



**STATE OF TENNESSEE  
DEPARTMENT OF TRANSPORTATION**

**COMMISSIONER'S OFFICE**  
SUITE 700, JAMES K. POLK BUILDING  
505 DEADERICK STREET  
NASHVILLE, TENNESSEE 37243-1402  
(615) 741-2848

**CLAY BRIGHT**  
COMMISSIONER

**BILL LEE**  
GOVERNOR

Krista Lee Carsner, Executive Director  
Fiscal Review Committee  
425 Fifth Avenue North  
Suite G, 102 Cordell Hull Building  
Nashville, TN 37243

RE: Sole Source Contract Request  
BEM Systems, Inc. Edison #63791

Dear Ms. Carsner,

The referenced sole source contract request is to provide continuing support, maintenance, and enhancement service for the Tennessee Department of Transportation Integrated Right-of-Way Information System (IRIS) software application. IRIS is used for managing the right-of-way process and associated property records as well as maintaining stringent budget controls. The right-of-way process is composed of many required functions including appraisal, acquisition, relocation, excess land, engineering, utilities, and railroads.

The Contractor, BEM Systems, Inc., was competitively selected through the RFP process to develop the customized IRIS application for TDOT based on its proprietary PAECETrak software. The purpose of this sole source contract is for the continuation of software support, maintenance, and enhancement development for TDOT's ongoing use of the IRIS software application.

This package contains the following materials as required by your office:

1. Supplemental Documentation Form required by the Committee.
2. STS Endorsement.
3. Approved Special Contract Request form.
4. Summary sheet for proposed contract.
5. Copy of proposed original contract.

Please advise if you have any questions or comments. Thank you for your consideration.

Sincerely,

A handwritten signature in black ink, appearing to read "Clay Bright", is written over a light blue horizontal line.

Clay Bright  
Commissioner

**CONTRACT REVIEW  
CHECKLIST EFFECTIVE 2018**

Proposed non-competitive contracts with a term of more than one year or which contain a provision to allow for extension by either party that would extend the contract beyond 12 months and which have a cumulative value of not less than \$250,000, including all possible extensions; and

Any amendment to a contract (meeting the \$250,000 and over one year threshold) *must* be presented to the Fiscal Review Committee (FRC), *60 days prior to the proposed effective date*, if it meets *any* of the following conditions:

- increases or decreases the maximum liability;
- extends or shortens the original term of the contract;
- changes the entity or name of the entity with which the state is contracting; or
- otherwise changes an original contract or amended contract in a substantive manner.

*If a department or agency is unsure if a contract or amendment meets the criteria of the FRC and should be submitted for review and commit, please contact the FRC staff for a determination.*

Use the following checklist to ensure copies of the proper documentation has been submitted to the FRC staff:

**SUMMARY LETTER**

- Detailing terms of contract or amendment and detailed justification of why the goods or services should be acquired through non-competitive negotiation.
- If request is submitted less than 60 days before effective date, a detailed explanation for why the request is late. **PLEASE NOTE: LATE SUBMISSIONS WILL BE ROLLED FOR ONE COMMITTEE MEETING AND PLACED LAST ON THE AGENDA.**

- SUPPLEMENTAL DOCUMENTATION FORM** – Form must be completely filled out with back-up documentation from Edison of total expenditures on the date submitted. No requests will be placed on the agenda if this form is not complete.

- N/A**  **APPROVED RULE EXCEPTION REQUESTS** (if appropriate)

- APPROVED OFFICE FOR INFORMATION RESOURCES (OIR), eHEALTH, OR HUMAN RESOURCES PRE-APPROVAL ENDORSEMENT REQUESTS** (if appropriate)

- SPECIAL CONTRACT REQUEST**

- SUMMARY SHEET FOR CONTRACT** (original or proposed)

- N/A**  **ANY REVISED SUMMARY SHEETS**

ORIGINAL CONTRACT

- If *new non-competitive contract*, actual language of the proposed contract (can be in draft form if necessary).

N/A  SUMMARY SHEET FOR EACH PRIOR AMENDMENT

N/A  ALL PRIOR EXECUTED AMENDMENTS

N/A  REQUEST FORM and SUMMARY SHEET FOR PROPOSED AMENDMENT

- If *new amendment*, actual language of the proposed amendment (can be in draft form if necessary).

N/A  COPY OF PERFORMANCE BOND IF REQUIRED IN THE CONTRACT (if performance bond must be renewed each year, a copy of the renewal)

N/A  ANY ADDITIONAL SUPPORTING DOCUMENTS

FULLY EXECUTED COPY OF FINAL DOCUMENT IMMEDIATELY UPON RECEIPT BY THE DEPARTMENT

**FRC STAFF COMMITTEE CONTACT INFORMATION:**

**Fiscal Review Committee  
Cordell Hull Building  
425 5th Avenue North, Suite G-102  
(615) 741-2564 (main line for FRC)  
[FiscalReviewRequest@capitol.tn.gov](mailto:FiscalReviewRequest@capitol.tn.gov)**

[www.capitol.tn.gov/joint/committees/fiscal-review/](http://www.capitol.tn.gov/joint/committees/fiscal-review/)

## Supplemental Documentation Required for Fiscal Review Committee

### **Instructions:**

1. No contract or contract amendment will be placed on the Committee's agenda for consideration until this form has been fully completed and all back-up documentation has been submitted.
2. Please complete each section as it applies to contracts or amendments that are being submitted. Sections denoted with an asterisk (\*) are considered mandatory. This information should provide for background information on previous actions, if applicable, that have taken place on the contract document and associated amendments.
3. Add rows as necessary.
4. Submit this document, any attachments, your summary letter, and contract documentation for review by the Fiscal Review Committee.
5. **Contact Name:** Enter first and last name of person to contact with questions about this document or any of the submitted information.
6. **Contact Number:** Enter the telephone number (including extension) of the contact person listed.
7. **Presenter's Name(s):** Enter the name of each person who will be presenting this request to the Committee.
8. **Edison Contract Number:** Enter the contract number issued by the Edison system for this document.
9. **RFS Number:** Enter the Edison system issued RFS number for this document.
10. **Original Contract Begin Date:** Enter the beginning date of the original contract or the proposed effective date for new contracts.
11. **Current End Date:** Enter the end date that is currently reflected in Section B.1. of this contract (prior to amendment request if applicable) or the proposed end date for new contracts.
12. **Current Requested Amendment Number:** Enter the amendment number (*if applicable*) that is currently being requested.
13. **Proposed Amendment Effective Date:** Enter the proposed effective date for the requested amendment (*if applicable*).
14. **Department Submitting:** Enter the title of the agency/department submitting this request.
15. **Division:** Enter the title of the division within the agency/department submitting this request.
16. **Date Submitted:** Enter the date the request was sent to Fiscal

Supplemental Documentation Required for  
Fiscal Review Committee

Review Committee staff.

17. **Submitted Within Sixty (60) days:** Enter yes or no in this blank if request was submitted within 60 days of the proposed effective date.
18. **If not, explain:** Provide detailed rationale as to why the deadline for submission was not met. **Please Note:** Late submissions will be rolled for one meeting and placed at the end of the agenda.
19. **Contract Vendor Name:** Enter the officially registered vendor name.
20. **Current or Proposed Maximum Liability:** Enter the dollar amount that is reflected on the most current fully executed contract summary sheet and in Section C. 1 or the proposed maximum liability for new contracts.
21. **For commodities contracts, Estimated Total Spend:** Enter the estimated total expenditures for the contract if the contract does not have a "maximum liability."
22. **Current Contract Allocation by Fiscal Year:** Enter the amounts reflected on the contract summary sheet and the corresponding FY. If no contract summary sheet, enter the estimated spend per fiscal year.  
**\*\*NOTE:** Total of all these columns must add up to maximum liability or estimated total spend as reported in Section 20 or 21 of this document.
23. **Current Total Expenditures by Fiscal Year:** By using Edison enter the amounts that have been expended from this contract by fiscal year breakdown. Not applicable (NA) for new contracts.
24. **Explanation of surplus funds:** If the allocation exceeded the expenditure in any fiscal year, enter the explanation of each surplus funding year.
25. **Explanation of carry forward:** If agency/department has carried forward the surplus funds, enter the authority (and provide copy with this document) of the carry forward provision.
26. **Explanation of overspending contract allocation:** If agency/department has overspent the contract allocation, enter the reasons for excess expenditures and how the funding was attained.
27. **Contract Funding Source/Amount:** Enter the dollar figure in the appropriate category to reflect the source of contract funding.
28. **If Other, please define:** If a dollar amount is placed in the "other" category, please define the source represented.
29. **If Interdepartmental, please define:** If a dollar amount is placed in the "interdepartmental" category, please define all sources represented.
30. **Dates of All Previous Amendments or Revisions:** Enter all dates of prior amendment and revision (*including Contract Summary Sheet revisions*) in this section.

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31. **Brief Description of Actions in Previous Amendment or Revision:** Enter a brief summary of prior amendments or revisions next to the appropriate effective date of the amendment (e.g. increased maximum liability, added scope items, revised contract summary sheet to reflect funding change, etc.).
32. **Method of Original Award:** Enter the procurement method of original award if requesting amendment (e.g. RFP, Special Request).
33. **Projected Cost Prior to Award and Cost Determination Used:** Enter the total cost projected by the department prior to award and explain how the agency arrived at the estimate of expected costs.
34. **For ALL new sole-source contracts, list the number of potential vendors that could provide the service or goods being procured and why those other options were not considered:** List the number of potential vendors that could provide this good or service; efforts to identify reasonable, competitive procurement alternatives; and how the Department determined a sole-source contract was in the best interest of the State.

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*Contact Name:	Leslie South, Deputy General Counsel	*Contact Phone:	615-741-2941		
*Presenter's name(s):	Joe Galbato, Deputy Commissioner and CFO Joe Kirk, CIO Brian Carroll, Legislative Director				
Edison Contract Number: <i>(if applicable)</i>	63791	RFS Number: <i>(if applicable)</i>	N/A		
*Original or Proposed Contract Begin Date:	07/01/2020	*Current or Proposed End Date:	06/30/2023		
Current Request Amendment Number: <i>(if applicable)</i>	N/A				
Proposed Amendment Effective Date: <i>(if applicable)</i>	N/A				
*Department Submitting:	Transportation				
*Division:	Information Technology				
*Date Submitted:					
*Submitted Within Sixty (60) days:	Yes				
<i>If not, explain:</i>	N/A				
*Contract Vendor Name:	BEM Systems, Inc.				
*Current or Proposed Maximum Liability:	\$837,600.00				
*Estimated Total Spend for Commodities:	N/A				
<b>*Current or Proposed Contract Allocation by Fiscal Year: (as Shown on Most Current Fully Executed Contract Summary Sheet)</b>					
FY: 2021	FY: 2022	FY: 2023	FY:	FY	FY
\$279,200.00	\$279,200.00	\$279,200.00	\$	\$	\$
<b>*Current Total Expenditures by Fiscal Year of Contract: (attach backup documentation from Edison)</b>					
FY:	FY:	FY:	FY:	FY	FY
\$	\$	\$	\$	\$	\$
IF Contract Allocation has been greater than Contract Expenditures, please give the reasons and explain where surplus funds were spent:		N/A			
IF surplus funds have been carried forward, please give the reasons and provide the authority for the carry forward provision:		N/A			
IF Contract Expenditures exceeded Contract Allocation, please give the reasons and explain how funding was acquired to pay the overage:		N/A			

Supplemental Documentation Required for  
Fiscal Review Committee

<b>*Contract Funding Source/Amount:</b>			
State:	\$837,600.00	Federal:	N/A
<i>Interdepartmental:</i>	N/A	<i>Other:</i>	N/A
If “ <i>other</i> ” please define:		N/A	
If “ <i>interdepartmental</i> ” please define:		N/A	
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>		RFP	
*What were the projected costs of the service for the entire term of the contract prior to contract award? How was this cost determined?		Projected costs are based upon costs under current contract and discussions with vendor. Costs are in line with current costs.	
*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.		BEM Systems, Inc. developed the Integrated Right-of-Way (IRIS) customized software application for TDOT after being awarded the original contract resulting from an RFP. This application is based upon the vendor’s proprietary software. After the expiration of the original contract, a sole source contract for continuing support, maintenance, and development was approved by the Committee, and that contract is set to expire on 06/30/2020 (Edison ID #53438). A new sole source contract is in the best interest of the State to allow TDOT to continue its use of this vital application and complete needed enhancements for the wide variety of functions that it manages.	



## STS Pre-Approval Endorsement Request E-Mail Transmittal

**TO :** STS Contracts  
Department of Finance & Administration  
E-mail : [it.abc@tn.gov](mailto:it.abc@tn.gov)

**FROM :** Mark D. Patterson  
E-mail : [mark.d.patterson@tn.gov](mailto:mark.d.patterson@tn.gov)

**DATE :** 9/20/2019 Received by STS on Friday, September 20, 2019

**RE :** Request for STS Pre-Approval Endorsement

**Applicable RFS # 40100-04420**

**State Security Confidential Information Applicability**

Under Tenn. Code Ann. §10-7-504(i) vendor identity or a description of the goods or services provided by the vendor shall be confidential.

- Applicable  
 Not Applicable

Additional language is attached and endorsement is contingent upon inclusion of this additional language:

- Applicable  
 Not Applicable

**STS Endorsement Signature & Date:**

**Stephanie Dedmon,** Digitally signed by Stephanie  
**CIO (WMH)** Dedmon, CIO (WMH)  
Date: 2019.09.30 11:47:38 -05'00'

**Chief Information Officer**

*NOTE: Proposed contract/grant support is applicable to the subject IT service technical merit.*

Strategic Technology Solutions (STS) pre-approval endorsement is required pursuant to procurement regulations pertaining to contracts with information technology as a component of the scope of service. This request seeks to ensure that STS is aware of and has an opportunity to review the procurement detailed below and in the attached document(s). This requirement applies to any procurement method regardless of dollar amount.

Please indicate STS endorsement of the described procurement (with the appropriate signature above), and return this document via e-mail at your earliest convenience.

**Contracting Agency**

**Transportation**

<b>Applicable RFS # 40100-04420</b>	
<b>Agency Contact</b> (name, phone, e-mail)	<b>Mark D. Patterson, 615-532-3010</b> <b><u>Mark.d.patterson@tn.gov</u></b>
<b>Attachments Supporting Request</b> (mark all applicable)	
<p>Note: The complete draft procurement document and the applicable documents listed below must accompany this request when submitted to STS. Special Contract Requests and Amendment Requests without Agency Head signature are acceptable. STS is aware that these documents will not have CPO signature when submitted with this request.</p>	
<input type="checkbox"/> Solicitation Document <input checked="" type="checkbox"/> Special Contract Request <input type="checkbox"/> Amendment Request <input type="checkbox"/> Proposed Contract/Grant or Amendment <input type="checkbox"/> Original Contract/Grant and Previous Amendments (if any)	
<b>Information Systems Plan (ISP) Project Applicability</b>	
<p>To avoid delay of STS pre-approval, the applicability of an ISP project to the procurement must be confirmed with agency IT staff prior to submitting this request to STS. If necessary, agency IT staff should contact STS Planning with questions concerning the need for an ISP project.</p>	
<p>IT Director/Staff Name Confirming (required):</p> <input type="checkbox"/> Applicable – Approved ISP Project# <input checked="" type="checkbox"/> Not Applicable	
<b>Subject Information Technology Service Description</b>	
<p>Provide a brief summary of the information technology services involved. Clearly identify included technologies such as system development/maintenance, security, networking, <i>etc.</i> As applicable, identify the contract or solicitation sections related to the IT services.</p>	
<p>The contract with BEM Systems Inc. is for the continuation of software support, maintenance and enhancement development for the TDOT Integrated Right-of-Way (ROW) Information System (IRIS) software application. This application consists of a full suite of BEM Systems' PAECETrak property acquisition and property management modules and includes the PAECETrak Utility Relocation system, UTrak. Additionally, IRIS integrates with a Geographic Information System (GIS). PACETrak is a Commercial Off-the-Shelf (COTS) application, proven to accelerate the clearing of ROW, successfully manage extensive property records, and maintaining stringent budget controls while delivering at-a-glance project transparency. PACETrak has been tailored to meet TDOT's specific business processes and workflow among the ROW functions, encompassing Appraisal, Acquisition, Relocation, Excess Land, Engineering, Utilities, and Railroads. TDOT's transition to a COTS ROW management system increases efficiency and improves project management capabilities.</p>	

**Attachment: STS Endorsement Conditions**  
**This STS endorsement is contingent upon modification of the procurement documents as described below.**

STS endorses with the understanding that the URL to the Enterprise Information Security Policies under A.2.c.(10).d. be replaced with the following URL:

<https://www.tn.gov/finance/strategic-technology-solutions/strategic-technology-solutions/sts-security-policies.html>

## Search/Fill in a Form

[Instructions](#) | [Form](#) | [Attachments](#)

**Seq #** 448

**SCR Technology**

**Subject** 40100 BEM Systems Inc

**Priority** 3-Standard

**Due Date**

**Status** Approved

**Approver Status**

**Agency Request Tracking#** 40100-044220

**Procuring Agency** 40100

**Edison Contract ID** 63781

**Proposed Contractor** BEM Systems Inc

### More Information

For continued support for the IRIS application required by TDOT for the clearing of ROW, managing associated property records and maintaining stringent budget controls.

[Return to Search](#)

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# Search/Fill in a Form

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Seq # 448

## SCR Technology

Subject 40100 BEM Systems Inc

### Download Templates

Description	Attached File
1	

[Personalize](#) | [Find](#) | [View All](#) | | | [First](#) | 1 of 1 | [Last](#)

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### Upload your attachments

Description	Attached File
1 BEM_SCR.pdf	BEM_SCR.pdf
2 Recommendation.pdf	Recommendation.pdf
3 BEM_Systems_-_STS_Pre-Approval	BEM_Systems_-_STS_Pre-ApprovalEndorsement_0 20 19.pdf

[Personalize](#) | [Find](#) | [View All](#) | | | [First](#) | 1-3 of 3 | [Last](#)

[Attach](#) | [Open](#)

[Attach](#) | [Open](#)

[Attach](#) | [Open](#)

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## 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](mailto:agsprs.agsprs@tn.gov).

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

<b>Request Tracking #</b>	<b>40100-044220</b>
<b>1. Contracting Agency</b>	<b>Transportation</b>
<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>	<b>Mark D. Patterson, 615-532-3010</b> <b><a href="mailto:Mark.d.patterson@tn.gov">Mark.d.patterson@tn.gov</a></b>
<b>4. Brief Goods or Services Caption</b>	<b>TDOT Integrated Right-of-Way (ROW) Information System (IRIS)</b>
<b>5. Description of the Goods or Services to be Acquired</b>	<b>The contract with BEM Systems Inc. is for the continuation of software support, maintenance and enhancement development for the TDOT Integrated Right-of-Way (ROW) Information System (IRIS) software application.</b>
<b>6. Proposed Contractor</b>	<b>BEM Systems, Inc.</b>
<b>7. Name &amp; Address of the Contractor's principal owner(s)</b> <i>- NOT required for a TN state education institution</i>	<b>BEM Systems, Inc.</b> <b>100 Passaic Ave.</b> <b>Chatham, NJ 07928</b>
<b>8. Proposed Contract Period</b> <i>- with ALL options to extend exercised</i> <i>The proposed contract start date shall follow the approval date of this request.</i>	<b>60 months</b>

Request Tracking #	40100-044220
9. Strategic Technology Solutions ("STS") Pre-Approval Endorsement Request – information technology (N/A to THDA)	<input type="checkbox"/> Not Applicable <input checked="" type="checkbox"/> Attached
10. eHealth Pre-Approval Endorsement Request – health-related professional, pharmaceutical, laboratory, or imaging	<input checked="" type="checkbox"/> Not Applicable <input type="checkbox"/> Attached
11. Human Resources Pre-Approval Endorsement Request – contracts with an individual, state employee training, or services related to the employment of current or prospective state employees	<input checked="" type="checkbox"/> Not Applicable <input type="checkbox"/> Attached
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.	<input checked="" type="checkbox"/> NO <input type="checkbox"/> YES,
13. Maximum Contract Cost – with ALL options to extend exercised	\$1,396,000.00
14. Was there an initial government estimate? If so, what amount?	<input type="checkbox"/> NO <input checked="" type="checkbox"/> YES, \$1,396,00.00
15. Cost Determination Used- How did agency arrive at the estimate of expected costs?	Quote from Contractor
16. Explanation of Fair and Reasonable Price- Explain how agency determined that price is fair and reasonable	Pricing similar to current BEM Systems IRIS contract, <u>Edison ID# 53438</u>
17. Documentation of Discussions with Contractor- How did agency document discussions with Contractor? Attach documentation to this request as applicable.	Email and phone conversations
18. Explanation of Need for or requirement placed on the State to acquire the goods or services	This is required to continue maintenance and support of the IRIS application and to complete needed enhancements.
19. Proposed contract impact on current State operations	This contract will allow for the continued support for the IRIS application, required by TDOT for the clearing of ROW, managing associated property records, and maintaining stringent budget controls. ROW functions are composed of many required functions including appraisal, acquisition, relocation, excess land, engineering, utilities, and railroads.

Request Tracking #	40100-044220
<p>20. <b>Justification</b> – Specifically explain why the goods or services should be acquired through the procurement method or contract type selected.</p>	<p>The contract with BEM Systems Inc. is for the continuation of software support, maintenance and enhancement development for TDOT's IRIS software application. BEM Systems is the sole source provider of the IRIS application and is the sole source provider for IRIS software support, maintenance and enhancement development.</p> <p>BEM Systems developed the TDOT IRIS application under a previous TDOT contract <u>beginning in 2012</u>. IRIS consists of a full suite of BEM Systems' PAECETrak property acquisition and property management modules and includes the PAECETrak Utility Relocation system, UTrak. PAECETrak has been tailored to meet TDOT's specific business processes and workflow among the ROW functions including appraisal, acquisition, relocation, excess land, engineering, utilities, and railroads.</p>
<b>For No Cost and Revenue Contracts Only</b>	
21. What costs will the State incur as a result of this contract? If any, please explain.	
22. What is the total estimated revenue that the State would receive as a result of this contract?	
23. Could the State also contract with other parties interested in entering substantially the same agreement? Please explain.	<input type="checkbox"/> NO <input type="checkbox"/> YES
24. Summary of State responsibilities under proposed contract	
<b>For Sole Source and Proprietary Procurements Only</b>	
25. Evidence of Contractor's experience & length of experience providing the goods or services to be procured.	<p>BEM was founded in 1990 and is an employee-owned consulting engineering and information management firm providing comprehensive environmental services to federal, state, and local government agencies. BEM also has a long history delivering successful information management systems. One of BEM Systems' specialties is ROW systems. BEM understands the importance of utilizing Information Technology and Geographic Information Systems (GIS) to streamline project execution and our client's business processes.</p>

Request Tracking #	40100-044220
<p>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.</p>	<p><input type="checkbox"/> NO    <input checked="" type="checkbox"/> YES,                  Method: RFP awarded to BEM Systems to develop IRIS based on its proprietary PAECETrak software.                  Name/Address:                  BEM Systems, Inc.                  100 Passaic Ave.                  Chatham, NJ 07928</p>
<p>27. Contractor selection process and efforts to identify reasonable, competitive, procurement alternatives</p>	<p>N/A, sole source provider of IRIS software support, maintenance and enhancement development.</p>
<p><b>Signature Required for all Special Contract Requests</b></p>	
<p>Signature of Agency head or authorized designee, title of signatory, and date (the authorized designee may sign his or her own name if indicated on the Signature Certification and Authorization document)</p> <p>Signature:  Date: </p>	

**TO:** Chris Salita, Director of Sourcing

**FROM:** Jennifer Garrison, Sourcing Account Specialist **Jennifer  
Garrison**

**DATE:** October 3, 019

**SUBJECT:** Recommendation of Special Contract Request 448

Digitally signed by  
Jennifer Garrison  
Date: 2019.10.03 14:41:42  
-05'00'

The Tennessee Department of Transportation is seeking a sole source procurement with BEM Systems, Inc. for the continuation of software support, maintenance and enhancement development for the TDOT Integrated Right-of-Way (ROW) Information System (IRIS) software application. The current application has been customized for TDOT's business processes and workflow. For compatibility of existing systems, continuity of results and the extensive training that would be required for a new system a sole source procurement is being requested.

I, Jennifer Garrison, recommend the approval of this sole source request.



# CONTRACT

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

<b>Begin Date</b> 7/1/2020	<b>End Date</b> 6/30/2023	<b>Agency Tracking #</b> 40100-04420	<b>Edison Record ID</b> 63791
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<b>Contractor Legal Entity Name</b> BEM Systems, Inc.	<b>Edison Vendor ID</b> 152256
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**Goods or Services Caption** (one line only)  
Integrated Right-of-Way Information System (IRIS)

<b>Contractor</b> <input checked="" type="checkbox"/> Contractor	<b>CFDA #</b>
---	---------------

Funding —					
FY	State	Federal	Interdepartmental	Other	TOTAL Contract Amount
2021	\$279,200.00				\$279,200.00
2022	\$279,200.00				\$279,200.00
2023	\$279,200.00				\$279,200.00
<b>TOTAL:</b>	<b>\$837,600.00</b>				<b>\$837,600.00</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)

<input type="checkbox"/> Competitive Selection	
<input checked="" type="checkbox"/> Other	Sole Source

**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) TX00211157	<b>Account Code</b> (optional) 72203000
---	--

Department ID:  
4026280000

UNSPSC:  
90131602

**CONTRACT  
BETWEEN THE STATE OF TENNESSEE,  
TENNESSEE DEPARTMENT OF TRANSPORTATION  
AND  
BEM SYSTEMS, INC.**

This Contract, by and between the State of Tennessee, Department of Transportation ("State") and BEM Systems, Inc. ("Contractor"), is for the provision of Integrated Right-of-Way Information System ("IRIS"), 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 For-Profit Corporation.  
Contractor Place of Incorporation or Organization: New Jersey  
Contractor Edison Registration ID # 152256

**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. This Contract is for the following Contractor services:

A.2.a IRIS Enhancements. IRIS software enhancements may be performed based on written Statements of Work ("SOW") issued by the State and accepted by the Contractor. Any software enhancements will be performed on the licensed, unaltered release of the software comprising IRIS Applications. A workflow and process for Software Enhancements can be found in Attachment A.

A.2.b. Statement of Work Process.

A.2.b.1. The State will provide the Contractor with a SOW describing the required services. The SOW will include, at a minimum, the following:

A.2.b.1.i. SOW Date;

A.2.b.1.ii. SOW Number;

A.2.b.1.iii. Description of the project;

A.2.b.1.iv. Required deliverables/milestones and meetings;

A.2.b.1.v. Project begin and end Dates;

A.2.b.1.vi. Location where project work will be performed;

A.2.b.1.vii. Hardware and software provided by the State, if applicable; and,

A.2.b.1.viii. Definition of completed work.

A.2.b.2. For services to be performed at a State facility, performance shall generally be done during normal State business hours (8:00 AM to 4:30 PM CT); excluding weekends and State holidays. However, the State may require that Contractor personnel perform work outside the normal State business hour timeframe. These hours will be mutually agreed to by the Parties; however, the State will

have final approval. A Contractor will not be compensated for overtime hours worked without prior approval and then only at the payment rate submitted in response to the related SOW.

- A.2.b.3. The State's SOW, and subsequent purchase order ("PO"), will be the sole authorization for the requested services. The State will not sign or accept Contractor/manufacture documents or agreements related to a specific services engagement.
  - A.2.b.4. The Contractor shall respond to the SOW with a detailed "Project Offer" that describes how the Contractor will accomplish the project, the SOW requested deliverables and milestones within the stated project time frame, any limitations at the location where the Project work will be performed, confirmation that necessary hardware and software provided by the State is applicable, and the total costs. The Project Offer must not have any terms and conditions.
  - A.2.b.5. The Contractor must accept SOW requests by email and must provide Project Offers by email as requested by the State. If the Project Offer will take longer than five (5) business days to compile, communication regarding the nature of the delay, along with a reasonable revised turnaround time request, must be sent within the five (5) business days window. Project Offers will remain in effect for thirty (30) calendar days and should not include any tax from which the State is exempt.
  - A.2.b.6. The State shall be the sole determinate of the acceptability of project work performed and delivered by the Contractor. The Contractor shall not invoice the State until the State has provided the Contractor with written confirmation that the Project work agreed to in the SOW is acceptable.
- A.2.c. IRIS Maintenance and Support. The Contractor shall provide annual maintenance and support for IRIS, including the following:
- (1) Support Availability. The Contractor shall have project management and support personnel available for phone and email consultation during the hours of 7am to 3pm CT, Monday through Friday, excluding State holidays.
  - (2) Software Versions and Documentation. The Contractor shall provide new versions of the software to keep the State abreast of the Contractor's current software product. Complete documentation of all IRIS enhancements or revisions shall be provided with new releases of software. Documentation must describe, in a user-friendly manner, what the user needs to know to understand each level on which the software operates. The documentation must specifically include documentation of the database, including data entity and attribute definitions, table and field names, data types, data sizes, business rules, and entity-relationship diagrams that depict all relationships between tables and fields in the database using industry and State standards. Software will be delivered to the State via the most convenient method to be determined by the State. The updated customized source code may also be requested by the State and must then be delivered by the Contractor.
  - (3) Remote Support. The Contractor may provide support remotely (i.e., not at the State project site) as long as the specific circumstances render such an approach reasonable. However, at the State's discretion, the State may require that IRIS maintenance and support be provided by Contractor personnel at the State's project site, if this is determined by the State to be in the best interest of the IRIS project.

- (4) Time Frames for Services. The Contractor shall correct all the IRIS-related errors and performance or operational delays. Contractor shall provide emergency maintenance services to correct code problems or any performance or operational problems related to the design or coding of the IRIS software.
- (5) Contractor Support Services.
- a. The Contractor shall provide web support (help desk ticket system) for reporting all IRIS issues. All issues reported through web support will be discussed during the weekly status meeting held between the Contractor and TDOT. The agenda for the weekly status meetings shall include, but are not limited to, discussions of issues reported through web support, reoccurring issues, upcoming projects, and updates on current projects.
  - b. The Contractor shall email the Tennessee Department of Transportation ("TDOT") bi-weekly reports on approved SOW projects. The report should include at a minimum: status update of work efforts since the approval of the project or the last bi-weekly report, known or foreseeable challenges, proactive steps taken by Contractor to offset challenges, request for TDOT assistance, and new goals set for the next bi-weekly report.
  - c. The Contractor will immediately notify TDOT of any delays that would cause the Contractor to not meet the project deadline established in the SOW. Failure to notify TDOT of an unmet deadline within a reasonable amount of time may result in a formal complaint in the Edison system. The Contractor together with TDOT will set a revised project deadline. If the second deadline is not met due to fault of the Contractor, the Contractor agrees to discount the total project cost by 10%.
  - d. The Contractor will make TDOT aware of new initiatives and/or enhancements started by other state department of transportation ("DOT") customers that may allow TDOT to gain optimal use of IRIS. While TDOT is not obligated to adopt other customers' initiatives or enhancements, it may choose to do so through the SOW process stated in Section A.2.b.

Contact for Services. The Contractor will be the initial contact point for all IRIS maintenance and support notifications and support requests, regardless of the perceived source of the problem, or whether the Contractor or a subcontractor/third party owns and/or directly maintains the faulty software. The Contractor may elect to have telephone or on-site repair or support services performed by subcontracted personnel; however, if this is the case, the Contractor shall be responsible for coordinating the effort so that the use of any third-party support is transparent to the State and so that the State shall not have to deal directly with the subcontractor.

- (5) Maintenance of Operations and Services during Work. The correction of errors, Defects or deficiencies shall not detract from or interfere with software maintenance or operational tasks.
- (6) Problems Not Caused by Contractor Fault. If Contractor personnel determine that the problem is not the fault of Contractor-provided software or hardware, then the Contractor shall notify State support personnel immediately. If the State agrees that the problem is due to software, hardware, or project management decisions that are the responsibility of the State, the State shall resolve the problem. However, in this case, if requested by the State, contractor personnel shall remain on-site and/or dedicated to the problem to perform any required joint

functions until the problem is resolved, and the State shall compensate the Contractor for the time the Contractor has to remain on site.

- (8) IRIS Applications Software Corrections and Compatibility Upgrades.
- a. Overview. The Contractor shall provide maintenance for the IRIS Applications that will consist of custom software defect corrections and IRIS Applications compatibility upgrades.
  - b. Definition. IRIS is a repository of Right of Way and utility data and documents providing the creation of working documents, generation of reports, and documentation of work processes. IRIS Applications maintenance for Custom Software defect corrections will entitle the State to the correction of a Contractor verified software Defect with the licensed, unaltered release of the custom software delivered as part of the IRIS Applications. There will be no set maximum limit on the number verified software Defects corrected, tested, and delivered to the State by the Contractor during the contract period. There will be no maximum limit on the number of hours spent by the Contractor necessary to correct verified software Defects. Software corrections will be delivered to the State via the most convenient method to be determined by the State. The updated customized source code may also be requested by the State and must then be delivered by the Contractor.
  - c. Compatibility Upgrades and New Development. Compatibility upgrades shall entitle the State to upgraded versions of the IRIS software to be compatible with the latest versions of State supported software. All new development shall be in the State's currently supported architecture.
    1. The Contractor shall maintain IRIS so that it will run on a current, manufacturer-supported Operating System. "Operating System" shall mean the software that supports a computer's basic functions, such as scheduling tasks, executing applications, and controlling peripherals.
    2. If IRIS requires middleware or database software, the Contractor shall maintain manufacturer-supported middleware and database software versions that are at all times fully compatible with current versions of IRIS and its Operating System, to ensure that security vulnerabilities are not introduced.
  - d. IRIS Security. The Contractor shall comply with the State of Tennessee's Enterprise Information Security Policies as amended periodically. The State of Tennessee's Enterprise Information Security Policies document is found at the following URL: <https://www.tn.gov/finance/strategic-technology-solutions/strategic-technology-solutions/sts-security-policies.html>
  - e. Prior to delivery to the State, the Contractor will test and verify at the Contractor's site that any new IRIS Applications are functional on the designated software platforms. There will be no set maximum limit on the number of software modifications necessary to make IRIS Applications functional on the State supported software platforms. The compatibility upgrades will be accomplished only at the direction of the State's Product

Owner and will not be accomplished unless the Product Owner directs the Contractor to do so.

- f. Issue/Bug Tracking. The Contractor shall provide Web access to an issue/bug tracking system so the State can submit and review the status of issues/bugs with IRIS Applications.
- A.3. Contractor Test Environment. The Contractor shall maintain a fully operational test version of the IRIS Applications which is as identical as possible to the State's production environment, at their primary business location.
- A.4. Contractor Readiness. The Contractor shall be prepared to start on the first SOW within thirty (30) days of the Effective Date.
- A.5. 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.6. Inspection and Acceptance. The State shall have the right to inspect all goods or services provided by Contractor under this Contract. If, upon inspection, the State determines that the goods or services are Defective, the State shall notify Contractor, and Contractor shall re-deliver the goods or provide the services at no additional cost to the State. If after a period of thirty (30) days following delivery of goods or performance of services the State does not provide a notice of any Defects, the goods or services shall be deemed to have been accepted by the State.
- A.7. Correction of Deficiencies. Any corrections of deficiencies relating to the Contract Scope of Services requirements or deliverables and any investigation necessary to determine the source of such deficiencies shall be completed by the Contractor at no cost to the State.

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

This Contract shall be effective on July 1, 2020 ("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.1. 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 eight hundred thirty-seven thousand, six hundred dollars and zero cents (\$837,600.00) ("Maximum Liability"). This Contract does not grant the Contractor any exclusive rights. The State does not guarantee that it will buy any minimum quantity of goods or services under this Contract. Subject to the terms and conditions of this Contract, the Contractor will only be paid for goods or services provided under this Contract after a purchase order is issued to Contractor by the State or as otherwise specified by this Contract.
- C.2. Compensation Firm. The payment methodology in Section C.3. of this Contract shall constitute the entire compensation due the Contractor for all goods or services provided under this Contract regardless of the difficulty, materials or equipment required. The payment methodology includes all applicable taxes, fees, overhead, and all other direct and indirect costs incurred or to be incurred by the Contractor.
- C.3. Payment Methodology. The Contractor shall be compensated based on the payment methodology for goods or services authorized by the State in a total amount as set forth in Section C.1.
- a. The Contractor's compensation shall be contingent upon the satisfactory provision of goods or services as set forth in Section A.
  - b. The Contractor shall be compensated based upon the following payment methodology:

Goods or Services Description	Amount (per compensable increment)		
	7/1/2020 – 6/30/2023	7/1/2023 – 6/30/2024	7/1/2024 – 6/30/2025
Annual IRIS Maintenance & Support, Including RWR Relocation Cost	\$8,683.33 per month	\$8,827.83 per month	\$8,975.25 per month
IRIS Enhancements- Hourly Payment Rate for Approved SOWs	\$108.15 per hour	\$111.00 per hour	\$115.00 per hour

- 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 Transportation  
Information Technology Division  
505 Deaderick Street, Suite 500  
Nashville, TN 37243

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

- (2) Only be submitted for goods delivered or services completed and shall not include any charge for future goods to be delivered or services to be performed;
    - (3) Not include Contractor's taxes, which includes without limitation Contractor's sales and use tax, excise taxes, franchise taxes, real or personal property taxes, or income taxes; and
    - (4) Include shipping or delivery charges only as authorized in this Contract.
  - c. The timeframe for payment (or any discounts) begins only when the State is in receipt of an invoice that meets the minimum requirements of this Section C.5.
- C.6. Payment of Invoice. A payment by the State shall not prejudice the State's right to object to or question any payment, invoice, or other matter. A payment by the State shall not be construed as acceptance of goods delivered, any part of the services provided, or as approval of any amount invoiced.
- C.7. Invoice Reductions. The Contractor's invoice shall be subject to reduction for amounts included in any invoice or payment that is determined by the State, on the basis of audits conducted in accordance with the terms of this Contract, to not constitute proper compensation for goods delivered or services provided.
- C.8. Deductions. The State reserves the right to deduct from amounts, which are or shall become due and payable to the Contractor under this or any contract between the Contractor and the State of Tennessee, any amounts that are or shall become due and payable to the State of Tennessee by the Contractor.
- C.9. Prerequisite Documentation. The Contractor shall not invoice the State under this Contract until the State has received the following, properly completed documentation.
  - a. The Contractor shall complete, sign, and present to the State the "Authorization Agreement for Automatic Deposit Form" provided by the State. By doing so, the Contractor acknowledges and agrees that, once this form is received by the State, payments to the Contractor, under this or any other contract the Contractor has with the State of Tennessee, may be made by ACH; and
  - b. The Contractor shall complete, sign, and return to the State the State-provided W-9 form. The taxpayer identification number on the W-9 form must be the same as the Contractor's Federal Employer Identification Number or Social Security Number referenced in the Contractor's Edison registration information.

**D. MANDATORY TERMS AND CONDITIONS:**

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

**The State:**

**Primary Contact:**

Van Colebank, Product Owner  
Tennessee Department of Transportation  
505 Deaderick Street, Suite 500  
Nashville, TN 37243  
[van.colebank@tn.gov](mailto:van.colebank@tn.gov)  
Telephone # 615-253-6423  
FAX # 615-401-7656

**Alternate Contacts (CC on all Communications):**

Mark D. Patterson, IT Business Services  
Tennessee Department of Transportation  
505 Deaderick Street  
Nashville, TN 37243  
[mark.d.patterson@tn.gov](mailto:mark.d.patterson@tn.gov)  
Telephone: 615-532-3010  
FAX: 615-401-7656

Jessica M. Starling, IT Business Services  
Tennessee Department of Transportation  
505 Deaderick Street  
Nashville, TN 37243  
[jessica.m.starling@tn.gov](mailto:jessica.m.starling@tn.gov)  
Telephone: 615-532-0025  
FAX: 615-401-7656

**The Contractor:**

Kerry Patton, Chief Financial Officer  
BEM Systems, Inc.  
500 Passaic Avenue  
Chatham, NJ 07928  
[kpatton@bemsys.com](mailto:kpatton@bemsys.com)  
Telephone: 908-598-2600 Ext. 124  
FAX: 908-598-2622

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

- D.3. **Modification and Amendment.** This Contract may be modified only by a written amendment signed by all Parties and approved by all applicable State officials.
- D.4. **Subject to Funds Availability.** The Contract is subject to the appropriation and availability of State or federal funds. In the event that the funds are not appropriated or are otherwise unavailable, the State reserves the right to terminate this Contract upon written notice to the Contractor. The State's exercise of its right to terminate this Contract shall not constitute a breach of Contract by the State. Upon receipt of the written notice, the Contractor shall cease all work associated with the Contract. If the State terminates this Contract due to lack of funds availability, the Contractor shall be entitled to compensation for all conforming goods requested and accepted by the State and for all satisfactory and authorized services completed as of the termination date. Should the State exercise its right to terminate this Contract due to unavailability of funds, the Contractor shall have no right to recover from the State any actual, general, special, incidental, consequential, or any other damages of any description or amount.
- D.5. **Termination for Convenience.** The State may terminate this Contract for convenience without cause and for any reason. The State shall give the Contractor at least thirty (30) days written notice before the termination date. The Contractor shall be entitled to compensation for all conforming goods delivered and accepted by the State or for satisfactory, authorized services completed as of the termination date. In no event shall the State be liable to the Contractor for

compensation for any goods neither requested nor accepted by the State or for any services neither requested by the State nor satisfactorily performed by the Contractor. In no event shall the State's exercise of its right to terminate this Contract for convenience relieve the Contractor of any liability to the State for any damages or claims arising under this Contract.

- D.6. Termination for Cause. If the Contractor fails to properly perform its obligations under this Contract in a timely or proper manner, or if the Contractor materially violates any terms of this Contract ("Breach Condition"), the State shall have the right to immediately terminate the Contract and withhold payments in excess of compensation for completed services or provided goods. Notwithstanding the above, the Contractor shall not be relieved of liability to the State for damages sustained by virtue of any Breach Condition and the State may seek other remedies allowed at law or in equity for breach of this Contract.
- D.7. Assignment and Subcontracting. The Contractor shall not assign this Contract or enter into a subcontract for any of the goods or services provided under this Contract without the prior written approval of the State. Notwithstanding any use of the approved subcontractors, the Contractor shall be the prime contractor and responsible for compliance with all terms and conditions of this Contract. The State reserves the right to request additional information or impose additional terms and conditions before approving an assignment of this Contract in whole or in part or the use of subcontractors in fulfilling the Contractor's obligations under this Contract.
- D.8. Conflicts of Interest. The Contractor warrants that no part of the Contractor's compensation shall be paid directly or indirectly to an employee or official of the State of Tennessee as wages, compensation, or gifts in exchange for acting as an officer, agent, employee, subcontractor, or consultant to the Contractor in connection with any work contemplated or performed under this Contract.

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

- D.9. Nondiscrimination. The Contractor hereby agrees, warrants, and assures that no person shall be excluded from participation in, be denied benefits of, or be otherwise subjected to discrimination in the performance of this Contract or in the employment practices of the Contractor on the grounds of handicap or disability, age, race, creed, color, religion, sex, national origin, or any other classification protected by federal or state law. The Contractor shall, upon request, show proof of nondiscrimination and shall post in conspicuous places, available to all employees and applicants, notices of nondiscrimination.
- D.10. Prohibition of Illegal Immigrants. The requirements of Tenn. Code Ann. § 12-3-309 addressing the use of illegal immigrants in the performance of any contract to supply goods or services to the state of Tennessee, shall be a material provision of this Contract, a breach of which shall be grounds for monetary and other penalties, up to and including termination of this Contract.
- a. The Contractor agrees that the Contractor shall not knowingly utilize the services of an illegal immigrant in the performance of this Contract and shall not knowingly utilize the services of any subcontractor who will utilize the services of an illegal immigrant in the performance of this Contract. The Contractor shall reaffirm this attestation, in writing, by submitting to the State a completed and signed copy of the document at Attachment A, semi-annually during the Term. If the Contractor is a party to more than one contract with the State, the Contractor may submit one attestation that applies to all contracts with the State. All Contractor attestations shall be maintained by the Contractor and made available to State officials upon request.

- b. Prior to the use of any subcontractor in the performance of this Contract, and semi-annually thereafter, during the Term, the Contractor shall obtain and retain a current, written attestation that the subcontractor shall not knowingly utilize the services of an illegal immigrant to perform work under this Contract and shall not knowingly utilize the services of any subcontractor who will utilize the services of an illegal immigrant to perform work under this Contract. Attestations obtained from subcontractors shall be maintained by the Contractor and made available to State officials upon request.
  - c. The Contractor shall maintain records for all personnel used in the performance of this Contract. Contractor's records shall be subject to review and random inspection at any reasonable time upon reasonable notice by the State.
  - d. The Contractor understands and agrees that failure to comply with this section will be subject to the sanctions of Tenn. Code Ann. § 12-3-309 for acts or omissions occurring after its effective date.
  - e. For purposes of this Contract, "illegal immigrant" shall be defined as any person who is not: (i) a United States citizen; (ii) a Lawful Permanent Resident; (iii) a person whose physical presence in the United States is authorized; (iv) allowed by the federal Department of Homeland Security and who, under federal immigration laws or regulations, is authorized to be employed in the U.S.; or (v) is otherwise authorized to provide services under the Contract.
- D.11. Records. The Contractor shall maintain documentation for all charges under this Contract. The books, records, and documents of the Contractor, for work performed or money received under this Contract, shall be maintained for a period of five (5) full years from the date of the final payment and shall be subject to audit at any reasonable time and upon reasonable notice by the State, the Comptroller of the Treasury, or their duly appointed representatives. The financial statements shall be prepared in accordance with generally accepted accounting principles.
- D.12. Monitoring. The Contractor's activities conducted and records maintained pursuant to this Contract shall be subject to monitoring and evaluation by the State, the Comptroller of the Treasury, or their duly appointed representatives.
- D.13. Progress Reports. The Contractor shall submit brief, periodic, progress reports to the State as requested.
- D.14. Strict Performance. Failure by any Party to this Contract to require, in any one or more cases, the strict performance of any of the terms, covenants, conditions, or provisions of this Contract shall not be construed as a waiver or relinquishment of any term, covenant, condition, or provision. No term or condition of this Contract shall be held to be waived, modified, or deleted except by a written amendment signed by the Parties.
- D.15. Independent Contractor. The Parties shall not act as employees, partners, joint venturers, or associates of one another. The Parties are independent contracting entities. Nothing in this Contract shall be construed to create an employer/employee relationship or to allow either Party to exercise control or direction over the manner or method by which the other transacts its business affairs or provides its usual services. The employees or agents of one Party are not employees or agents of the other Party.
- D.16. Patient Protection and Affordable Care Act. The Contractor agrees that it will be responsible for compliance with the Patient Protection and Affordable Care Act ("PPACA") with respect to itself and its employees, including any obligation to report health insurance coverage, provide health insurance coverage, or pay any financial assessment, tax, or penalty for not providing health insurance. The Contractor shall indemnify the State and hold it harmless from any costs to the

State arising from Contractor's failure to fulfill its PPACA responsibilities for itself or its employees.

- D.17. Limitation of State's Liability. The State shall have no liability except as specifically provided in this Contract. In no event will the State be liable to the Contractor or any other party for any lost revenues, lost profits, loss of business, decrease in the value of any securities or cash position, time, goodwill, or any indirect, special, incidental, punitive, exemplary or consequential damages of any nature, whether based on warranty, contract, statute, regulation, tort (including but not limited to negligence), or any other legal theory that may arise under this Contract or otherwise. The State's total liability under this Contract (including any exhibits, schedules, amendments or other attachments to the Contract) or otherwise shall under no circumstances exceed the Maximum Liability. This limitation of liability is cumulative and not per incident.
- D.18. Limitation of Contractor's Liability. In accordance with Tenn. Code Ann. § 12-3-701, the Contractor's liability for all claims arising under this Contract shall be limited to an amount equal to two (2) times the Maximum Liability amount detailed in Section C.1. and as may be amended, PROVIDED THAT in no event shall this Section limit the liability of the Contractor for: (i) intellectual property or any Contractor indemnity obligations for infringement for third-party intellectual property rights; (ii) any claims covered by any specific provision in the Contract providing for liquidated damages; or (iii) any claims for intentional torts, criminal acts, fraudulent conduct, or acts or omissions that result in personal injuries or death.
- 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 for the affected obligations until Contractor resumes performance of the affected obligations; or (b) immediately terminate this Contract or any purchase order, in whole or in part, without further payment except for fees then due and payable. Contractor will not increase its charges under this Contract or charge the State any fees other than those provided for in this Contract as the result of a Force Majeure Event.

- D.25. State and Federal Compliance. The Contractor shall comply with all State and federal laws and regulations applicable to Contractor in the Contractor's performance of this Contract.
- D.26. Governing Law. This Contract shall be governed by and construed in accordance with the laws of the State of Tennessee, without regard to its conflict or choice of law rules. The Tennessee Claims Commission or the state or federal courts in Tennessee shall be the venue for all claims, disputes, or disagreements arising under this Contract. The Contractor acknowledges and agrees that any rights, claims, or remedies against the State of Tennessee or its employees arising under this Contract shall be subject to and limited to those rights and remedies available under Tenn. Code Ann. §§ 9-8-101 - 408.
- D.27. Entire Agreement. This Contract is complete and contains the entire understanding between the Parties relating to its subject matter, including all the terms and conditions of the Parties' agreement. This Contract supersedes any and all prior understandings, representations, negotiations, and agreements between the Parties, whether written or oral.
- D.28. Severability. If any terms and conditions of this Contract are held to be invalid or unenforceable as a matter of law, the other terms and conditions of this Contract shall not be affected and shall remain in full force and effect. The terms and conditions of this Contract are severable.
- D.29. Headings. Section headings of this Contract are for reference purposes only and shall not be construed as part of this Contract.
- D.30. Incorporation of Additional Documents. Each of the following documents is included as a part of this Contract by reference. In the event of a discrepancy or ambiguity regarding the Contractor's duties, responsibilities, and performance under this Contract, these items shall govern in order of precedence below:
- a. any amendment to this Contract, with the latter in time controlling over any earlier amendments;
  - b. this Contract with any attachments or exhibits (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 in an amount not less than one million dollars (\$1,000,000) including employer liability of one million dollars (\$1,000,000) per accident for bodily injury by accident, one million dollars (\$1,000,000) policy limit by disease, and one million dollars (\$1,000,000) per employee for bodily injury by disease.
- 2) If the Contractor certifies that it is exempt from the requirements of Tenn. Code Ann. §§ 50-6-101 – 103, then the Contractor shall furnish written proof of such exemption for one or more of the following reasons:
  - i. The Contractor employs fewer than five (5) employees;

- ii. The Contractor is a sole proprietor;
- iii. The Contractor is in the construction business or trades with no employees;
- iv. The Contractor is in the coal mining industry with no employees;
- v. The Contractor is a state or local government; or
- vi. The Contractor self-insures its workers' compensation and is in compliance with the TDCI rules and Tenn. Code Ann. § 50-6-405.

c. Automobile Liability Insurance

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

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

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

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

**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. Transfer of Ownership of Custom Software Developed for the State.

a. Definitions.

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

- (2) "Custom-Developed Application Software," shall mean customized application software developed by Contractor for the State under this Contract intended to function with the Contractor-Owned Software or any Work Product provided under this Contract.
- (3) "Rights Transfer Application Software," shall mean any pre-existing application software and documentation owned or supplied by Contractor or a third party necessary for the use, functioning, support, or maintenance of the Contractor-Owned Software, the Custom-Developed Application Software, Third Party Software, and any Work Product provided to State.
- (4) "Third-Party Software," shall mean software supplied by Contractor under this Contract or necessary for the functioning of any Work Product not owned by the State or the Contractor.
- (5) "Work Product," shall mean all deliverables such as software, software source code, documentation, planning, etc., that are created, designed, developed, or documented by the Contractor for the State under this Contract. Work Product shall include Rights Transfer Application Software.

b. Rights and Title to the Software

- (1) All right, title and interest in and to the Contractor-Owned Software shall at all times remain with Contractor, subject to any license or transfer of rights or ownership granted under this Contract. Contractor grants the State a perpetual non-exclusive license to the Contractor-Owned Software to be used solely with the Custom-Developed Application Software and the Work Product.
- (2) Contractor shall provide the source code in the Custom-Developed Application Software, Work Product and the Contractor-Owned Software, with all subsequent modifications, enhancements, bug-fixes or any other changes in the source code of the Work Product and the Contractor-Owned Software and all other code and documentation necessary for the Custom-Developed Application Software to be installed and function as intended and as set forth in this Contract, to the State.
- (3) Contractor may lease or sell the Custom-Developed Application Software to third parties with the written permission of the State, which permission may be conditioned on the State receiving royalties from such sales or licenses.
- (4) All right, title and interest in and to the Custom-Developed Application Software, and to modifications thereof made by State, including without limitation all copyrights, patents, trade secrets and other intellectual property and other proprietary rights embodied by and arising out of the Custom-Developed Application Software, shall belong to State. To the extent such rights do not automatically belong to State, Contractor hereby assigns, transfers, and conveys all right, title and interest in and to the Custom-Developed Application Software, including without limitation the copyrights, patents, trade secrets, and other intellectual property rights arising out of or embodied by the Custom-Developed Application Software. Contractor and its employees, agents, contractors or representatives shall execute any other documents that State or its counsel deem necessary or desirable to document this transfer or allow State to register its claims and rights to such intellectual property rights or enforce them against third parties.

- (5) All right, title and interest in and to the Third-Party Software shall at all times remain with the third party, subject to any license or other rights granted to the State under this Contract or otherwise.
- c. The Contractor may use for its own purposes the general knowledge, skills, experience, ideas, concepts, know-how, and techniques obtained and used during the course of performing under this Contract. The Contractor may develop for itself, or for others, materials which are similar to or competitive with those that are produced under this Contract.
- E.3. Software Support and Maintenance Warranty. Contractor shall provide to the State all software upgrades, modifications, bug fixes, or other improvements in its software that it makes generally available to its customers.
- E.4. Extraneous Terms and Conditions. Contractor shall fill all orders submitted by the State under this Contract. No purchase order, invoice, or other documents associated with any sales, orders, or supply of any good or service under this Contract shall contain any terms or conditions other than as set forth in the Contract. Any such extraneous terms and conditions shall be void, invalid and unenforceable against the State. Any refusal by Contractor to supply any goods or services under this Contract conditioned upon the State submitting to any extraneous terms and conditions shall be a material breach of the Contract and constitute an act of bad faith by Contractor.
- E.5. State Furnished Property. The Contractor shall be responsible for the correct use, maintenance, and protection of all articles of nonexpendable, tangible personal property furnished by the State for the Contractor's use under this Contract. Upon termination of this Contract, all property furnished by the State shall be returned to the State in the same condition as when received, less ordinary wear and tear. Should the property be destroyed, lost, or stolen, the Contractor shall be responsible to the State for the fair market value of the property at the time of loss.
- E.6. 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.
- E.7. Lobbying. The Contractor certifies, to the best of its knowledge and belief, that:
- a. No federally appropriated funds have been paid or will be paid, by or on behalf of the Contractor, to any person for influencing or attempting to influence an officer or employee of an agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.
- b. If any funds other than federally appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with any contract, grant, loan, or cooperative agreement, the Contractor shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
- c. The Contractor shall require that the language of this certification be included in the award documents for all sub-awards at all tiers (including subcontracts, sub-grants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

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

- E.8. 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.9. Software License Warranty. Contractor grants a license to the State to use all software provided under this Contract in the course of the State's business and purposes.

**IN WITNESS WHEREOF,**

**BEM SYSTEMS, INC.:**

Kerry Patton 10/24/19  
**CONTRACTOR SIGNATURE** **DATE**

Kerry Patton CFO  
**PRINTED NAME AND TITLE OF CONTRACTOR SIGNATORY (above)**

**TENNESSEE DEPARTMENT OF TRANSPORTATION:**

\_\_\_\_\_  
**CLAY BRIGHT, COMMISSIONER** **DATE**

\_\_\_\_\_  
**JOHN REINBOLD, GENERAL COUNSEL** **DATE**  
**APPROVED AS TO FORM AND LEGALITY**

## ATTESTATION RE PERSONNEL USED IN CONTRACT PERFORMANCE

SUBJECT CONTRACT NUMBER:	63791
CONTRACTOR LEGAL ENTITY NAME:	BEM Systems, Inc.
EDISON VENDOR IDENTIFICATION NUMBER:	0000152256

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.

*Kerry Patton*

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.

*Kerry Patton CFO*

PRINTED NAME AND TITLE OF SIGNATORY

*10/24/19*

DATE OF ATTESTATION