



**STATE OF TENNESSEE  
DEPARTMENT OF REVENUE  
ANDREW JACKSON STATE OFFICE BUILDING  
NASHVILLE, TENNESSEE 37242**

**BILL LEE  
Governor**

**DAVID GERREGANO  
Commissioner**

May 1, 2019

Fiscal Review Committee  
8<sup>th</sup> Floor Rachel Jackson Building  
425 5<sup>th</sup> Avenue North  
Nashville, Tennessee 37243-0213

Re: Proposed Contract Multistate Tax Commission

The Department of Revenue respectfully submits this draft contract for review by the joint Fiscal Review Committee.

Multistate Tax Commission, MTC, The MTC was created by the Multistate Tax Compact in 1967 and has been operating its Joint Audit Program since 1972. Currently, 27 states and the District of Columbia participate in the Joint Audit Program.

The services to be acquired are continued participation in the Multistate Tax Commission (MTC) Joint Audit Program as authorized by Tenn. Code Ann. §§ 67-1-102(10) and 67-1-1704(h). Tennessee is now an Associate and Project Member of the MTC. As a member of the MTC Joint Audit Program, the MTC operates as an arm of the Department. Participation in the MTC Joint Audit Program assists Tennessee by offering a unique and cost-effective method for conducting additional tax audits. It assists in ensuring compliance among large multistate taxpayers beyond those already actively being pursued by the Department.

We appreciate your consideration in reviewing this original contract and welcome any questions.

Sincerely,

David Gerregano

Cc: bs/jm

Supplemental Documentation Required for  
Fiscal Review Committee

*Contact Name:	Tyron Odom	*Contact Phone:	615.253.1381		
*Presenter's name(s):	Barbara Sampson and Justin Moorhead				
Edison Contract Number: <i>(if applicable)</i>		RFS Number: <i>(if applicable)</i>			
*Original or Proposed Contract Begin Date:	07/01/2019	*Current or Proposed End Date:	06/30/2024		
Current Request Amendment Number: <i>(if applicable)</i>					
Proposed Amendment Effective Date: <i>(if applicable)</i>					
*Department Submitting:	Department of Revenue				
*Division:	Audit				
*Date Submitted:	May 1, 2019				
*Submitted Within Sixty (60) days:	Yes				
<i>If not, explain:</i>					
*Contract Vendor Name:	Multistate Tax Commission				
*Current or Proposed Maximum Liability:	\$1,381,300				
*Estimated Total Spend for Commodities:					
<b>*Current or Proposed Contract Allocation by Fiscal Year:</b> <i>(as Shown on Most Current Fully Executed Contract Summary Sheet)</i>					
FY:2020	FY:2021	FY:2022	FY:2023	FY2024	FY
\$262,800	\$268,200	\$275,400	\$283,200	\$291,700	\$
<b>*Current Total Expenditures by Fiscal Year of Contract:</b> <i>(attach backup documentation from Edison)</i>					
FY:2015	FY:2016	FY:2017	FY:2018	FY2019	FY
\$243,900	\$248,760	\$253,800	\$258,900	\$262,800	\$
IF Contract Allocation has been greater than Contract Expenditures, please give the reasons and explain where surplus funds were spent:					
IF surplus funds have been carried forward, please give the reasons and provide the authority for the carry forward provision:					
IF Contract Expenditures exceeded Contract Allocation, please give the reasons and explain how funding was acquired to pay the overage:					

Supplemental Documentation Required for  
Fiscal Review Committee

<b>*Contract Funding Source/Amount:</b>			
State:	\$1,381,300	Federal:	
<i>Interdepartmental:</i>		<i>Other:</i>	
If " <i>other</i> " please define:			
If " <i>interdepartmental</i> " please define:			
Dates of All Previous Amendments or Revisions: <i>(if applicable)</i>		Brief Description of Actions in Previous Amendments or Revisions: <i>(if applicable)</i>	
Method of Original Award: <i>(if applicable)</i>			
*What were the projected costs of the service for the entire term of the contract prior to contract award? How was this cost determined?		\$1,269,480. The MTC Executive Committee approved a two percent increase of the previous contracted amount.	
*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.		The services to be acquired are continued participation in the multistate tax commission joint audit program as authorized by Tenn. Code Ann. §§ 67-1-102(b)(10) and 67-1-1704(g).	
*Provide information on the circumstances and status of any disciplinary action taken or pending against the vendor during the past 5 years with state agencies/ departments, professional organizations, or through any legal action.		None	
*In addition, please provide any information regarding the due diligence that the Department has taken to ensure that the vendor is not or has not been involved in any circumstances related to illegal activity, including but not limited to fraud.			

**TO:** Chris Salita, Director of Sourcing  
Kevin C. Bartels, Staff Attorney-Sourcing

**FROM:** Maria Paredes, Sourcing Analyst

**DATE:** April 18<sup>th</sup>, 2018

**SUBJECT:** Recommendation of Special Contract Request (cy19-13236)

The Department of Revenue is seeking approval of a special contract request for a five year contract that would be a sole source contract with Multistate Tax Commission.

The Multistate Tax Commission (MTC) is a unique intergovernmental agency that was specifically created by the Multistate Tax Compact. This contract would allow for continued participation in the MTC Joint Audit Program as authorized by Tenn. Code Ann §§ 67-1-102(b)(10) and 67-1-1704(g). The State is now an Associate and Project Member of the MTC and this allows for the MTC to operate as an arm of the Department. The MTC performs mutually agreed upon audits, and forwards their finding and recommendation to the Department for the assessment and collection of taxes. The program produces revenue in excess of its cost and assists the Department in maintaining the State's sales and use, as well as franchise and excise tax bases.

Pursuant to Section 6.2.1 of the Central Procurement Office Procedure Manual, I am recommending the approval of this no-cost and sole source request.

**Chris Salita**

Digitally signed by Chris Salita  
DN: cn=Chris Salita, o=CPO, ou=32101,  
email=Chris.Salita@tn.gov, c=US  
Date: 2019.04.23 15:41:58 -05'00'

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Director of Sourcing

Date

**Kevin C. Bartels**

Digitally signed by Kevin C. Bartels  
DN: cn=Kevin C. Bartels, o=CPO,  
ou=Legal,  
email=Kevin.C.Bartels@tn.gov, c=US  
Date: 2019.04.22 13:46:50 -05'00'

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Staff Attorney

Date

# Special Contract Request

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

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

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

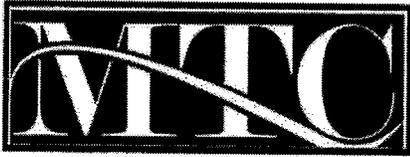
<p><b>APPROVED</b></p> <p><b>Michael F. Perry-CS</b></p> <p><small>Digitally signed by Michael F. Perry-CS DN: cn=Michael F. Perry-CS, o=CPO, ou=32101, email=Chris.Salita@tn.gov, c=US Date: 2019.04.23 15:42:14 -05'00'</small></p>	<p><b>APPROVED</b></p> <p><b>Bryan Chriske on behalf of Comptroller Justin P. Wilson</b></p> <p><small>Digitally signed by Bryan Chriske on behalf of Comptroller Justin P. Wilson Date: 2019.04.26 14:19:56 -05'00'</small></p>
<b>CHIEF PROCUREMENT OFFICER</b>	<b>DATE</b>
<b>COMPTROLLER OF THE TREASURY</b>	<b>DATE</b>

<b>Request Tracking #</b>	<b>34701-12020</b>
<b>1. Contracting Agency</b>	<b>Department of Revenue</b>
<b>2. Type of Contract or Procurement Method</b>	<input type="checkbox"/> No Cost <input type="checkbox"/> Revenue <input checked="" type="checkbox"/> Sole Source <input type="checkbox"/> Proprietary <input type="checkbox"/> Competitive Negotiation <input type="checkbox"/> Other _____
<b>3. Requestor Contact Information</b>	<b>Tyron Odom. 615.253.1381</b>
<b>4. Brief Goods or Services Caption</b>	<b>Tax Auditing Services/ MTC Joint Audit Program</b>

Request Tracking #	34701-12020
5. Description of the Goods or Services to be Acquired	<p>The services to be acquired are continued participation in the Multistate Tax Commission (MTC) Joint Audit Program as authorized by Tenn. Code Ann. §§ 67-1-102(b)(10) and 67-1-1704(g). Tennessee is now an Associate and Project Member of the MTC. As a member of the MTC Joint Audit Program, the MTC operates as an arm of the Department; performs mutually agreed upon audits as though they were part of the Department's own audit staff; ensures that its audit staff is adequately trained in the applicable Tennessee tax laws; and forwards their findings and recommendations to the Department for the assessment and collection of taxes determined to be due at the completion of the audit.</p>
6. Proposed Contractor	Multistate Tax Commission
7. Name & Address of the Contractor's principal owner(s) – NOT required for a TN state education institution	<p>Gregory S. Matson, Executive Director Multistate Tax Commission 444 North Capitol St., Suite 425 Washington, D.C. 20001 Email: <a href="mailto:gmatson@MTC.gov">gmatson@MTC.gov</a> Phone: 202.650.0300 Website: <a href="http://www.mtc.gov">www.mtc.gov</a></p>
8. Proposed Contract Period – with ALL options to extend exercised The proposed contract start date shall follow the approval date of this request.	60 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	\$ 1,381,300
14. Was there an initial government estimate? If so, what amount?	<input checked="" type="checkbox"/> NO <input type="checkbox"/> YES, \$

<b>Request Tracking #</b>	34701-12020
<b>15. Cost Determination Used-</b> How did agency arrive at the estimate of expected costs?	The MTC Executive Committee approved the audit and other program fees for FY 2019. The fee increase was 2% in the second year and 3% in the last three, which was consistent with what was previously projected by the MTC.
<b>16. Explanation of Fair and Reasonable Price-</b> Explain how agency determined that price is fair and reasonable	The rate is set by the MTC Executive Committee and has remained consistent for several years. All States pay the same standard rate affected only by level of MTC membership and participation in both or either the sales and use tax audit program and corporate income tax program.
<b>17. Documentation of Discussions with Contractor-</b> How did agency document discussions with Contractor? Attach documentation to this request as applicable.	The Department has been participating in the MTC Audit Program since approximately 2010. The Department's Audit Division Director has communicated with the MTC's Director of Administration regarding the rate for a new contract period. Communications have been by phone or email.
<b>18. Explanation of Need for or requirement placed on the State to acquire the goods or services</b>	Participation in the MTC Joint Audit Program assists Tennessee by offering a unique and cost-effective method for conducting additional tax audits. It assists in ensuring compliance among large multistate taxpayers beyond those already actively being pursued by the Department. The Joint Audit Program also assists Tennessee in identifying inconsistent reporting to different states by multistate taxpayers and offers Tennessee an additional resource and tool for adapting existing laws to new circumstances and industry practices that arise continuously.
<b>19. Proposed contract impact on current State operations</b>	The program produces revenue in excess of its costs and assists the state in maintaining its sales and use and franchise, excise tax bases.
<b>20. Justification</b> – Specifically explain why the goods or services should be acquired through the procurement method or contract type selected.	The MTC is a unique intergovernmental agency that was specifically created by the Multistate Tax Compact. Based upon the results of the Joint Audit Program to date, the estimated revenue is conservatively \$6,000,000 to \$10,000,000 for a contract period of 5 years.

Request Tracking #	34701-12020
<b>For No Cost and Revenue Contracts Only</b>	
21. What costs will the State incur as a result of this contract? If any, please explain.	
22. What is the total estimated revenue that the State would receive as a result of this contract?	
23. Could the State also contract with other parties interested in entering substantially the same agreement? Please explain.	<input type="checkbox"/> NO <input type="checkbox"/> YES
24. Summary of State responsibilities under proposed contract	
<b>For Sole Source and Proprietary Procurements Only</b>	
25. Evidence of Contractor's experience & length of experience providing the goods or services to be procured.	The MTC was created by the Multistate Tax Compact in 1967 and has been operating its Joint Audit Program since 1972. Currently, 28 states participate in the Joint Audit Program.
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.	<input type="checkbox"/> NO <input checked="" type="checkbox"/> YES, Method: Sole Source Name/Address: Same as above
27. Contractor selection process and efforts to identify reasonable, competitive, procurement alternatives	The MTC is a unique intergovernmental agency that was specifically created by the Multistate Tax Compact.
<b>Signature Required for all Special Contract Requests</b>	
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)	
Signature: <i>David Menegazzo</i>	Date: <i>4/12/19</i>



MULTISTATE TAX COMMISSION

444 North Capitol St., NW  
Suite 425  
Washington, DC 20001-1538  
Telephone: 202.650.0300

[www.mtc.gov](http://www.mtc.gov)

April 11, 2019

Hal Jones  
Tennessee Department of Revenue

Dear Mr. Jones:

Due to the unique nature of its services the Multistate Tax Commission acts as sole source provider for the Joint Audit Program (for both business income and sales & use tax audits in the case of Tennessee).

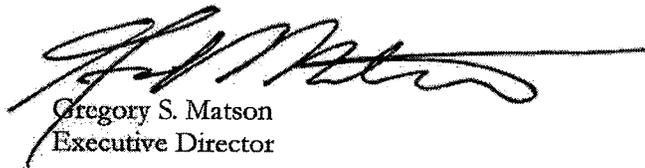
The Multistate Tax Commission is an intergovernmental state tax agency working on behalf of states and taxpayers to facilitate the equitable and efficient administration of state tax laws that apply to multistate and multinational enterprises. Created by the Multistate Tax Compact, the commission is charged by this law with:

- Facilitating the proper determination of State and local tax liability of multistate taxpayers, including the equitable apportionment of tax bases and settlement of apportionment disputes;
- Promoting uniformity or compatibility in significant components of tax systems;
- Facilitating taxpayer convenience and compliance in the filing of tax returns and in other phases of tax administration;
- Avoiding duplicative taxation.

The commission was created in 1967 as an effort by states to protect their tax authority in the face of previous proposals to transfer the writing of key features of state tax laws from the state legislature. The commission's Joint Audit Program has been in operation since 1972.

Please refer to the attached document for a detailed description of this program and the services provided.

Best Regards



Gregory S. Matson  
Executive Director

## MULTISTATE TAX COMMISSION

### DESCRIPTION OF SERVICES PROVIDED / PROGRAM FEES

#### **Joint Audit Program and Program Fees**

Tennessee will be able to participate in the Audit Committee's in-person summer, fall, and spring meetings; make choices regarding audit participation and completion of audit authorizations for audits chosen. Following audit work on completed audits and audits in progress, Tennessee will review any proposed assessments specific to Tennessee. Audit Committee meetings consist of audit nomination and selection processes as appropriate, discussion of developing audit issues and solutions, and discussion of general case progress and reporting.

The audit fees support the audit services provided to states through the Joint Audit Program.

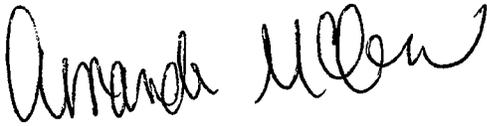
Overall audit fees are set on a reimbursement basis to cover the costs of operating of the program as required by Article VIII of the Multistate Tax Compact. They are distributed among the states by a schedule approved by the Executive Committee. The distribution of the fees among participating states is based on a long-range schedule of fee changes adopted in May 1991.

States participating in both income and sales tax audits pay a base fee amount that is equal for each state and is based on a cost reimbursement method. States participating in only income or sales tax audits pay an amount equal to 60 percent of the base fee amount for participating in both types of audits. States that are not compact or sovereignty members also pay an additional 20 percent general operations support surcharge. Those participating states which are among the 10 smallest states by population (and the District of Columbia) have their audit fees reduced by 10 percent.



**CONTRACT**

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

<b>Begin Date</b> 07/01/19	<b>End Date</b> 06/30/2024	<b>Agency Tracking #</b> 34701-12020	<b>Edison Record ID</b>		
<b>Contractor Legal Entity Name</b> Multistate Tax Commission			<b>Edison Vendor ID</b> 45344		
<b>Goods or Services Caption (one line only)</b> Tax auditing services					
<b>Contractor</b> <input checked="" type="checkbox"/> Contractor		<b>CFDA #</b>			
<b>Funding</b>					
<b>FY</b>	<b>State</b>	<b>Federal</b>	<b>Interdepartmental</b>	<b>Other</b>	<b>TOTAL Contract Amount</b>
2020	262,800				262,800
2021	268,200				268,200
2022	275,400				275,400
2023	283,200				283,200
2024	291,700				291,700
<b>TOTAL:</b>	<b>1,381,300</b>				<b>1,381,300</b>
<b>Contractor Ownership Characteristics:</b>					
<input type="checkbox"/> Minority Business Enterprise (MBE):					
<input type="checkbox"/> African American <input type="checkbox"/> Asian American <input type="checkbox"/> Hispanic American <input type="checkbox"/> Native American					
<input type="checkbox"/> Woman Business Enterprise (WBE)					
<input type="checkbox"/> Tennessee Service Disabled Veteran Enterprise (SDVBE)					
<input type="checkbox"/> Disabled Owned Business (DSBE)					
<input type="checkbox"/> 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.					
<input type="checkbox"/> Government <input type="checkbox"/> Non-Minority/Disadvantaged <input checked="" type="checkbox"/> Other: Intergovernmental state tax agency created by the Multistate Tax Compact in 1967					
<b>Selection Method &amp; Process Summary (mark the correct response to confirm the associated summary)</b>					
<input type="checkbox"/> Competitive Selection		Describe the competitive selection process used			
<input checked="" type="checkbox"/> Other		Describe the selection process used and submit a Special Contract Request			
<b>Budget Officer Confirmation:</b> There is a balance in the appropriation from which obligations hereunder are required to be paid that is not already encumbered to pay other obligations.					
					
<b>Speed Chart (optional)</b> RV 127		<b>Account Code (optional)</b> 70803000			

**CONTRACT  
BETWEEN THE STATE OF TENNESSEE,  
DEPARTMENT OF REVENUE  
AND  
MULTISTATE TAX COMMISSION**

This Contract, by and between the State of Tennessee, Department of Revenue ("State") and Multistate Tax Commission ("Contractor"), is for the provision of tax auditing 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 an intergovernmental state tax agency created by the Multistate Tax Compact in 1967. Contractor Place of Incorporation or Organization: Washington, D.C.  
Contractor Edison Registration ID # 45344

**A. SCOPE:**

- A.1. The Contractor shall provide all goods or services and deliverables as required, described, and detailed below and shall meet all service and delivery timelines as specified by this Contract.
- A.2. Definitions. For purposes of this Contract, definitions shall be as follows and as set forth in the Contract:  
Not applicable
- A.3. The Contractor agrees to operate as an arm of the State through the Contractor's Joint Audit Program. The Contractor agrees that its audit staff will perform mutually agreed upon audits as though they were part of the State's own audit staff. The Contractor will ensure that its audit staff is adequately trained in the applicable tax laws of the State and will be responsible for forwarding their findings and recommendations to the State for the assessment and collection of taxes determined to be due at the completion of the audit.
- The State will participate with other member states in the selection of the audit candidates. The State will also make the decision as to whether or not to participate in a given audit and how to act upon the audit results. The State will also participate in the Contractor's Audit Committee and its oversight subcommittee(s) to guide the program and ensure that it is responsive to the State and other member state needs.
- A.4. The Contractor shall audit the taxpayers mutually agreed upon by the parties for the purpose of establishing the sales and use or corporate income tax liability thereof, as the case may be. Except as may be specifically agreed to by the parties hereto, the normal audit period to be reviewed shall be three years in the case of income tax and to the extent of the applicable statute of limitation years (up to four years) in the case of sales and use tax.
- A.5. Unless determined otherwise by the State and the Contractor prior to the commencement of an audit, any and all audits authorized hereunder shall be conducted substantially in accordance with the Multistate Tax Commission (MTC) Audit Manuals which have been reviewed and are hereby approved by the State for the purpose of this Agreement. Notwithstanding the foregoing, the State shall be entitled to supervise and direct the conduct of any and all aspects of the audits authorized hereunder with respect to the determination of taxpayer's liability to the State. If, however, in the exclusive judgment of the Contractor, such supervision or direction interferes or threatens to interfere with the audits of taxpayer with respect to the MTC member states, the Contractor may elect, upon five days written notice, to terminate its agency relationship with respect to the audit(s) so affected or to take such other action as may be required to protect the interests of the MTC member states. In the event of such termination, the Contractor shall take reasonable efforts to assist the State in the State's continuation of the affected audit(s) by the State's own employees or other agents.
- A.6. It is understood and agreed that after its initial contact of any given taxpayer agreed upon by the parties to be subject to audit hereunder by the Contractor, the Contractor may determine that it is

not feasible to continue said audit or audits to completion. Such determination shall be made in the exclusive judgment of the Contractor, after consultation with a representative of the State. Upon making such a determination, the Contractor shall provide written notification thereof to the State.

- A.7. With respect to any audit candidates to be selected during the term of this Agreement, the State shall be polled with respect thereto in the identical manner that member states are polled. In addition, the State shall be entitled to fully participate in the vote on any and all issues brought before the MTC's Audit Committee including but not limited to the selection of audit candidates.
- A.8. Upon the timely request of the State to join an MTC audit, the State shall be required to execute and timely deliver to the MTC its written authorization of the MTC to audit the taxpayer on its behalf. Failure to timely deliver said authorization shall preclude the State from joining said audit unless the MTC shall determine, in its exclusive judgment, to proceed on behalf of the State after the receipt of the State's authorization. A request and authorization shall be considered timely if the authorization is received by the MTC at least 5 days prior to the scheduled commencement of the audit.
- A.9. If, upon the date of termination hereof, any one or more audits in which the State is a party is not completed by the issuance of an audit report by the MTC, this Agreement shall be extended automatically until the date upon which the last audit report is issued for the State. No further payments shall be made by the State for the period of the extension.
- A.10. Warranty. Contractor represents and warrants that the term of the warranty ("Warranty Period") shall be the greater of the Term of this Contract or any other warranty 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.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.

**B. TERM OF CONTRACT:**

This Contract shall be effective on 07/01/2019 ("Effective Date") and extend for a period of Sixty (60) months after the Effective Date ("Term"). The State shall have no obligation for goods or services provided by the Contractor prior to the Effective Date.

**C. PAYMENT TERMS AND CONDITIONS:**

- C.1. **Maximum Liability.** In no event shall the maximum liability of the State under this Contract exceed One Million Three Hundred and Eighty-One Thousand Three Hundred (\$1,381,300) ("Maximum Liability"). This Contract does not grant the Contractor any exclusive rights. The State does not guarantee that it will buy any minimum quantity of goods or services under this Contract. Subject to the terms and conditions of this Contract, the Contractor will only be paid for goods or services provided under this Contract after a purchase order is issued to Contractor by the State or as otherwise specified by this Contract.
- C.2. **Compensation Firm.** The payment methodology in Section C.3. of this Contract shall constitute the entire compensation due the Contractor for all goods or services provided under this Contract regardless of the difficulty, materials or equipment required. The payment methodology includes all applicable taxes, fees, overhead, and all other direct and indirect costs incurred or to be incurred by the Contractor.
- C.3. **Payment Methodology.** The Contractor shall be compensated based on the payment methodology for goods or services authorized by the State in a total amount as set forth in Section C.1.
  - a. The Contractor's compensation shall be contingent upon the satisfactory provision of goods or services as set forth in Section A.
  - b. The Contractor shall be compensated based upon the following payment methodology:

Goods or Services Description	Amount (per compensable increment)
Taxpayer Auditing Services 7/1/19 through 12/31/19	\$131,400
Taxpayer Auditing Services 01/1/20 through 6/30/20	\$131,400
Taxpayer Auditing Services 7/1/20 through 12/31/20	\$134,100
Taxpayer Auditing Services 1/1/21 through 6/30/21	\$134,100
Taxpayer Auditing Services 7/1/21 through 12/31/21	\$137,700
Taxpayer Auditing Services 1/1/22 through 6/30/22	\$137,700
Taxpayer Auditing Services 7/1/22 through 12/31/22	\$141,600
Taxpayer Auditing Services 1/1/23 through 6/30/23	\$141,600
Taxpayer Auditing Services 7/1/23 through 12/31/23	\$145,850
Taxpayer Auditing Services 1/1/24 through 6/30/24	\$145,850

Add Contingently Required Subsections as Appropriate (refer to instructions for details)

- C.4. **Travel Compensation.** The Contractor shall not be compensated or reimbursed for travel time, travel expenses, meals, or lodging.
- C.5. **Invoice Requirements.** The Contractor shall invoice the State only for goods delivered and accepted by the State or services satisfactorily provided at the amounts stipulated in Section C.3., above. Contractor shall submit invoices and necessary supporting documentation, no more frequently than once a month, and no later than thirty (30) days after goods or services have been provided to the following address:

Tennessee Department of Revenue  
Audit Division

P.O. Box 190644  
Nashville, TN 37219-0644

- a. Each invoice, on Contractor's letterhead, shall clearly and accurately detail all of the following information (calculations must be extended and totaled correctly):
    - (1) Invoice number (assigned by the Contractor);
    - (2) Invoice date;
    - (3) Contract number (assigned by the State);
    - (4) Customer account name: Department of Revenue & Audit 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:

Hal Jones, OOS Audit Manager  
Tennessee Department of Revenue  
5665 New Northside Dr., Suite 160  
Atlanta, GA 30328  
[Hal.Jones@tn.gov](mailto:Hal.Jones@tn.gov)  
Telephone # 770.541.5980  
FAX # Number

The Contractor:

Gregory S. Matson, Executive Director  
Multistate Tax Commission  
444 North Capitol St., N.W., Suite 425  
Washington D.C. 20001  
[gmatson@MTC.gov](mailto:gmatson@MTC.gov)  
Telephone # 202.650.0300  
FAX # Number

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

- D.3. Modification and Amendment. This Contract may be modified only by a written amendment signed by all Parties and approved by all applicable State officials.
- D.4. Subject to Funds Availability. The Contract is subject to the appropriation and availability of State or federal funds. In the event that the funds are not appropriated or are otherwise unavailable, the State reserves the right to terminate this Contract upon written notice to the Contractor. The State's exercise of its right to terminate this Contract shall not constitute a breach of Contract by the State. Upon receipt of the written notice, the Contractor shall cease all work associated with

the Contract. If the State terminates this Contract due to lack of funds availability, the Contractor shall be entitled to compensation for all conforming goods requested and accepted by the State and for all satisfactory and authorized services completed as of the termination date. Should the State exercise its right to terminate this Contract due to unavailability of funds, the Contractor shall have no right to recover from the State any actual, general, special, incidental, consequential, or any other damages of any description or amount.

- D.5. Termination for Convenience. The State may terminate this Contract for convenience without cause and for any reason. The State shall give the Contractor at least thirty (30) days written notice before the termination date. The Contractor shall be entitled to compensation for all conforming goods delivered and accepted by the State or for satisfactory, authorized services completed as of the termination date. In no event shall the State be liable to the Contractor for compensation for any goods neither requested nor accepted by the State or for any services neither requested by the State nor satisfactorily performed by the Contractor. In no event shall the State's exercise of its right to terminate this Contract for convenience relieve the Contractor of any liability to the State for any damages or claims arising under this Contract.
- D.6. Termination for Cause. If the Contractor fails to properly perform its obligations under this Contract in a timely or proper manner, or if the Contractor materially violates any terms of this Contract ("Breach Condition"), the State shall have the right to immediately terminate the Contract and withhold payments in excess of compensation for completed services or provided goods. Notwithstanding the above, the Contractor shall not be relieved of liability to the State for damages sustained by virtue of any Breach Condition and the State may seek other remedies allowed at law or in equity for breach of this Contract.
- D.7. Assignment and Subcontracting. The Contractor shall not assign this Contract or enter into a subcontract for any of the goods or services provided under this Contract without the prior written approval of the State. Notwithstanding any use of the approved subcontractors, the Contractor shall be the prime contractor and responsible for compliance with all terms and conditions of this Contract. The State reserves the right to request additional information or impose additional terms and conditions before approving an assignment of this Contract in whole or in part or the use of subcontractors in fulfilling the Contractor's obligations under this Contract.
- D.8. Conflicts of Interest. The Contractor warrants that no part of the Contractor's compensation shall be paid directly or indirectly to an employee or official of the State of Tennessee as wages, compensation, or gifts in exchange for acting as an officer, agent, employee, subcontractor, or consultant to the Contractor in connection with any work contemplated or performed under this Contract.

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

- D.9. Nondiscrimination. The Contractor hereby agrees, warrants, and assures that no person shall be excluded from participation in, be denied benefits of, or be otherwise subjected to discrimination in the performance of this Contract or in the employment practices of the Contractor on the grounds of handicap or disability, age, race, creed, color, religion, sex, national origin, or any other classification protected by federal or state law. The Contractor shall, upon request, show proof of nondiscrimination and shall post in conspicuous places, available to all employees and applicants, notices of nondiscrimination.
- D.10. Prohibition of Illegal Immigrants. The requirements of Tenn. Code Ann. § 12-3-309 addressing the use of illegal immigrants in the performance of any contract to supply goods or services to the state of Tennessee, shall be a material provision of this Contract, a breach of which shall be grounds for monetary and other penalties, up to and including termination of this Contract.
- a. The Contractor agrees that the Contractor shall not knowingly utilize the services of an illegal immigrant in the performance of this Contract and shall not knowingly utilize the

services of any subcontractor who will utilize the services of an illegal immigrant in the performance of this Contract. The Contractor shall reaffirm this attestation, in writing, by submitting to the State a completed and signed copy of the document at Attachment Reference, semi-annually during the Term. If the Contractor is a party to more than one contract with the State, the Contractor may submit one attestation that applies to all contracts with the State. All Contractor attestations shall be maintained by the Contractor and made available to State officials upon request.

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

- D.16. Patient Protection and Affordable Care Act. The Contractor agrees that it will be responsible for compliance with the Patient Protection and Affordable Care Act ("PPACA") with respect to itself and its employees, including any obligation to report health insurance coverage, provide health insurance coverage, or pay any financial assessment, tax, or penalty for not providing health insurance. The Contractor shall indemnify the State and hold it harmless from any costs to the State arising from Contractor's failure to fulfill its PPACA responsibilities for itself or its employees.
- D.17. Limitation of State's Liability. The State shall have no liability except as specifically provided in this Contract. In no event will the State be liable to the Contractor or any other party for any lost revenues, lost profits, loss of business, decrease in the value of any securities or cash position, time, goodwill, or any indirect, special, incidental, punitive, exemplary or consequential damages of any nature, whether based on warranty, contract, statute, regulation, tort (including but not limited to negligence), or any other legal theory that may arise under this Contract or otherwise. The State's total liability under this Contract (including any exhibits, schedules, amendments or other attachments to the Contract) or otherwise shall under no circumstances exceed the Maximum Liability. This limitation of liability is cumulative and not per incident.
- D.18. Limitation of Contractor's Liability. In accordance with Tenn. Code Ann. § 12-3-701, the Contractor's liability for all claims arising under this Contract shall be limited to an amount equal to two (2) times the Maximum Liability amount detailed in Section C.1. and as may be amended, PROVIDED THAT in no event shall this Section limit the liability of the Contractor for: (i) intellectual property or any Contractor indemnity obligations for infringement for third-party intellectual property rights; (ii) any claims covered by any specific provision in the Contract providing for liquidated damages; or (iii) any claims for intentional torts, criminal acts, fraudulent conduct, or acts or omissions that result in personal injuries or death.
- D.19. Hold Harmless. The Contractor agrees to indemnify and hold harmless the State of Tennessee as well as its officers, agents, and employees from and against any and all claims, liabilities, losses, and causes of action which may arise, accrue, or result to any person, firm, corporation, or other entity which may be injured or damaged as a result of acts, omissions, or negligence on the part of the Contractor, its employees, or any person acting for or on its or their behalf relating to this Contract. The Contractor further agrees it shall be liable for the reasonable cost of attorneys' fees, court costs, expert witness fees, and other litigation expenses for the State to enforce the terms of this Contract.

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

- D.20. HIPAA Compliance. The State and Contractor shall comply with obligations under the Health Insurance Portability and Accountability Act of 1996 ("HIPAA"), Health Information Technology for Economic and Clinical Health ("HITECH") Act and any other relevant laws and regulations regarding privacy (collectively the "Privacy Rules"). The obligations set forth in this Section shall survive the termination of this Contract.
- a. Contractor warrants to the State that it is familiar with the requirements of the Privacy Rules, and will comply with all applicable requirements in the course of this Contract.
  - b. Contractor warrants that it will cooperate with the State, including cooperation and coordination with State privacy officials and other compliance officers required by the Privacy Rules, in the course of performance of the Contract so that both parties will be in compliance with the Privacy Rules.
  - c. The State and the Contractor will sign documents, including but not limited to business associate agreements, as required by the Privacy Rules and that are reasonably

necessary to keep the State and Contractor in compliance with the Privacy Rules. This provision shall not apply if information received or delivered by the parties under this Contract is NOT "protected health information" as defined by the Privacy Rules, or if the Privacy Rules permit the parties to receive or deliver the information without entering into a business associate agreement or signing another document.

- d. The Contractor will indemnify the State and hold it harmless for any violation by the Contractor or its subcontractors of the Privacy Rules. This includes the costs of responding to a breach of protected health information, the costs of responding to a government enforcement action related to the breach, and any fines, penalties, or damages paid by the State because of the violation.
- D.21. Tennessee Consolidated Retirement System. Subject to statutory exceptions contained in Tenn. Code Ann. §§ 8-36-801, *et seq.*, the law governing the Tennessee Consolidated Retirement System ("TCRS"), provides that if a retired member of TCRS, or of any superseded system administered by TCRS, or of any local retirement fund established under Tenn. Code Ann. §§ 8-35-101, *et seq.*, accepts State employment, the member's retirement allowance is suspended during the period of the employment. Accordingly and notwithstanding any provision of this Contract to the contrary, the Contractor agrees that if it is later determined that the true nature of the working relationship between the Contractor and the State under this Contract is that of "employee/employer" and not that of an independent contractor, the Contractor, if a retired member of TCRS, may be required to repay to TCRS the amount of retirement benefits the Contractor received from TCRS during the Term.
- D.22. Tennessee Department of Revenue Registration. The Contractor shall comply with all applicable registration requirements contained in Tenn. Code Ann. §§ 67-6-601 – 608. Compliance with applicable registration requirements is a material requirement of this Contract.
- D.23. Debarment and Suspension. The Contractor certifies, to the best of its knowledge and belief, that it, its current and future principals, its current and future subcontractors and their principals:
- a. are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any federal or state department or agency;
  - b. have not within a three (3) year period preceding this Contract been convicted of, or had a civil judgment rendered against them from commission of fraud, or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, state, or local) transaction or grant under a public transaction; violation of federal or state antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification, or destruction of records, making false statements, or receiving stolen property;
  - c. are not presently indicted or otherwise criminally or civilly charged by a government entity (federal, state, or local) with commission of any of the offenses detailed in section b. of this certification; and
  - d. have not within a three (3) year period preceding this Contract had one or more public transactions (federal, state, or local) terminated for cause or default.

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

- D.24. Force Majeure. "Force Majeure Event" means fire, flood, earthquake, elements of nature or acts of God, wars, riots, civil disorders, rebellions or revolutions, acts of terrorism or any other similar cause beyond the reasonable control of the Party except to the extent that the non-performing Party is at fault in failing to prevent or causing the default or delay, and provided that the default or delay cannot reasonably be circumvented by the non-performing Party through the use of

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

- D.25. State and Federal Compliance. The Contractor shall comply with all State and federal laws and regulations applicable to Contractor in the Contractor's performance of this Contract.
- D.26. Governing Law. This Contract shall be governed by and construed in accordance with the laws of the State of Tennessee, without regard to its conflict or choice of law rules. The Tennessee Claims Commission or the state or federal courts in Tennessee shall be the venue for all claims, disputes, or disagreements arising under this Contract. The Contractor acknowledges and agrees that any rights, claims, or remedies against the State of Tennessee or its employees arising under this Contract shall be subject to and limited to those rights and remedies available under Tenn. Code Ann. §§ 9-8-101 - 408.
- D.27. Entire Agreement. This Contract is complete and contains the entire understanding between the Parties relating to its subject matter, including all the terms and conditions of the Parties' agreement. This Contract supersedes any and all prior understandings, representations, negotiations, and agreements between the Parties, whether written or oral.
- D.28. Severability. If any terms and conditions of this Contract are held to be invalid or unenforceable as a matter of law, the other terms and conditions of this Contract shall not be affected and shall remain in full force and effect. The terms and conditions of this Contract are severable.
- D.29. Headings. Section headings of this Contract are for reference purposes only and shall not be construed as part of this Contract.
- D.30. Incorporation of Additional Documents. Each of the following documents is included as a part of this Contract by reference. In the event of a discrepancy or ambiguity regarding the Contractor's duties, responsibilities, and performance under this Contract, these items shall govern in order of precedence below:
- a. any amendment to this Contract, with the latter in time controlling over any earlier amendments;
  - b. this Contract with any attachments or exhibits (excluding the items listed at subsections c. through f., below), which includes [identify attachments and exhibits];
  - c. any clarifications of or addenda to the Contractor's proposal seeking this Contract;
  - d. the State solicitation, as may be amended, requesting responses in competition for this Contract;
  - e. any technical specifications provided to proposers during the procurement process to award this Contract; and
  - f. the Contractor's response seeking this Contract.

D.31. Iran Divestment Act. The requirements of Tenn. Code Ann. § 12-12-101, *et seq.*, addressing contracting with persons as defined at Tenn. Code Ann. §12-12-103(5) that engage in investment activities in Iran, shall be a material provision of this Contract. The Contractor certifies, under penalty of perjury, that to the best of its knowledge and belief that it is not on the list created pursuant to Tenn. Code Ann. § 12-12-106.

D.32. Insurance. Contractor shall maintain insurance coverage as specified in this Section. The State reserves the right to amend or require additional insurance coverage, coverage amounts, and endorsements required under this Contract. Contractor's failure to maintain or submit evidence of insurance coverage, as required, is a material breach of this Contract. If Contractor loses insurance coverage, fails to renew coverage, or for any reason becomes uninsured during the Term, Contractor shall immediately notify the State. All insurance companies providing coverage must be: (a) acceptable to the State; (b) authorized by the Tennessee Department of Commerce and Insurance ("TDCI"); and (c) rated A- / VII or better by A.M. Best. All coverage must be on a primary basis and noncontributory with any other insurance or self-insurance carried by the State. Contractor agrees to name the State as an additional insured on any insurance policy with the exception of workers' compensation (employer liability) and professional liability (errors and omissions) insurance. All policies must contain an endorsement for a waiver of subrogation in favor of the State. Any deductible or self insured retention ("SIR") over fifty thousand dollars (\$50,000) must be approved by the State. The deductible or SIR and any premiums are the Contractor's sole responsibility. The Contractor agrees that the insurance requirements specified in this Section do not reduce any liability the Contractor has assumed under this Contract including any indemnification or hold harmless requirements.

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

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

The State agrees that it shall give written notice to the Contractor as soon as practicable after the State becomes aware of any claim asserted or made against the State, but in no event later than

thirty (30) calendar days after the State becomes aware of such claim. The failure of the State to give notice shall only relieve the Contractor of its obligations under this Section to the extent that the Contractor can demonstrate actual prejudice arising from the failure to give notice. This Section shall not grant the Contractor or its insurer, through its attorneys, the right to represent the State in any legal matter, as the right to represent the State is governed by Tenn. Code Ann. § 8-6-106.

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

a. Commercial General Liability (“CGL”) Insurance

- 1) The Contractor shall maintain CGL, which shall be written on an ISO Form CG 00 01 occurrence form (or a substitute form providing equivalent coverage) and shall cover liability arising from property damage, premises and operations products and completed operations, bodily injury, personal and advertising injury, and liability assumed under an insured contract (including the tort liability of another assumed in a business contract).

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

b. Workers’ Compensation and Employer Liability Insurance

- 1) For Contractors statutorily required to carry workers’ compensation and employer liability insurance, the Contractor shall maintain:
  - i. Workers’ compensation in an amount not less than one million dollars (\$1,000,000) including employer liability of one million dollars (\$1,000,000) per accident for bodily injury by accident, one million dollars (\$1,000,000) policy limit by disease, and one million dollars (\$1,000,000) per employee for bodily injury by disease.

- 2) If the Contractor certifies that it is exempt from the requirements of Tenn. Code Ann. §§ 50-6-101 – 103, then the Contractor shall furnish written proof of such exemption for one or more of the following reasons:

- i. The Contractor employs fewer than five (5) employees;
- ii. The Contractor is a sole proprietor;
- iii. The Contractor is in the construction business or trades with no employees;
- iv. The Contractor is in the coal mining industry with no employees;
- v. The Contractor is a state or local government; or

vi. The Contractor self-insures its workers' compensation and is in compliance with the TDCI rules and Tenn. Code Ann. § 50-6-405.

c. Automobile Liability Insurance

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

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

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

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

**E. SPECIAL TERMS AND CONDITIONS:**

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

Add Appropriate and Contingently Required Special Terms & Conditions (refer to instructions for details)

**IN WITNESS WHEREOF,**

**CONTRACTOR LEGAL ENTITY NAME:**

---

**CONTRACTOR SIGNATURE**

**DATE**

---

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

**STATE AGENCY NAME:**

---

**NAME & TITLE**

**DATE**

**DRAFT**

**ATTESTATION RE PERSONNEL USED IN CONTRACT PERFORMANCE**

<b>If the attestation applies to more than one contract, modify this row accordingly.</b>	
<b>SUBJECT CONTRACT NUMBER:</b>	
<b>CONTRACTOR LEGAL ENTITY NAME:</b>	
<b>EDISON VENDOR IDENTIFICATION NUMBER:</b>	

If the attestation applies to more than one contract, modify the following paragraph accordingly.

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

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**CONTRACTOR SIGNATURE**

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

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**PRINTED NAME AND TITLE OF SIGNATORY**

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**DATE OF ATTESTATION**

