The Contractor certifies, under penalty of perjury, that to the best of its knowledge and belief that it is not on the list created pursuant to Tenn. Code Ann. § 12-12-106.
- D.32. Insurance. Contractor shall maintain insurance coverage as specified in this Section. The State reserves the right to amend or require additional insurance coverage, coverage amounts, and endorsements required under this Contract. Contractor's failure to maintain or submit evidence of insurance coverage, as required, is a material breach of this Contract. If Contractor loses insurance coverage, fails to renew coverage, or for any reason becomes uninsured during the Term, Contractor shall immediately notify the State. All insurance companies providing coverage must be: (a) acceptable to the State; (b) authorized by the Tennessee Department of Commerce and Insurance ("TDCI"); and (c) rated A- / VII or better by A.M. Best. All coverage must be on a primary basis and noncontributory with any other insurance or self-insurance carried by the State. Contractor agrees to name the State as an additional insured on any insurance policy with the exception of workers' compensation (employer liability) and professional liability (errors and omissions) insurance. All policies must contain an endorsement for a waiver of subrogation in favor of the State. Any deductible or self insured retention ("SIR") over fifty thousand dollars (\$50,000) must be approved by the State. The deductible or SIR and any premiums are the

Contractor's sole responsibility. The Contractor agrees that the insurance requirements specified in this Section do not reduce any liability the Contractor has assumed under this Contract including any indemnification or hold harmless requirements.

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

Contractor shall provide the State a certificate of insurance ("COI") evidencing the coverages and amounts specified in this Section. The COI must be on a form approved by the TDCI (standard ACORD form preferred). The COI must list each insurer's National Association of Insurance Commissioners (NAIC) number and be signed by an authorized representative of the insurer. The COI must list the State of Tennessee – CPO Risk Manager, 312 Rosa L. Parks Ave., 3<sup>rd</sup> floor Central Procurement Office, Nashville, TN 37243 as the certificate holder. Contractor shall provide the COI ten (10) business days prior to the Effective Date and again thirty (30) calendar days before renewal or replacement of coverage. Contractor shall provide the State evidence that all subcontractors maintain the required insurance or that subcontractors are included under the Contractor's policy. At any time, the State may require Contractor to provide a valid COI. The Parties agree that failure to provide evidence of insurance coverage as required is a material breach of this Contract. If Contractor self-insures, then a COI will not be required to prove coverage. Instead Contractor shall provide a certificate of self-insurance or a letter, on Contractor's letterhead, detailing its coverage, policy amounts, and proof of funds to reasonably cover such expenses. The State reserves the right to require complete, certified copies of all required insurance policies, including endorsements required by these specifications, at any time.

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

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

a. Commercial General Liability ("CGL") Insurance

- 1) The Contractor shall maintain CGL, which shall be written on an ISO Form CG 00 01 occurrence form (or a substitute form providing equivalent coverage) and

shall cover liability arising from property damage, premises and operations products and completed operations, bodily injury, personal and advertising injury, and liability assumed under an insured contract (including the tort liability of another assumed in a business contract).

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

b. Workers' Compensation and Employer Liability Insurance

- 1) For Contractors statutorily required to carry workers' compensation and employer liability insurance, the Contractor shall maintain:
  - i. Workers' compensation and employer liability insurance in the amounts required by appropriate state statutes.
- 2) If the Contractor certifies that it is exempt from the requirements of Tenn. Code Ann. §§ 50-6-101 – 103, then the Contractor shall furnish written proof of such exemption for one or more of the following reasons:
  - i. The Contractor employs fewer than five (5) employees;
  - ii. The Contractor is a sole proprietor;
  - iii. The Contractor is in the construction business or trades with no employees;
  - iv. The Contractor is in the coal mining industry with no employees;
  - v. The Contractor is a state or local government; or
  - vi. The Contractor self-insures its workers' compensation and is in compliance with the TDCI rules and Tenn. Code Ann. § 50-6-405.

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

**E. SPECIAL TERMS AND CONDITIONS:**

- E.1. Conflicting Terms and Conditions. Should any of these special terms and conditions conflict with any other terms and conditions of this Contract, the special terms and conditions shall be subordinate to the Contract's other terms and conditions.
- E.2. Confidentiality of Records. Strict standards of confidentiality of records and information shall be maintained in accordance with applicable state and federal law. All material and information, regardless of form, medium or method of communication, provided to the Contractor by the State or acquired by the Contractor on behalf of the State that is regarded as confidential under state or federal law shall be regarded as "Confidential Information." Nothing in this Section shall permit Contractor to disclose any Confidential Information, regardless of whether it has been disclosed or made available to the Contractor due to intentional or negligent actions or inactions of agents of the State or third parties. Confidential Information shall not be disclosed except as required or permitted under state or federal law. Contractor shall take all necessary steps to safeguard the

confidentiality of such material or information in conformance with applicable state and federal law.

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

- E.3. State Ownership of Goods. The State shall have ownership, right, title, and interest in all goods provided by Contractor under this Contract including full rights to use the goods and transfer title in the goods to any third parties.
- E.4. Intellectual Property Indemnity. The Contractor agrees to indemnify and hold harmless the State of Tennessee as well as its officers, agents, and employees from and against any and all claims or suits which may be brought against the State concerning or arising out of any claim of an alleged patent, copyright, trade secret or other intellectual property infringement. In any such claim or action brought against the State, the Contractor shall satisfy and indemnify the State for the amount of any settlement or final judgment, and the Contractor shall be responsible for all legal or other fees or expenses incurred by the State arising from any such claim. The State shall give the Contractor notice of any such claim or suit, however, the failure of the State to give such notice shall only relieve Contractor of its obligations under this Section to the extent Contractor can demonstrate actual prejudice arising from the State's failure to give notice. This Section shall not grant the Contractor, through its attorneys, the right to represent the State of Tennessee in any legal matter, as provided in Tenn. Code Ann. § 8-6-106.
- E.5. Prohibited Advertising or Marketing. The Contractor shall not suggest or imply in advertising or marketing materials that Contractor's goods or services are endorsed by the State. The restrictions on Contractor advertising or marketing materials under this Section shall survive the termination of this Contract.

**IN WITNESS WHEREOF,**

**TENNESSEE ASSOCIATION OF BROADCASTERS:**

---

**CONTRACTOR SIGNATURE**

**DATE**

---

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

**DEPARTMENT OF COMMERCE AND INSURANCE:**

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**JULIE MIX MCPEAK, COMMISSIONER**

**DATE**

1. Broadcast Medium:  X  Radio,  X  TV

2. Flight Start Date: June 1, 2019

3. Flight End Date: May 31, 2022

4. Total Net Consideration Owed to Association: \$1,000,000

5. Payment Terms: The NCSA/PEP Sponsor shall cause the Association to be paid in full the amount(s) specified on each Association monthly statement/invoice issued in connection with this Agreement within thirty (30) days of NCSA/PEP Sponsor's receipt of the Association's statements/invoices reciting that (i) the Association has performed under the Agreement during the time period covered by the pertinent statement/invoice, (ii) proof of broadcast, in a format described below, will be sent to the NCSA/PEP Sponsor as soon as practicable, but in no event later than forty-five (45) days after the date of the pertinent statement/invoice, and the total amount owed for the time period covered by the pertinent statement/invoice. The Association shall use its usual and customary efforts to obtain from each Station participating in this NCSA/PEP Program proof of broadcast in the form specified below, it being understood that the NCSA/PEP Sponsor agrees to be flexible with respect to the form of any proof of broadcast given that each station's participation in the NCSA/PEP Program is strictly voluntary.

6. Form of Proof of Broadcast: Summary Report and Station Affidavits

7. Maximum length of announcements with tag: 60 seconds

8. Minimum length of announcements with tag: 30 seconds

9. Format and Quantity of duplicate tapes:

Television	Radio	Language
<u>      </u> DVD Digital	<u>      </u> Compact Disk	<u> X </u> English Only
<u>      </u> HD	<u>      </u> Digital Audio	<u>      </u> English/Spanish
<u> X </u> MP4	<u> X </u> MP3	<u>      </u> Spanish Only
<u> X </u> Closed Captioned		

**ATTESTATION RE PERSONNEL USED IN CONTRACT PERFORMANCE**

<b>SUBJECT CONTRACT NUMBER:</b>	33501-191004
<b>CONTRACTOR LEGAL ENTITY NAME:</b>	Tennessee Association of Broadcasters
<b>EDISON VENDOR IDENTIFICATION NUMBER:</b>	91215

**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.**

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**CONTRACTOR SIGNATURE**

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

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**PRINTED NAME AND TITLE OF SIGNATORY**

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**DATE OF ATTESTATION**