

STATE OF TENNESSEE



DAVID H. LILLARD, JR.
STATE TREASURER

TREASURY DEPARTMENT

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STATE CAPITOL
NASHVILLE, TENNESSEE 37243-0225

Sender's telephone: 615.770.1754
Sender's email: heather.iverson@tn.gov

July 31, 2020

Fiscal Review Committee
The Honorable Ron Travis, Chair
The Honorable Todd Gardenhire, Vice-Chair
G-102 Cordell Hull Building
425 5th Avenue North
Nashville, Tennessee 37243

To the Distinguished Members of the Fiscal Review Committee,

The Department of Treasury respectfully requests to enter into a new contract with Avenu Unclaimed Property Systems, LLC ("Avenu") for support and maintenance services for the Department's unclaimed property management system; supplemental claims processing services; and call center services. Because the system is proprietary, Avenu is the only contractor that can provide these services with respect to the system. The current contract for maintenance and support expires in mid-October 2020, and the current contract for supplemental claims processing and call center services expires in September 2021. The Department desires to combine these into one (1) contract to make it more efficient to competitively bid out these services in an upcoming RFP.

Thank you for your consideration of this request. If you need additional information, please contact me.

Sincerely,

Heather Iverson,
Legal Services Director

Supplemental Documentation Required for
Fiscal Review Committee

Supplemental Documentation Required for
Fiscal Review Committee

*Contact Name:	Heather Iverson	*Contact Phone:	615-770-1754
*Presenter's name(s):	Steve Summerall		
Edison Contract Number: <i>(if applicable)</i>		RFS Number: <i>(if applicable)</i>	
*Original or Proposed Contract Begin Date:	October 15, 2020	*Current or Proposed End Date:	October 14, 2023
Current Request Amendment Number: <i>(if applicable)</i>			
Proposed Amendment Effective Date: <i>(if applicable)</i>			
*Department Submitting:	Department of Treasury		
*Division:	Unclaimed Property		
*Date Submitted:	July 31, 2020		
*Submitted Within Sixty (60) days:	Yes		
<i>If not, explain:</i>			
*Contract Vendor Name:	Avenu Unclaimed Property Systems, LLC		
*Current or Proposed Maximum Liability:	\$7,000,000.00		
*Estimated Total Spend for Commodities:			
*Current or Proposed Contract Allocation by Fiscal Year: (as Shown on Most Current Fully Executed Contract Summary Sheet)			
FY: 2021	FY: 2022	FY: 2023	FY:2024
\$2,000,000	\$2,000,000	\$2,000,000	\$1,000,000
*Current Total Expenditures by Fiscal Year of Contract: (attach backup documentation from Edison)			
FY: 2021	FY: 2022	FY: 2023	FY:2024
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	N/A		

Supplemental Documentation Required for
Fiscal Review Committee

was acquired to pay the overage:			
*Contract Funding Source/Amount:			
State:		Federal:	
<i>Interdepartmental:</i>		<i>Other:</i>	100%
If “ <i>other</i> ” please define:		All program funds come from unclaimed property located by the program and its vendors. Under T.C.A. §§ 66-29-146 and 66-29-148, the Department may withhold sufficient funds from its transfer to the general fund each year to pay for administrative expenses.	
If “ <i>interdepartmental</i> ” please define:			
Dates of All Previous Amendments or Revisions: <i>(if applicable)</i>		Brief Description of Actions in Previous Amendments or Revisions: <i>(if applicable)</i>	
Method of Original Award: <i>(if applicable)</i>		Sole Source Special Contract Request	
*What were the projected costs of the service for the entire term of the contract prior to contract award? How was this cost determined?		The projected costs of the service for the initial three (3) year term of the contract were \$7,00,000. The Department based its expenditure projections on past history with this contractor.	
*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.		There are no other vendors which can provide these services. This vendor owns the computer system and is the only vendor that can provide improvements, enhancements and properly maintain the system. Further, because this vendor owns the proprietary system, it is the only vendor that can access the system to provide claims processing and call center services.	

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.

Upload the completed document and route for approvals by selecting the appropriate SCR e-Form type in Edison. For additional guidance, please see the Special Contracts Request e-Form Job Aid available online at the following: <https://www.teamtn.gov/cpo/learning-development/cpo-job-aids.html>.

APPROVED [Upload this SCR to e-Forms in Edison. Approvals will be captured in Edison Workflow.]	APPROVED [Upload this SCR to e-Forms in Edison. Approvals will be captured in Edison Workflow.]
CHIEF PROCUREMENT OFFICER DATE	COMPTROLLER OF THE TREASURY DATE

Approval of the SCR does not constitute approval of the final contract.

Request Tracking #	30901-47721
1. Contracting Agency	Department of Treasury
2. Type of Contract or Procurement Method	<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 _____
3. Requestor Contact Information	Dawn Rochelle 615-253-8770 Dawn.rochelle@tn.gov
4. Brief Goods or Services Caption	Unclaimed property database maintenance; supplemental claims processing; and call center services
5. Description of the Goods or Services to be Acquired	The contractor will provide maintenance and support for the unclaimed property database and website, both of which the contractor developed. The contractor will also process claims for the Unclaimed Property Division as well as answer calls.
6. Proposed Contractor	Avenu Unclaimed Property Systems, LLC

Request Tracking #	30901-47721
7. Name & Address of the Contractor's principal owner(s) – NOT required for a TN state education institution	Avenu Unclaimed Property Systems, C David Lemoine 100 Hancock Street, 10th Floor Quincy, Massachusetts 02171
8. Proposed Contract Period – with ALL options to extend exercised <i>The proposed contract start date shall follow the approval date of this request.</i>	36 months
9. Strategic Technology Solutions (“STS”) Pre-Approval Endorsement Request – information technology (N/A to THDA)	<input checked="" type="checkbox"/> Not Applicable <input 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	\$ 7,000,000.00
14. Was there an initial government estimate? If so, what amount?	<input type="checkbox"/> NO <input checked="" type="checkbox"/> YES, \$7,000,000
15. Cost Determination Used- How did agency arrive at the estimate of expected costs?	The Department arrived at the cost estimate based on discussions with the contractor and other services obtained from the contractor.
16. Explanation of Fair and Reasonable Price- Explain how agency determined that price is fair and reasonable	The Department compared the quoted cost with that of its other support services.
17. Documentation of Discussions with Contractor- How did agency document discussions with Contractor? Attach documentation to this request as applicable.	Emails
18. Explanation of Need for or requirement placed on the State to acquire the goods or services	The Department must have a robust electronic system for managing the unclaimed property program, which is required by law. In addition, as the number of claims has increased significantly over the last several years, it is important that the Department requires external sources to process those additional claims.
19. Proposed contract impact on current State operations	The contract will allow the Department to continue, uninterrupted, utilizing the system and the contractor's claims processing services.

Request Tracking #	30901-47721
<p>20. Justification – Specifically explain why the goods or services should be acquired through the procurement method or contract type selected.</p>	<p>In 2019, the Department issued an RFI for comprehensive unclaimed property management services. Two (2) vendors responded, including this contractor. The Department’s goal is to release an RFP for these services in the next several months. Given the extensive time it would take to transition in the event another vendor were the best evaluated proposer, the Department wishes to continue the relationship with the current vendor for thirty-six (36) months, which should allow time for the Department to issue the RFP, evaluate proposals and accomplish a transition, if necessary.</p> <p>In order to effectuate the release of a comprehensive RFP, this contract combines the two key services provided by this contractor (currently under two contracts). The supplemental claims processing services contract currently does not expire until September 2021. Should this contract be approved, the Department will terminate the existing contract.</p>
For No Cost and Revenue Contracts Only	
<p>21. What costs will the State incur as a result of this contract? If any, please explain.</p>	
<p>22. What is the total estimated revenue that the State would receive as a result of this contract?</p>	
<p>23. Could the State also contract with other parties interested in entering substantially the same agreement? Please explain.</p>	<input type="checkbox"/> NO <input type="checkbox"/> YES
<p>24. Summary of State responsibilities under proposed contract</p>	
For Sole Source and Proprietary Procurements Only	
<p>25. Evidence of Contractor’s experience & length of experience providing the goods or services to be procured.</p>	<p>The contractor has provided services to the Department’s Unclaimed Property Division for over twenty (20) years and is one of the leaders in the unclaimed property industry.</p>
<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>	<input checked="" type="checkbox"/> NO <input checked="" type="checkbox"/> YES,

Request Tracking #	30901-47721
27. Contractor selection process and efforts to identify reasonable, competitive, procurement alternatives	Sole source. This contractor owns the proprietary system used by the Department and is the only company that can provide maintenance to that system. Putting this contract in place will give the Department time to move forward with a competitive procurement.
Signature Required for all Special Contract Requests	
<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) [Either upload signed SCR in Edison or capture authorized agency approval in Edison Workflow.]</p>	
Signature: _____	Date: _____



CONTRACT

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

Begin Date October 15, 2020	End Date October 14, 2023	Agency Tracking # 30901-47721	Edison Record ID
Contractor Legal Entity Name Avenu Unclaimed Property Systems, LLC			Edison Vendor ID 229059

Goods or Services Caption (one line only)
Maintenance and support for unclaimed property system and claims processing

Contractor <input checked="" type="checkbox"/> Contractor	CFDA #
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Funding —					
FY	State	Federal	Interdepartmental	Other	TOTAL Contract Amount
2021				\$2,000,000.00	\$2,000,000.00
2022				\$2,000,000.00	\$2,000,000.00
2023				\$2,000,000.00	\$2,000,000.00
2024				\$1,000,000.00	\$1,000,000.00
TOTAL:				\$7,000,000.00	\$7,000,000.00

Contractor Ownership Characteristics:

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

Woman Business Enterprise (WBE)

Tennessee Service Disabled Veteran Enterprise (SDVBE)

Disabled Owned Business (DSBE)

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

Government Non-Minority/Disadvantaged Other:

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

Competitive Selection

Other 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.

Speed Chart (optional)	Account Code (optional)
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**CONTRACT
BETWEEN THE STATE OF TENNESSEE,
DEPARTMENT OF TREASURY
AND
AVENU UNCLAIMED PROPERTY SYSTEMS, LLC**

This Contract, by and between the State of Tennessee, Department of Treasury ("State") and Avenu Unclaimed Property Systems, LLC ("Contractor"), is for the provision of unclaimed property services, 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 Limited Liability Company.
Contractor Place of Incorporation or Organization: Virginia
Contractor Edison Registration ID # 229059

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.

SOFTWARE MAINTENANCE

A.2. System Maintenance; Problem Resolution; Consulting Services; and Training. The "System" consists of the UPS2000 application, the Holder Reporting web application and the eClaims web application.

- a. Maintenance. The Contractor shall maintain the System at or above the "Operative" level (i.e., functions in accordance with the documentation and technical specifications for the System as set forth in the Statement of Work incorporated herein by reference as "Attachment 1") and shall furnish to the State the following support and services:
- (1) Incorporate any improvements, enhancements and new releases of the System developed by the Contractor that are generally made available to other licensees of the System along with the explanatory reference documentation. Such modified software shall not degrade current performance levels and in all respects shall be compatible with then-existing State business uses for the System. Documentation of the existing System shall be changed as necessary for purposes of removing errors, providing consistency of interpretation and/or documenting improvements. All such improvements, enhancements and new releases shall be considered part of the System.
 - (2) Provide to the State updates to any portions of the System released at no cost to the Contractor by other software suppliers (such as Seagate Crystal Reports). Such updates shall be tested by the Contractor prior to furnishing the same to the State.
 - (3) Provide access to the Contractor's online support documentation via the Contractor's website.
 - (4) Provide ability to download updates System components from the Contractor's website.
 - (5) Diagnose, verify, and correct errors, malfunctions and defects in the System. However, if such System errors or malfunctions are a direct result of either an act or omission by the State or of any act or event beyond the control of the Contractor that could not be avoided by the exercise of due care, the State shall pay the Contractor for its services rendered in analyzing the error or malfunction in accordance with Section A.5 of this Contract. At the State's request, the Contractor shall correct any

System error or malfunction caused by the State or by the act or event beyond the control of the Contractor and, upon correction of the error or malfunction, the State shall pay the Contractor for such services in accordance with the change order procedures prescribed in Section A.4. of this Contract below.

- (6) Provide the NAUPA File Encryption Utility to the State.
 - (7) Provide to the State registration to Web-ex meetings hosted by the Contractor for the purpose of providing training and information sharing.
 - (8) On an annual basis, provide to the State two (2) user registrations to personally attend user training conferences as may be hosted by the Contractor.
- b. Problem Resolution. The State shall notify the Contractor of a System problem by entering a request on the Contractor's YouTrack or similar website. If the problem is critical, the State shall also notify the Contractor by telephone. The contractor shall reply to the State within twenty-four (24) hours after notification by the State. The response shall include an estimated date on which the problem will be corrected. The State shall submit to the Contractor a listing of output and all such other data which the Contractor reasonably may request in order to reproduce operating conditions similar to those present when the System problem occurred. The Contractor shall correct the problem within a reasonable period of time, unless the problem is critical or unless the State requests priority correction of the problem. If the problem is critical or if the State requests priority correction of the problem, the Contractor shall give the problem its highest priority and use commercially reasonable efforts to correct the problem within twenty-four (24) hours after the Contractor received from the State a listing of output and other data as described above. Where the problem cannot be corrected within twenty-four (24) hours, a plan and schedule for resolution shall be provided to the State by the Contractor. A problem shall be deemed critical if there is no means of temporary circumvention ("work-around") of the problem and the problem either (i) prevents the System from operating or (ii) prevents State personnel from performing their assigned tasks. If the State requests priority correction of a non-critical problem, the Contractor shall be compensated at the applicable rate set forth in Section C.3 below.
- c. Consulting. The Contractor shall provide to the State off-site telephone support in the form of consultation, assistance and advice on the use and maintenance of the System. The Contractor and the State shall from time to time designate a telephone number for a Maintenance and Consulting Contact Point. The State shall have the right to call such telephone number for assistance with the use or maintenance of the System from 8:00 a.m. Eastern Time until 7:00 p.m. Eastern Time Monday through Friday. Such technical support shall also be available to the State at additional times and dates provided the particular support services are prearranged by the Parties.
- d. Training. The Contractor shall, at the State's request, provide five (5) days per year of on-site training services to the State relative to the operation and use of the System. The training shall occur on such dates and at such times as shall be mutually agreed to by the Parties. The State shall provide office space for use by State and Contractor personnel. The State's commitment to provide office space applies only to the Contractor staff required to carry out the training services. Space will be provided to the Contractor at the Andrew Jackson State Office Building; 502 Deaderick Street; Nashville, Tennessee.
- e. State Telephone Contacts. The State shall designate from time to time one person who shall be responsible for coordinating requests for services under this Contract. At the State's discretion, the State may designate two (2) additional persons who may

coordinate requests for services hereunder. When appropriate, the Contractor shall work with other State personnel to explain the System and solve problems.

- f. The Contractor shall upgrade the UPS2000 System to provide Level One Match, Level Two Basic Verification and Level Three Authentication through the Contractor's web service, as more fully described in the Contractor's proposal attached hereto as Attachment 2. The State shall not be obligated to pay the amounts indicated in Section C.3.d. below until the State has provided to the Contractor written approval of the implementation of the web service.
- A.3. User Licenses. The Contractor shall provide the State with one hundred (100) user licenses for the System at no additional charge to the State. The Contractor's own users shall not require a license. Each license is non-exclusive, limited, and non-sublicensable. Such licenses do not include the Source Code. The State may not use any of the Source Code for any Component Systems for which the State is not expressly obtaining a license for use under this Contract. Any rights not expressly granted in this Contract are expressly reserved. "Source Code" means computer programs written in higher-level programming languages, sometimes accompanied by English language comments and other programmer documentation, and "Component Systems" means any portion of the System, including all copies of the object code and all related specifications, documentation, technical information, and all corrections, modifications, additions, improvements and enhancements to and all intellectual property rights for such Component System. The State is prohibited from causing or permitting the reverse engineering, disassembly or decompilation of the System. The State will not allow the System, in whole or in part, to be exported outside the United States of America, in any manner or by any means, without in each instance obtaining the Contractor's prior written consent and, if required, a validated export license from the Bureau of Industry and Security within the U.S. Department of Commerce and such other appropriate United States governmental authorities. The State is prohibited from removing or altering any of the intellectual property rights notices embedded in or that the Contractor otherwise provides with the System.

A.4. Change Orders.

- a. Scope. The State may at any time, with written notice to the Contractor, request changes within the general scope of this Contract, without a formal amendment of this Contract. Such changes may include changes to the System or Website as are required in order to conform to State or federal regulations, rules, statutes and court interpretations thereof involving unclaimed property and accounting, and such changes as are necessary due to State personnel changes (e.g., new State Treasurer or Unclaimed Property Director name on claim forms and correspondence). Other changes might involve System or Website customization for State specific tasks, development of custom System or Website reports, modifying System or Website functions and workflow, changing claims payment formats, and correcting and troubleshooting NAUPA files. All such changes and enhancements, once made, shall be considered part of the System or Website, as applicable, thereby entitling the State to the maintenance and support services described in Sections A.2 and A.3 above with respect to such changes and enhancements.
- b. 175 Hours Included. The Contractor agrees to provide up to one hundred fifty (175) hours annually of such changes to the system, including any training, consulting or testing that the State may request relative to such changes, at no charge during the term of this Contract. The State acknowledges that these hours cannot be carried over to the following year without mutual agreement of the Parties by October 14th of the respective year. Otherwise, the unused hours for that year are forfeited. Any such agreement shall be reduced to writing and signed by the respective Parties without a formal amendment of this Contract. Any correction of System deficiencies and any capabilities required in this Contract are the Contractor's responsibility to make without charge to the State and shall not be included within the above free hours, provided such deficiencies were not as a result of the State's errors. If the problem requiring the change is due to System deficiencies or any capabilities required in this

Contract and not as a direct result of the State's errors, any investigation necessary to determine the source of the problem shall be the responsibility of the Contractor. Otherwise, such investigation shall be included within the above free hours, or if such hours have been expended, shall be charged to the State in accordance with subsections (d) of this Section below. Change order work in excess of one seventy five (175) hours will be billed as set forth in subsection (d) below.

- c. Change Order Creation. After receipt of a written request for additional services from the State, the Contractor shall respond to the State, within a maximum of ten (10) business days, with a written proposal for completing the service. The Contractor's proposal must specify:
- (1) the effect, if any, of implementing the requested change(s) on all other services required under this Contract;
 - (2) the specific effort involved in completing the change(s);
 - (3) the expected schedule for completing the change(s) and delivery date; and
 - (4) the maximum number of person hours required for the change(s).

The Change Order may include a flat fee for the proposed work. This flat fee shall in no instance exceed the product of the estimated person hours required multiplied by the appropriate payment rate proposed for such work. In the event the Parties agree to a flat fee for the work, the Contractor shall not be paid the hourly rate set forth in this Contract and instead the flat fee shall constitute payment in full for the work. The Contractor shall not perform any additional service until the State has approved the proposal. If approved, the State will sign the proposal, and it shall constitute a Change Order between the Contract Parties pertaining to the specified change(s) and shall be incorporated, hereby, as a part of this Contract.

- d. Change Order Performance. Subsequent to creation of a Change Order, the Contractor shall complete the required services. The State will be the sole judge of the acceptable completion of work, and, upon such determination, shall provide the Contractor written approval. Said acceptance and approval shall not be unreasonably withheld or delayed.
- e. Change Order Remuneration. The State will remunerate the Contractor only for acceptable work. All acceptable work performed pursuant to an approved Change Order (in excess of 175 hours per year), without a formal amendment of this Contract, shall be remunerated in accordance with and further limited by Contract Section C.3.c. In no instance shall the State be liable to the Contractor for any amount exceeding the maximum cost specified by the Change Order authorizing the services. Upon State approval of the work, the Contractor shall invoice the State in accordance with the relevant provisions of this Contract. If the Contractor does not deliver the solution by the delivery date on the Change Order and the delay is not the result of action or changes requested by the State, the cost indicated on the Change Order will be reduced by fifteen percent (15%) for each seven (7) calendar day period that the delivery is delayed and further reduced by an additional fifteen percent (15%) of the original amount for each additional seven (7) calendar day period the delivery is delayed.

CLAIMS PROCESSING AND CALL CENTER SERVICES

A.5. Supplemental Unclaimed Property Claims Processing.

In General. The Contractor shall review and process all unclaimed property claims, including, but not limited to, Fast-Track claims, assigned by the State to the Contractor

hereunder and in accordance with such guidelines and procedures as shall be mutually agreed to by the parties. Claims that do not meet the definition of Fast-Track claims below are referred to herein as "Regular" claims. The State shall designate a claim as Fast-Track or Regular at the time the State assigns the claim to the Contractor. For purposes of this Contract, a claim shall be considered a Fast-Track claim if it meets the parameters set forth in the written procedures mutually agreed upon between the parties.

- a. Claim and Property Data. The Contractor shall utilize the State's database (the UPS2000 system) and the State's imaging system (Perceptive Content) to view claim-related documents. All documents will be imaged by the State and uploaded into Perceptive Content for the Contractor to view. All work of the Contractor will be documented in the UPS2000 system. The State will establish a secure Business to Business VPN tunnel with the Contractor. The Contractor shall then access the State's application via the secure VPN tunnel. The Contractor shall provide internal routing and DNS to this VPN tunnel for all users of the Contractor. The State will provide and manage user accounts for access to the application. The Contractor shall provide all user account details as requested by the State and participate in a quarterly audit of the user accounts.
- b. Claim Processing.
 - (1) Claims shall be assigned by the State to the Contractor by adding a specific claim status in the UPS2000 system. The Contractor shall then run an existing report in the UPS2000 system to view all claims that have been assigned to the Contractor and the dates they were assigned. The Contractor shall then distribute the claims to each of the Contractor's claims processors who are assigned to this Contract. Unless otherwise agreed to in writing by the State, the Contractor shall process all claims in the order in which they are received so that the oldest claims are processed first. The Contractor shall use the process described in the written procedures mutually agreed upon by the Parties to manage and track all the claims that have been assigned by the Contractor to its various claims processors.
 - (2) The Contractor shall have its claims processors access the property within the UPS2000 system and Perceptive Content to verify that the claimant information in the UPS2000 system matches the information on the claim. The Contractor shall then direct its claims processors to access Lexis Nexis - Accurint (or such other third party database as approved by the State in writing), hereinafter referred to as the "3rd Party Database", in order to verify the claimant information and ensure that the claim is being paid to the correct individual. It shall be the Contractor's responsibility to obtain and pay for the requisite licenses to use the 3rd Party Database.
 - (3) The information obtained from the 3rd Party Database shall be documented by the Contractor in the UPS2000 system work history based upon the State's requirements. The Contractor shall document in the UPS2000 system that (i) the claimant is the rightful owner and (ii) the address to which the payment is to be mailed. The Contractor shall then add the correct corresponding claim status (either Approval Level 1, Request More Information, Denied or Returned to the State).
 - (4) If the Contractor is unable to validate the claimant is entitled to the property via the 3rd Party Database and documentation provided in the State's imaging system then the Contractor shall request additional information from the claimant. The Contractor shall update UPS2000 to indicate the missing information needed and to generate an "Evidence Follow-up" letter out of UPS2000. The Contractor will add the appropriate status in UPS2000 and the Contractor will move the claim to the next appropriate queue in Perceptive Content. If no additional evidence is provided by the claimant in accordance with agreed procedures and timelines, Contractor shall return the claim to the State. If additional evidence is received, but after reviewing the claim the Contractor determines that the claimant is not entitled to receive any of the funds, the Contractor shall update UPS2000 to indicate the claim is denied and to generate a denial letter in the "Mail" function in UPS2000. The Contractor will add the

appropriate status in UPS2000 and the Contractor will move the claim to the next appropriate queue in Perceptive Content. The State may agree or request a claim to be returned to the State for further processing. Any forms or letters to be sent shall follow such guidelines and procedures as shall be mutually agreed to by the parties.

- c. Erroneous Payments. Payments made by the state of Tennessee to the wrong person shall be the responsibility of the Contractor if, based on the information provided in the UPSS2000 system, Perceptive Content and the information obtained from the 3rd Party Database, the Contractor approved the claim of a person who clearly is not entitled to the payment. The Contractor shall repay the State the amount of any such erroneous payment within thirty (30) calendar days of the earlier of its discovery by the Contractor or notification by the State to the Contractor.
 - d. Errors in Claims Processing. The Contractor acknowledges and agrees that it is critical that the Contractor accurately process all claims. In order to ensure accuracy is maintained, the State, at its sole discretion, may pull a sample of claims each billable period. If in any given month, more than five percent (5%) of the claims which the Contractor approves or denies contain errors, the State may reduce the number of claims assigned to that particular claims processor or to the Contractor in total. Examples of the type errors covered by this Section include, but are not limited to, incorrect claimant information or mailing address entered into the UPS2000 system by the Contractor, paying incorrect owner, and incomplete claim because not all properties owed to the claimant were included and processed with the claim.
- A.6. Call Center Services. During the term of this Contract, the State may elect, at its sole discretion, to have the Contractor perform the following call center services hereunder and in accordance with such guidelines and procedures as shall be mutually agreed to by the parties. The State agrees to give the Contractor at least sixty (60) calendar days' advance notice prior to the commencement of the services.
- a. Acquisition and Maintenance of Toll Free Telephone Call Center. The Contractor shall acquire and maintain a toll free telephone call center that is dedicated to the State for the purpose of answering on behalf of the State all incoming initial unclaimed property claimant inquiries. The call center shall be staffed with personnel who are trained to answer initial claimant inquiries. The Contractor shall transfer said number to the State at no cost to the State such that the State or its designee can maintain the same number for continuous, uninterrupted use after the termination of this Contract. The call center shall be operable each day except Saturdays, Sundays and legal holidays as defined in Tennessee Code Annotated, Section 15-1-101, as amended, during the hours of 7:00 A.M. to 4:30 P.M. Central Time.
 - b. Call Scripts. The Contractor shall develop for the State's approval the scripts to be used for answering each type of call. The scripts shall also provide guidance on when a call is to be transferred to a Contractor supervisor or to the State. The Contractor acknowledges and understands that the types of initial claimant inquiries may include, but are not limited to, (i) whether the State is holding unclaimed property for the claimant, (ii) what is the value of the unclaimed property the State is holding for the claimant, (iii) what is the status of the claimant's claim, (iv) when should the claimant receive the property, and (v) such other inquiries as may be contained in the State-approved scripts.
 - c. Answering Calls. The Contractor's personnel assigned to answer initial claimant call inquiries shall access the UPS2000 system and the State's imaging system in order to provide accurate information that the caller is seeking, if appropriate. The Parties shall establish written procedures that the Contractor's personnel must adhere to in sharing and confirming information to a caller. If the Contractor cannot satisfactorily answer the claimant's question, the call shall be referred to the State. The Contractor's personnel shall record within the notes field in the UPS2000 system a summary of each call so that there is a permanent record of the conversation which can be used by a claims processor

or if the claimant calls at a different time. All claim calls received through the call center shall be answered by the Contractor's personnel within the time frame described in Section A.7(2) below.

- d. Making Calls. When the Contractor's personnel processes claims under section A.5. above and adds a status code of Request More Information or Denied then a call to the claimant shall be made to explain the circumstances of the claim to the claimant. If the claimant does not answer such call the Contractor shall leave a voice message, if possible, letting the claimant know they are calling regarding their claim and provide a method of contact back. The Contractor shall add a work history note in UPS2000 system detailing the call made to the claimant.
- e. Recording of Calls. All calls received and made shall be recorded by the Contractor and made available upon request to the State for at least six (6) months from the date of the call. The date and general time of the call shall be preserved as a part of the recording. The Contractor shall ensure that the recordings can be accessed by the claimant's phone number, unless the number is blocked. The Parties shall mutually develop written procedures on the manner by which recordings can be accessed for phone numbers that are blocked.
- f. Customer Care and Sample Call Reviews. To ensure that call center personnel are managing calls appropriately, providing accurate responses, being polite, using the required script and providing a positive overall experience to the caller, the Contractor shall pull and listen to an agreed upon number of sample calls received and made each billable period. The Contractor's management shall score the call based upon agreed criteria and shall discuss any deficiencies noted with the appropriate personnel who answered and otherwise handled the call. The Contractor shall provide the State with the score results from the previous month. The results shall be submitted at the same time the Contractor submits its invoice for services rendered during that previous month. If in any given month, more than five percent (5%) of the calls are not being managed appropriately, the State may reduce the number of calls that may be answered by that particular call center operator or to the Contractor in total.
- g. Call Management Report. The Contractor shall provide to the State a call management report with each invoice it submits to the State under Section C.5 below. The report shall contain summary and detailed information for each call received and made during the previous billable period. The report shall include the types of information described in the written procedures mutually agreed to by the Parties, and such other information that is agreed to in writing by the Parties.

A.7. Performance Standards Guarantee. The Contractor agrees the following performance standards shall be met or exceeded and that if such standards are not met, the Contractor's compensation shall be reduced pursuant to Section A.7.b. below:

a. Standards.

- (1) Each Fast-Track claim assigned to the Contractor under Section A.5. above shall be processed (either Approved, Request More Information, Denied or Returned to the State) within fourteen (14) days of being assigned to the Contractor. Each Regular claim assigned to the Contractor under Section A.5. above shall be processed (either Approved, Request More Information, Denied or Returned to the State) within twenty-one (21) days of being assigned to the Contractor. If the Contractor requests additional information from the claimant, the Contractor shall have an additional fourteen (14) days from the date the information is received to either approve the claim, request more information, deny the claim or return the claim to the State.
- (2) Each call made to the call center as provided in Section A.6. above shall be answered by the Contractor's personnel within sixty (60) seconds.

- (3) Each call made to the claimant under section A.6. above shall be made the next business day or sooner, or within twenty-four (24) hours of the status code being added, weekends and holidays excepted.

b. Guarantee.

- (1) If the Contractor does not meet or exceed the performance standard in Section A.7.a. above for a given claim, the amount of compensation payable to the Contractor for such claim shall be reduced by five percent (5%) for each day the standard was not met.
- (2) If the Contractor does not meet or exceed the performance standard in Section A.7.a. above for a given call received that is not abandoned (as defined below), the amount of compensation payable to the Contractor for such call shall be reduced by five percent (5%) for each thirty (30) seconds the standard is not met. For each call that is abandoned after sixty (60) seconds, the amount of compensation payable to the Contractor for the month in which the call was abandoned shall be reduced by five (5) times the per call minute rate in Section C.3.e below. For purposes of this paragraph, an abandoned call is a call in which the call originator abandons, disconnects, or cancels the call after a connection has been made, but before any conversation occurs between the Contractor's personnel and the caller.
- (3) If the Contractor does not meet or exceed the performance standard in Section A.7.a. above for a given call made, the amount of compensation payable to the Contractor for such call shall be reduced by five percent (5%) for each sixty (60) minutes the standard is not met. In order to determine if the standard in Section A.7.a. was met the contractor will pull an agreeable sample amount of calls made and verify the time the call was made compared to when the status code was added.

- c. Waiver of Reduction. Any amount to be reduced hereunder may be waived by the State upon presentation of adequate documentation from the Contractor indicating the standard was not met because of a unique problem or situation. Such documentation must be submitted to the State with the invoice in which the reduction will be made.

A.8. No Limit of Liability. Except as otherwise provided in Section D.18 below, the provisions of Sections A.5.c., A.5.d., A.6.e., and A.7., shall not be construed to limit the liability of the Contractor for damages sustained by the State by virtue of any breach of this Contract by the Contractor nor shall such obligations be construed to limit any other remedies available to the State in equity, at law or otherwise. The Contractor's compliance with A.5.c., A.5.d., A.6.e., and A.7., shall not be interpreted to relieve the Contractor from properly performing its obligations under this Contract.

A.9. Contractor Personnel.

- a. Personnel Assignment. In performing the services as set forth in this Contract, the Contractor shall assign such qualified personnel as needed to perform the services required under this Contract, and to meet the performance standards described in Section A.7. above.
- b. Reassignment or Removal of Personnel. During the term of this Contract, the State reserves the right to require the Contractor to reassign or otherwise remove from performance of this Contract any personnel found unacceptable to the State.

A.10. Claim and Phone Procedures Review; On-Site Visits. On a quarterly basis, the Parties shall review all claims processing and, if applicable, phone procedures, and modify the same if necessary. The State will train the Contractor's management on the procedures. The review and training shall take place at a time mutually agreed to by the Parties, and shall be held at the State's facilities in Nashville, Tennessee, or, at the State's sole discretion, via telephone

conference. The Contractor shall be responsible for its own travel, meals and lodging costs for one training visit each year.

The Contractor shall provide to the State, at the State's request, on-site tours of the Contractor's operational headquarters or other offices where the services under this Contract are performed. The State will be responsible for its own travel, meals and lodging costs.

- A.11. Inspection and Acceptance. The State shall have the right to inspect all goods or services provided by Contractor under this Contract. If, upon inspection, the State determines that the goods or services are Defective, the State shall notify Contractor, and Contractor shall re-deliver the goods or provide the services at no additional cost to the State. If after a period of thirty (30) days following delivery of goods or performance of services the State does not provide a notice of any Defects, the goods or services shall be deemed to have been accepted by the State.
- A.12. Gifts and Solicitations Policy. The Contractor shall not offer to give, or give, any gift to any employee of the State or to any member of a Board, Commission or Committee administratively attached to the State that would violate the State's Gifts and Solicitations Policy included as Attachment 3 to this Contract.
- A.13. Non-Solicitation. During the term of this Contract and for a period of twelve (12) months after the date that Contractor last provides services to the State under this Contract, neither party shall knowingly and directly solicit for employment or as an independent contractor any person employed by the other, if such person was directly involved in the performance of this Contract, without the express consent of the other party. This provision shall not apply to any individual whose employment has been terminated for a period of three (3) months or longer before any such solicitation occurs or to any offers of employment initiated by either party prior to the execution of this Contract.
- A.14. Warranty. Contractor represents and warrants that the term of the warranty ("Warranty Period") shall be for 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.15. Service Organization Control (SOC) Report. On an annual basis, the Contractor shall provide the State with a Type II Independent Service Auditor's report prepared for the service organization's controls relevant to the services provided under this Contract, such as, but not limited to, security, system availability, transaction processing, confidentiality and privacy, in accordance with Statement on Standards for Attestation Engagements (SSAE 18), or equivalent standard issued by the AICPA, without requiring the State to execute any other agreements or agree to any additional confidentiality obligations.

A.16. Exclusive Use of Data. Except in accordance with this Contract, the Contractor shall not make any use of the unclaimed property claim and property data provided to it hereunder, including, but not limited to, soliciting unclaimed property account owners concerning the Contractor or its subsidiaries and affiliates or the products or services thereof. In addition and except as expressly allowed in this Contract, the Contractor shall not disclose any information it may obtain hereunder and all such information is acknowledged to be held confidentially for the State. The Contractor shall advise any party that may be assisting the Contractor in the performance of this Contract of the confidential nature of the information. It is expressly understood and agreed that the obligations set forth in this section shall survive the termination of this Contract.

B. TERM OF CONTRACT:

B.1. Initial Term. This Contract shall be effective on October 15, 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.2. Renewal Options. This Contract may be renewed upon satisfactory completion of the Term. The State reserves the right to execute up to two (2) renewal options under the same terms set forth in Sections C.3 and C.4 for a period not to exceed twelve (12) months each, at the State’s sole option by written notice to the Contractor at least ninety (90) days prior to the expiration of the then-current term. 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 Seven Million and No/100 Dollars (\$7,000,000.00) (“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 for services performed pursuant to Sections A.2. through A.4. based upon the following payment methodology:

(1) For the period between October 15, 2020 and October 14, 2021, the following rates shall apply:

Service Description	Amount (per compensable increment)
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System Maintenance; Problem Resolution; Consulting Services and Training as described in Section A.2 above.	\$21,108.25 per quarter
Priority Correction of Non-Critical Problem as described in Section A.2.b above.	\$185 per hour
Additional User Licenses as described in Section A.3.	\$5,000 one-time charge plus \$1,750 annually (prorated as applicable) for each additional user license above one hundred (100)

(2) For each subsequent year, the Contractor shall be compensated based upon the payment rates in Section C.3.b.(1) above, increased up to a maximum of three percent (3%) of the prior year's rate.

c. The Contractor shall be compensated for changes requested and performed pursuant to Contract Section A.4. (in excess of 175 hours annually) without a formal amendment to this Contract, based upon the payment rates detailed in the schedule below as agreed pursuant to Section A.5., PROVIDED THAT compensation to the Contractor for such "change order" work shall not exceed THREE PERCENT (3%) of the maximum liability of this Contract. If, at any point during the Term, the State determines that the cost of necessary "change order" work would exceed the maximum amount, the State may amend this Contract to address the need.

Service Description	Amount (per compensable increment)
Change Orders as described in and subject to the terms and limitations (in excess of one hundred seventy five (175) hours annually) detailed in Section A.4. above	(1) CSR Support - \$150/hour (2) Development Team - \$200/hour (3) Senior Support & Development - \$250/hour (OR the flat maximum fee amount proposed by the Contractor in the applicable Change Order, whichever is less)

d. The Contractor shall be compensated for work performed pursuant to Section A.2.f. hereof based upon the payment rates detailed in the schedule below:

Service Description	Amount (per compensable increment)
Level One Match as described in Attachment 2	\$0.25 per claim
Level Two Basic Verification as described in Attachment 2	\$0.50 per transaction
Level Three Authentication as described in Attachment 2	\$1.25 per claim

e. The Contractor shall be compensated for work performed pursuant to Sections A.5. through A.16. hereof based upon the payment rates detailed in the schedule below:

Service Description	Amount (Per Compensable Increment)
Supplemental Unclaimed Property Claims Processing Services for Fast-Track claims that are Approved, Denied or that are Returned to	\$11.00 per claim

the State as described in Section A.5.	
Regular claims that are Approved, Denied or that are Returned to the State as described in Section A.5.	\$15.00 per claim
Call Center Services as described in Section A.6.	\$1.75 per call minute

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

C.4. Travel Compensation. Compensation to the Contractor for travel, meals, or lodging shall be subject to amounts and limitations specified in the current "State Comprehensive Travel Regulations," and shall only be compensable for the travel, meals, or lodging incurred in performance of the on-site training services set forth in Section A.2.d. above.

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

State of Tennessee, Department of Treasury
Division of Administrative Services
Budget Officer
14th Floor, Andrew Jackson State Office Building
502 Deaderick Street
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: State of Tennessee Treasury Department, Unclaimed Property 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:

John Gabriel, Director of Unclaimed Property
Tennessee Treasury Department
15th Floor, Andrew Jackson State Office Building

502 Deaderick Street
Nashville, Tennessee 37243-0203
john.gabriel@tn.gov
Telephone: (615) 253-5354

The Contractor:

Avenu Unclaimed Property Systems, LLC
5860 Trinity Parkway, Suite 120
Centreville, PA 20120
Contracts@avenuinsights.com
Telephone # 571-313-5155
FAX # Number

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

- D.3. Modification and Amendment. This Contract may be modified only by a written amendment signed by all Parties and approved by all applicable State officials.
- D.4. Subject to Funds Availability. The Contract is subject to the appropriation and availability of State or federal funds. In the event that the funds are not appropriated or are otherwise unavailable, the State reserves the right to terminate this Contract upon written notice to the Contractor. The State's exercise of its right to terminate this Contract shall not constitute a breach of Contract by the State. Upon receipt of the written notice, the Contractor shall cease all work associated with the Contract. If the State terminates this Contract due to lack of funds availability, the Contractor shall be entitled to compensation for all conforming goods requested and accepted by the State and for all satisfactory and authorized services completed as of the termination date. Should the State exercise its right to terminate this Contract due to unavailability of funds, the Contractor shall have no right to recover from the State any actual, general, special, incidental, consequential, or any other damages of any description or amount.
- D.5. Termination for Convenience. The State may terminate this Contract for convenience without cause and for any reason. The State shall give the Contractor 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, or if the Contractor materially violates any terms of this Contract ("Breach Condition"), the State shall provide written notice to Contractor specifying the Breach Condition. If within thirty (30) days of notice, the Contractor has not cured the Breach Condition, the State may terminate the Contract and withhold payments in excess of compensation for completed services or provided goods. Notwithstanding the above, the Contractor shall not be relieved of liability to the State for damages sustained by virtue of any breach of this Contract by the Contractor and the State may seek other remedies allowed at law or in equity for breach of this Contract.
- D.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 4, 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. For clarity, except as otherwise expressly set forth in this Section, Contractor's indemnification obligations and other remedies available under this Contract are subject to the limitations on liability set forth in this Section.
- 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 Attachments 1 through 4
 - 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., 3rd 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. Technology Professional Liability (Errors & Omissions)/Cyber Liability Insurance

1) The Contractor shall maintain technology professional liability (errors & omissions)/cyber liability insurance appropriate to the Contractor's profession in an amount not less than five million dollars (\$5,000,000) per occurrence or claim and five million dollars (\$5,000,000) annual aggregate, covering all acts, claims, errors, omissions, negligence, infringement of intellectual property (including copyright, patent and trade secret); network security and privacy risks, including but not limited to unauthorized access, failure of security, information theft, damage to destruction of or alteration of electronic information, breach of privacy perils, wrongful disclosure and release of private information, collection, or other negligence in the handling of confidential information, and including coverage for related regulatory fines, defenses, and penalties.

2) Such coverage shall include data breach response expenses, in an amount not less than five million dollars (\$5,000,000) and payable whether incurred by the State or Contractor, including but not limited to consumer notification, whether or not required by law, computer forensic investigations, public relations and crisis management firm fees, credit file or identity monitoring or remediation services and expenses in the performance of services for the State or on behalf of the State hereunder.

- 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. Partial Takeover of Contract. The State may, at its convenience and without cause, exercise a partial takeover of any service that the Contractor is obligated to perform under this Contract, including any service which is the subject of a subcontract between Contractor and a third party (a "Partial Takeover"). A Partial Takeover of this Contract by the State shall not be deemed a breach of contract. The Contractor shall be given at least thirty (30) days prior written notice of a Partial Takeover. The notice shall specify the areas of service the State will assume and the date the State will be assuming. The State's exercise of a Partial Takeover shall not alter the Contractor's other duties and responsibilities under this Contract. The State reserves the right to withhold from the Contractor any amounts the Contractor would have been paid but for the State's exercise of a Partial Takeover. The amounts shall be withheld effective as of the date the State exercises its right to a Partial Takeover. The State's exercise of its right to a Partial Takeover of this Contract shall not entitle the Contractor to any actual, general, special, incidental, consequential, or any other damages irrespective of any description or amount.
- E.3. Personally Identifiable Information. While performing its obligations under this Contract, Contractor may have access to Personally Identifiable Information held by the State ("PII"). For the purposes of this Contract, "PII" includes "Nonpublic Personal Information" as that term is defined in Title V of the Gramm-Leach-Bliley Act of 1999 or any successor federal statute, and the rules and regulations thereunder, all as may be amended or supplemented from time to time ("GLBA") and personally identifiable information and other data protected under any other applicable laws, rule or regulation of any jurisdiction relating to disclosure or use of personal information ("Privacy Laws"). Contractor agrees it shall not do or omit to do anything which would cause the State to be in breach of any Privacy Laws. Contractor shall, and shall cause its employees, agents and representatives to: (i) keep PII confidential and may use and disclose PII only as necessary to carry out those specific aspects of the purpose for which the PII was disclosed to Contractor and in accordance with this Contract, GLBA and Privacy Laws; and (ii) implement and maintain appropriate technical and organizational measures regarding information security to: (A) ensure the security and confidentiality of PII; (B) protect against any threats or hazards to the security or integrity of PII; and (C) prevent unauthorized access to or use of PII. Contractor shall immediately notify State: (1) of any disclosure or use of any PII by Contractor or any of its employees, agents and representatives in breach of this Contract; and (2) of any disclosure of any PII to Contractor or its employees, agents and representatives where the purpose of such disclosure is not known to Contractor or its employees, agents and representatives. The State reserves the right to review Contractor's policies and procedures

used to maintain the security and confidentiality of PII and Contractor shall, and cause its employees, agents and representatives to, comply with all reasonable requests or directions from the State to enable the State to verify or ensure that Contractor is in full compliance with its obligations under this Contract in relation to PII. Upon termination or expiration of the Contract or at the State's direction at any time in its sole discretion, whichever is earlier, Contractor shall immediately return to the State any and all PII which it has received under this Contract and shall destroy all records of such PII.

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

E.4. 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.5. Contractor Hosted Services Confidential Data, Audit, and Other Requirements

- a. "Confidential State Data" is defined as data deemed confidential by State or Federal statute or regulation. The Contractor shall protect Confidential State Data as follows:
- (1) The Contractor shall ensure that all Confidential State Data is housed in the continental United States, inclusive of backup data.
 - (2) The Contractor shall encrypt Confidential State Data at rest and in transit using the current version of Federal Information Processing Standard ("FIPS") 140-2 validated encryption technologies.
 - (3) The Contractor and the Contractor's processing environment containing Confidential State Data shall either (1) be in accordance with at least one of the following security standards: (i) International Standards Organization ("ISO") 27001; (ii) Federal Risk and Authorization Management Program ("FedRAMP"); or (2) be subject to an annual engagement by a CPA firm in accordance with the standards of the American Institute of Certified Public Accountants ("AICPA") for a System and Organization Controls for service organizations ("SOC") Type II audit. The State shall approve the SOC audit control objectives. The Contractor shall provide proof of current ISO certification or FedRAMP authorization for the Contractor and Subcontractor(s), or provide the State with the Contractor's and Subcontractor's annual SOC Type II audit report upon request by the State (without requiring the State to execute any other agreements or agree to any additional confidentiality obligations). The Contractor shall submit corrective action plans to the State for any issues included in the audit report within 30 days after the CPA firm provides the audit report to the Contractor or Subcontractor.

If the scope of the most recent SOC audit report does not include all of the current State fiscal year, upon request from the State, the Contractor must provide to the State a letter from the Contractor or Subcontractor stating whether the Contractor or Subcontractor made any material changes to their control environment since the prior audit and, if so, whether the changes, in the opinion of the Contractor or Subcontractor, would negatively affect the auditor's opinion in the most recent audit report.

No additional funding shall be allocated for these certifications, authorizations, or audits as these are included in the Maximum Liability of this Contract.

- (4) The Contractor must annually perform Penetration Tests and Vulnerability Assessments against its Processing Environment. "Processing Environment" shall mean the combination of software and hardware on which the Application runs. "Application" shall mean the computer code that supports and accomplishes the State's requirements as set forth in this Contract. "Penetration Tests" shall be in the form of attacks on the Contractor's computer system, with the purpose of discovering security weaknesses which have the potential to gain access to the Processing Environment's features and data. The "Vulnerability Assessment" shall be designed and executed to define, identify, and classify the security holes (vulnerabilities) in the Processing Environment. The Contractor shall allow the State, at its option, to perform Penetration Tests and Vulnerability Assessments on the Processing Environment.
- (5) Upon State request, the Contractor shall provide a copy of all Confidential State Data it holds. The Contractor shall provide such data on media and in a format determined by the State
- (6) Upon termination of this Contract and in consultation with the State, the Contractor shall destroy all Confidential State Data it holds (including any copies such as backups) in accordance with the current version of National Institute of Standards and Technology ("NIST") Special Publication 800-88. The Contractor shall provide a written confirmation of destruction to the State within ten (10) business days after destruction.

b. Minimum Requirements

- (1) The Contractor and all data centers used by the Contractor to host State data, including those of all Subcontractors, must comply with the State's Enterprise Information Security Policies as amended periodically. The State'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>.
- (2) The Contractor agrees to maintain the Application 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.
- (3) If the Application requires middleware or database software, Contractor shall maintain middleware and database software versions that are at all times fully compatible with current versions of the Operating System and Application to ensure that security vulnerabilities are not introduced.

c. Comptroller Audit Requirements

Upon reasonable notice and at any reasonable time, the Contractor and Subcontractor(s) agree to allow the State, the Comptroller of the Treasury, or their duly appointed representatives to perform information technology control

audits of the Contractor and all Subcontractors used by the Contractor. Contractor will maintain and cause its Subcontractors to maintain a complete audit trail of all transactions and activities in connection with this Contract. Contractor will provide to the State, the Comptroller of the Treasury, or their duly appointed representatives access to Contractor and Subcontractor(s) personnel for the purpose of performing the information technology control audit.

The information technology control audit may include a review of general controls and application controls. General controls are the policies and procedures that apply to all or a large segment of the Contractor's or Subcontractor's information systems and applications and include controls over security management, access controls, configuration management, segregation of duties, and contingency planning. Application controls are directly related to the application and help ensure that transactions are complete, accurate, valid, confidential, and available. The audit shall include the Contractor's and Subcontractor's compliance with the State's Enterprise Information Security Policies and all applicable requirements, laws, regulations or policies.

The audit may include interviews with technical and management personnel, physical inspection of controls, and review of paper or electronic documentation.

For any audit issues identified, the Contractor and Subcontractor(s) shall provide a corrective action plan to the State within 30 days from the Contractor or Subcontractor receiving the audit report.

Each party shall bear its own expenses incurred while conducting the information technology controls audit.

- d. Business Continuity Requirements. The Contractor shall maintain set(s) of documents, instructions, and procedures which enable the Contractor to respond to accidents, disasters, emergencies, or threats without any stoppage or hindrance in its key operations ("Business Continuity Requirements"). Business Continuity Requirements shall include:
- (1) "Disaster Recovery Capabilities" refer to the actions the Contractor takes to meet the Recovery Point and Recovery Time Objectives defined below. Disaster Recovery Capabilities shall meet the following objectives:
 - i. Recovery Point Objective ("RPO"). The RPO is defined as the maximum targeted period in which data might be lost from an IT service due to a major incident: N/A
 - ii. Recovery Time Objective ("RTO"). The RTO is defined as the targeted duration of time and a service level within which a business process must be restored after a disaster (or disruption) in order to avoid unacceptable consequences associated with a break in business continuity: 48 hours
 - (2) The Contractor and the Subcontractor(s) shall perform at least one Disaster Recovery Test every three hundred sixty-five (365) days. A "Disaster Recovery Test" shall mean the process of verifying the success of the restoration procedures that are executed after a critical IT failure or disruption occurs. The Disaster Recovery Test shall use actual State Data Sets that mirror production data, and success shall be defined as the Contractor verifying that the Contractor can meet the State's RPO and RTO requirements. A "Data Set" is defined as a collection of related sets of information that is composed of separate elements but can be manipulated as a unit by a computer. The Contractor shall provide written confirmation to the State after each Disaster

Recovery Test that its Disaster Recovery Capabilities meet the RPO and RTO requirements.

Signature Page Follows

IN WITNESS WHEREOF,

AVENU UNCLAIMED PROPERTY SYSTEMS, LLC:

CONTRACTOR SIGNATURE

DATE

PRINTED NAME AND TITLE OF CONTRACTOR SIGNATORY (above)

STATE OF TENNESSEE, DEPARTMENT OF TREASURY:

DAVID H. LILLARD, JR., STATE TREASURER

DATE

ATTACHMENT 1

STATEMENT OF WORK (SOW)

A. Description of Standard Software

1. Core Unclaimed Property Management System

- a) Detailed balancing and reconciling functions.
- b) Restrictions on unreconciled claims payments and transfers to claimants.
- c) Options to drop inactive claims either in batch based on STATE's aging parameters.
- d) Claims may be closed as single claims or *en masse* based on STATE's selected parameters.
- e) Interface with STATE's accounting system with batched claims and imported warrants.
- f) Forced balancing possible.

- g) System user productivity reports per STATE's selections.
- h) Segregation of user access per STATE segregation of duties policies.
- i) Customized correspondence to claimants and holders within standard parameters.
- j) Interface with STATE's Accounting System.
- k) Tangible Personal Property auction proceeds import.
- l) Formatting and compilation of rightful owners and properties-in-custody for advertisement.
- m) Listing of unclaimed properties for advertisement or STATE delivery to Finders.
- n) Reciprocity claims processing.
- o) Penalty and Interest assessments
- p) All information related to a security (from the high-level stock information to the underlying transactions at the stock and property level) is maintained in a securities management module.
- q) Ability to enter and/or import security prices and maintain the price history of securities.
- r) Entry of stock transactions at individual property level.
- s) Entry of all types of corporate actions against multiple properties in the system in a single batch transaction.
- t) Enabled sales of multiple securities in a single batch.
- u) Application of cash proceeds from a stock sale to all properties associated with securities included in the stock sale.
- v) Interface with Avenu Custody enables STATE, as an Avenu's Custody Management Services client, to send and receive securities re-registrations (Claims) electronically. Confirmation of the re-registration is returned and imported into UPS2000.
- w) Automated stock sale information sent via an SFTP to Avenu. Automated confirmation files are returned that post proceeds and complete the stock sale process.
- x) Tracking each unclaimed property audit with information on the holder involved, the auditor, the various phases of the audit, hours of each phase, and the results of the audit with specific details on properties located. The results can be tied to a remitted holder report.
- y) Owner Contact data extraction from the system for third party data matching.
- z) Permanent electronic storage of all records.
- aa) Training of STATE personnel with hours allotted by this agreement.

2. Holder Reporting Website

- a) Customized colors, fonts, and images to match the STATE'S existing Unclaimed Property website.
- b) Holder registration on the website. Holder's primary user may add a secondary user.
- c) Holder submission of National Association of Unclaimed Property Administrators (NAUPA) formatted holder reports.
- d) Reports validated in a secure process.
- e) Report validation customized to adhere to the STATE'S validation requirements.
- f) NAUPA code validation required unless the Report adheres to the STATE'S validation rules. The system will not accept reports that are not validated.
- g) Holder online receipt of downloadable error report.
- h) Holder view to history of files and payments.
- i) Payment instructions
- j) Online payment if interfaced with STATE's bank.
- k) Positive and Negative Reports accepted.
- l) Negative Reports linked to the Holder ID registered in the system.
- m) Holders receive summary of file for valid submission confirmation.
- n) Holders receive a rejection notice and error log containing details for invalid submissions.
- o) Online Holder payments is authorized by STATE.
- p) Check remittance information delivered to Holder for inclusion with payment.
- q) ACH debit receipts attached to Holder Report if accepted by STATE.
- r) Automated ACH payment processing.
- s) NACHA files created for payments.
- t) Automated payment batches.
- u) Automated receipts for each report.
- v) Reports automatically uploaded into UPS2000.

3. Claims Website

- a) Customized colors, fonts, images, as well as navigation bar, header, and footer.
- b) Customized website language within standard formatting.
- c) Customized email language sent by the website.
- d) Multilingual (Unicode, non-multibyte left-to-right reading languages) public facing presentation if the STATE provides translations.
- e) Mobile-friendly and responsive design.
- f) "Captcha" technology to protect data.
- g) User searches for properties using full-text searching on owner names, company names, addresses and property identities.
- h) Registration of claimants at claimant's election.
- i) Website users can submit claims online.
- j) Eligible claims are submitted for automated processing.
- k) Website users are presented with and emailed a claim form customized to the STATE's requirements within the limits of the website.
- l) Capture of claimant relationship to each property on a claim.
- m) Claimants may check claim status online.
- n) Claims status check by login, claim ID and Postal Code or optional email notification.

- o) Claim forms are bar-coded.
- p) Claimants can upload supporting documentation.
- q) Automated email confirmations to Claimants of claim submissions.
- r) Claims are automatically uploaded into UPS2000.
- s) ETL processes between UPS2000 and the website are customized to the STATE's requirements.
- t) Website traffic is monitored with built-in security measures for IP blocking.
- u) Integration with MissingMoney.com. Claimants who go to MissingMoney.com are redirected to the STATE's Claims website to complete the claim transaction.
- v) ACH information collected from Claimants.
- w) Authorization of claimant identity using STATE's selection of LexisNexis screens. (Added Fees set forth in Section C.3.d.)
- w) Verification of claimant identity using STATE's selection of LexisNexis interactive tests. (Added Fees set forth in Section C.3.d.)

ATTACHMENT 2

(PDF of Attachment 2 is attached)

Avenu Proposal Dated March 20, 2019

ATTACHMENT 3

The Tennessee Department of Treasury Gifts and Solicitations Policy

No employee or any member of a Board, Commission or Committee administratively attached to the Department shall solicit, accept or agree to accept, directly or indirectly, on behalf themselves or their immediate family, any gift in violation of state law including, but not limited to, any gratuity, service, favor, entertainment, lodging, transportation, loan, loan guarantee rebate, money, any promise, obligation or contract for future awards or compensation or any other thing of monetary value, from any **individual** or **entity** that:

- Has, or is seeking to obtain, contractual or other business or financial relations with the Treasury Department or the Tennessee Consolidated Retirement System;
- Conducts operations or activities that are regulated by the Treasury Department;
- May bid on future procurement from the Department or a Board, Commission, or Committee administratively attached to the Department based on the employee's reasonable belief that the person or entity intends to submit a bid; or
- Has an interest that may be substantially affected by the performance or nonperformance of the employee's official duties.

Generally, gifts from a lobbyist or an employer of a lobbyist are prohibited; however, the following are exceptions to the general gift prohibition:

- A gift given for nonbusiness purpose and motivated by a close personal friendship and not by the position of the employee, and specifically authorized and defined by the Ethics Commission;
- Informational materials in the form of books, articles, periodicals, other written materials, audiotapes, videotapes, or other forms of communication;
- Sample merchandise, promotional items, and appreciation tokens if they are routinely given to customers, suppliers or potential customers or suppliers in the ordinary course of business;
- Unsolicited tokens or awards of appreciation, honorary degrees, or bona fide awards in recognition of public service in the form of a plaque, trophy, desk item, wall memento, and similar items, provided that any such item shall not be in a form which can readily be converted to cash;
- Benefits resulting from business, employment, or other outside activities of the employee or the employee's immediate family, if such benefits are customarily provided to others in similar circumstances and are not enhanced due to the status of the employee;
- Opportunities and benefits made available to all members of an appropriate class of the general public, including but not limited to, discounts afforded to the general public or prizes and awards given out in public contests;
- Expenses of out-of-state travel, if such expenses are paid for or reimbursed by a governmental entity or an established and recognized organization of elected or appointed state government officials;
- Food, refreshments, amenities, goody bags, entertainment, or beverages provided as part of a meal, reception or similar event including tradeshows and professional meetings; and
- Food, refreshments, meals, foodstuffs, entertainment, beverages that are provided in connection with the following: an event where the employee is a speaker or part of a panel

discussion at a scheduled meeting of an established or recognized membership organization which regularly meets at in-state events in which invitations are extended to legislative or executive branch employees. The value of the items shall not exceed fifty dollars (\$50.00) per person, per day.*

* The amount may be increased to reflect the percentage of change in the average consumer price index. The Ethics Commission publishes the increased amount on its website.

For other gifts offered which are not included in the exceptions above, the employee must obtain the written approval of the Assistant Treasurer for Legal, Compliance, and Audit.

ATTACHMENT 4

ATTESTATION RE PERSONNEL USED IN CONTRACT PERFORMANCE

SUBJECT CONTRACT NUMBER:	
CONTRACTOR LEGAL ENTITY NAME:	Avenu Unclaimed Property Systems, LLC
EDISON VENDOR IDENTIFICATION NUMBER:	

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

CONTRACTOR SIGNATURE

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

Mike Melka, CFO

PRINTED NAME AND TITLE OF SIGNATORY

DATE OF ATTESTATION