



STATE OF TENNESSEE
DEPARTMENT OF FINANCE AND ADMINISTRATION
ENTERPRISE RESOURCE PLANNING DIVISION
312 ROSA PARKS AVENUE
NASHVILLE, TENNESSEE 37243
(615) 253-2978
FAX (615) 253-2980

LARRY MARTIN
COMMISSIONER

CLYDE PHILLIPS
DIRECTOR

MEMORANDUM

TO: Ms. Krista Lee, Executive Director, Fiscal Review Committee

FROM: Clyde Phillips, Edison Director *CP*

DATE: February 15, 2017

SUBJECT: Summary Letter for [REDACTED] Contract
Amendment

Please find attached, for the Fiscal Review Committee's consideration, documentation of an amendment request for Contract # 31516 (FA-12-38941) with [REDACTED]. As outlined in the Amendment Request, the amendment extends the contract term for two additional years and increases the maximum contract liability to cover the extended period.

This is the second amendment to the [REDACTED] contract. The two-year (24 months) extension will allow the Enterprise Resource Planning division and the Department of Human Resources time to consider and implement a different applicant services/recruiting software solutions that offer tighter integration and alignment with the State's ERP application, Edison.

The Department of Finance and Administration respectfully requests to be placed on the agenda to present this request at the next Fiscal Review Committee meeting.

Please let me or Sandy Strickland (sandy.strickland@tn.gov) know if you need additional information.

CP

CONTRACT FA-12-38941 (#31516) AMENDMENT 2 - CONTRACT & SPEND SUMMARY

FY 2018 Balance Summary*	
1. Final payment in FY 2017	\$68,000.00
2. Unspent travel	\$0.00
3. Other unspent authority	\$52,417.00
<hr/>	
* Subtotal unspent authority	\$120,417.00
Total Balance	\$120,417.00

Funding —					
FY	State	Federal	Interdepartmental	Other	TOTAL Contract Amount
Prior to FY 2015			\$143,438.00		\$143,438.00
2015			\$68,000.00		\$68,000.00
2016			\$71,000.00		\$71,000.00
2017			\$68,000.00		\$68,000.00
2018			\$113,708.50		\$113,708.50
2019			\$113,708.50		\$113,708.50
TOTAL:	\$0.00		\$577,855.00		\$577,855.00

	Contract Summary Sheet	Actual Spend	
2012	-	-	-
2013	7,438.00	7,438.00	-
2014	136,000.00	136,000.00	-
2015	110,805.67	68,000.00	42,805.67
2016	74,305.67	71,000.00	3,305.67
2017	74,305.66	74,305.66	74,305.66
	<hr/>	<hr/>	
	402,855.00	282,438.00	120,417.00

Amendment 5

Maximum Liability 402,855.00

Contract Spend

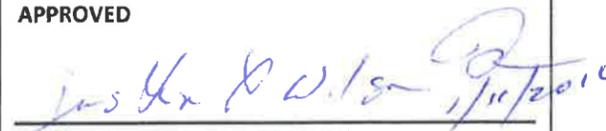
2012 Interdepartmental	11,200.00	11 month Insight	
Interdepartmental	<u>19,000.00</u>	Payment 6 deliverables	Contract adjustment. PO 23803 -- should have paid against Contract 21470.
Maintenance -- 2013 Interdepartmental Change Order	<u>7,438.00</u>	7,438.00	
Maintenance -- 2014 Interdepartmental Maintenance -- Interdepartmental	<u>68,000.00</u>	136,000.00	2013 Payment 2014 Payment
Maintenance -- 2015 Interdepartmental	<u>68,000.00</u>	68,000.00	2015 Payment
Maintenance -- 2016 Interdepartmental Change Order	<u>3,000.00</u>	71,000.00	2016 Payment
Maintenance -- 2017 Interdepartmental	<u>68,000.00</u>	68,000.00	2017 Payment
Maintenance -- 2018 Interdepartmental	87,500.00		

Change Order	26,208.50	113,708.50	2018 Estimated Payment
Maintenance -- 2019 Interdepartmental	87,500.00		
Change Order	26,208.50	<u>113,708.50</u>	2019 Estimated Payment
		<u><u>577,855.00</u></u>	

Rule Exception Request

Use this document to request changes to Central Procurement Office templates, policies, or other procurement documents or to modify the "necessary contract clauses" identified in Tenn. Comp. R. & Reg. 0690-03-01-.17 ("CPO Rule 17"). Complete this document in conformity with CPO Rule 17, which is available [here](#). Send the completed document in PDF format to: Agsprrs.Agsprsr@tn.gov All Rule Exception Requests are subject to review and approval by the Chief Procurement Officer. Rule Exception Requests that propose to modify any of CPO Rule 17's necessary contract clauses shall be subject to review and approval by the Comptroller of the Treasury.

APPROVED
Michael F. Perry/
TLS
 Digitally signed by Michael F. Perry/TLS
 DN: cn=Michael F. Perry/TLS, o=Central
 Procurement Office, ou=Chief Procurement
 Officer, email=toni.stuart@tn.gov, c=US
 Date: 2017.01.10 11:59:34 -0600
 CHIEF PROCUREMENT OFFICER

APPROVED

 COMPTROLLER OF THE TREASURY

Agency request tracking #	31701-17005
1. Procuring Agency	F&A
2. Edison contract ID #	31516
3. Contractor or Grantee	[REDACTED]
4. Contract's Effective Date	04/25/2012
5. Contract or grant contract's Term (with ALL options to extend exercised)	84 months (4/24/2019)
6. Contract's Maximum Liability (with ALL options to extend exercised)	\$ 577,855.00
7. Citation and explanation of the rule(s) for which the exception is requested	Tenn. Comp. Rules & Regs, ch. 0690-03-01-. 14 (2.c). Contract Type; Term Contract-General Edison requests an exception to deviate from the 60 month contract term limitation.
8. Description of requested changes If adding new provisions or modifying existing provisions, insert the new or modified provisions in their entirety.	No new provisions are required for this Rule Exception Request.
9. Justification	Edison requests an exception to the 60 month contract term limitation for the [REDACTED] dba [REDACTED] contract (31516) in order to continue ongoing licensing, technical support, maintenance, and software upgrades. This contract is part of the State's ERP application offering and represents the employee applicant services functionality. This software is used by potential applicants applying for job opportunities within state government, agency HR personnel requesting job postings and reviewing/processing candidates for those postings and Department of Human Resources personnel administering the preferred service recruiting function.

The request is to extend for two years (24 months) while the Edison team and the Department of Human Resources, the business owner of [REDACTED] consider different applicant services/recruiting software solutions that offer tighter integration and alignment with Edison and [REDACTED]. A two year extension will allow Edison and DOHR to evaluate products, decide on future direction, and implement a new solution.

Signature of Agency head or designee and date

Buddy Lee, ASST. COMMISSIONER



STS Pre-Approval Endorsement Request E-Mail Transmittal

TO : STS Contracts
Department of Finance & Administration
E-mail : it.abc@tn.gov

FROM : Sandy Strickland Blackwell
E-mail : sandy.strickland@tn.gov

DATE : 12/12/2016

RE : Request for STS Pre-Approval Endorsement

Applicable RFS # N/A

State Security Confidential Information Applicability

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

- Applicable
 Not Applicable

STS Endorsement Signature & Date:

Chief Information Officer

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

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

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

Contracting Agency	F&A
Agency Contact (name, phone, e-mail)	Sandy S Blackwell, 615-253-2798, sandy.strickland@tn.gov

Applicable RFS # **N/A**

Attachments Supporting Request (mark all applicable)

Note: The complete draft procurement document and the applicable documents listed below must accompany this request when submitted to STS. Special Contract Requests and Amendment Requests without Agency Head signature are acceptable. STS is aware that these documents will not have CPO signature when submitted with this request.

- Solicitation Document
- Special Contract Request
- Amendment Request
- Proposed Contract/Grant or Amendment
- Original Contract/Grant and Previous Amendments (if any)

Information Systems Plan (ISP) Project Applicability

To avoid delay of STS pre-approval, the applicability of an ISP project to the procurement must be confirmed with agency IT staff prior to submitting this request to STS. If necessary, agency IT staff should contact STS Planning with questions concerning the need for an ISP project.

IT Director/Staff Name Confirming (required): Sandy S Blackwell

- Applicable – Approved ISP Project#
- Not Applicable

Subject Information Technology Service Description

Provide a brief summary of the information technology services involved. Clearly identify included technologies such as system development/maintenance, security, networking, etc. As applicable, identify the contract or solicitation sections related to the IT services.

This amendment is to extend the current [REDACTED] contract two years. This contract is part of the State's ERP application offering and represents the employee applicant services functionality. This software is used by potential applicants applying for job opportunities within state government, agency HR personnel requesting job postings and reviewing/processing candidates for those postings and Department of Human Resources personnel administering the preferred service recruiting function.



HR Pre-Approval Endorsement Request E-Mail Transmittal

TO : Brigitte Tubbs-Jones, Employment Law Counsel
Department of Human Resources
E-mail : DOHR.Contracts@tn.gov

FROM : Sandy Strickland Blackwell
E-mail : sandy.strickland@tn.gov

DATE : 01/05/2017

RE : Request for Human Resources Pre-Approval Endorsement

Applicable RFS # N/A

Human Resources Endorsement Signature & Date:

Brigitte Tubbs-Jones 1/5/17
Department of Human Resources

Department of Human Resources (HR) pre-approval endorsement is required pursuant to procurement regulations pertaining to contracts with an individual; contracts that involve training State employees (except training pursuant to an information technology system procurement); or services relating to the employment of current or prospective state employees (interviewing, screening, evaluating, *et cetera*). This request seeks to ensure that HR is aware of and has an opportunity to review the procurement detailed below and in the attached document(s). This requirement applies to any procurement method regardless of dollar amount.

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

Contracting Agency	F&A
Agency Contact (name, phone, e-mail)	Sandy S Blackwell, 615-253-2798, sandy.strickland@tn.gov
Attachments Supporting Request (as applicable – copies without signatures acceptable)	
<input type="checkbox"/> Solicitation Document <input type="checkbox"/> Special Contract Request <input checked="" type="checkbox"/> Amendment Request <input type="checkbox"/> Proposed contract or amendment	
Subject HR Service Description (Brief summary of HR services involved. As applicable, identify the contract and solicitation sections related to the HR services.)	
<p>This contract is part of the State's ERP application offering and represents the employee applicant services functionality, [REDACTED]. This software is used by potential applicants applying for job opportunities within state government, agency HR personnel requesting job postings and reviewing/processing candidates for those postings and Department of Human Resources personnel administering the preferred service recruiting function.</p>	

Applicable RFS #	N/A



CONTRACT AMENDMENT COVER SHEET

Agency Tracking # 31701-17005	Edison ID 31516	Contract # FA-12-38941	Amendment # 2		
Contractor Legal Entity Name [REDACTED]			Edison Vendor ID 19519		
Amendment Purpose & Effect(s) This amendment extends the contract by two years and increases the maximum liability.					
Amendment Changes Contract End Date: <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO		End Date: April 24, 2019			
TOTAL Contract Amount INCREASE or DECREASE per this Amendment (zero if N/A):			\$ 577,855.00		
Funding —					
FY	State	Federal	Interdepartmental	Other	TOTAL Contract Amount
Prior to 2015			\$143,438.00		\$143,438.00
2015			\$68,000.00		\$68,000.00
2016			\$71,000.00		\$71,000.00
2017			\$68,000.00		\$68,000.00
2018			\$113,708.50		\$113,708.50
2019			\$113,708.50		\$113,708.50
TOTAL:			\$577,855.00		\$577,855.00
American Recovery and Reinvestment Act (ARRA) Funding: <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO					
Budget Officer Confirmation: There is a balance in the appropriation from which obligations hereunder are required to be paid that is not already encumbered to pay other obligations.			CPO USE		
			Speed Chart (optional) FA00000112		

**AMENDMENT TWO
OF CONTRACT 31516**

This Amendment is made and entered by and between the State of Tennessee, Department of Finance and Administration, hereinafter referred to as the "State" and [REDACTED] hereinafter referred to as the "Contractor." For good and valuable consideration, the sufficiency of which is hereby acknowledged, it is mutually understood and agreed by and between said, undersigned contracting parties that the subject contract is hereby amended as follows:

1. Contract section A.4 is deleted in its entirety.
2. Contract section A.13 is deleted in its entirety and replaced with the following:
 - A.13. Disaster Recovery Plan. The Contractor shall maintain a Disaster Recovery Plan throughout the life of the contract. The plan must address recovery of business functions, business units, business processes, human resources, and the technology infrastructure. The Contractor shall continually review the Disaster Recovery Plan and make necessary updates to the plan at least annually to ensure the plan always contains accurate and up-to-date information.

The plan shall include, but not be limited to:

 - a. Checkpoint/restart capabilities.
 - b. Description of data file and backup retention.
 - c. Backup procedures for all keying operations.
 - d. Backup procedures for all other manual operations in the event of a computer or telecommunications outage or a disaster at any of the State offices.
 - e. Backup procedures for online processing.
 - f. Recovery procedures for loss of manual files and hardcopy documents.
 - g. Annual test of the disaster recovery plan.

The Contractor shall comply with the following:

 - h. The Recovery Time Objective (RTO) shall be no more than twenty-four (24) hours.
 - i. The Recovery Point Objective (RPO) shall be no more than one (1) hour.
3. The following is added as Contract section A.17.
 - A.17 Transition Out. Upon notification by the State that the Contractor shall not be awarded a subsequent contract for these services, the remainder of the current contract term will serve as a transition phase. This transition phase shall be no shorter than four (4) months.
 - a. The Contractor agrees to fully cooperate with any subsequent Contractor(s) and/or the State during this transition time to make certain there is an orderly transition.
 - b. The Contractor shall submit a written Transition Plan for approval by the State within 20 days of written notification by the State. The Transition Plan will address items such as, but not limited to:
 1. Transition Period
 2. Data and Attachments Conversion – process for the Contractor to convert data from the Contractor's system to the State's system
 3. Website Management – coordinating the transition from Contractor website management to State website management
 - c. The Contractor shall execute the Contractor tasks defined in the Transition Plan.

- d. The Contractor shall be compensated at the blended hourly rate identified in contract section C.3.d. Costs not to exceed the maximum liability outlined in contract section C.1.
3. The following is added as Contract section A.18.

A.18 Security.

- a. Processing environment must be SOC2 Type 2, FedRamp, or ISO27000 compliant and the Contractor must provide proof of certification to the State on an annual basis.
- b. Data must reside in the United States.
- c. Confidential data must be encrypted in flight and at rest.
- d. At the term of this contract or as requested by the State, State data must be sanitized in accordance with NIST publication 800-88.

4. Contract section B.1 is deleted in its entirety and replaced with the following:

This Contract shall be effective for the period beginning on April 25, 2012 (“Effective Date”) and ending on April 24, 2019, (“Term”). The State shall have no obligation for goods delivered or services provided by the Contractor prior to the Effective Date.

5. Contract section B.2 is deleted in its entirety.

6. Contract section C.1 is deleted in its entirety and replaced with the following:

C.1. Maximum Liability. In no event shall the maximum liability of the State under this Contract exceed Five Thousand Seven Hundred Seventy-seven Eighty Hundred Fifty-five Dollars and No Cents (\$577,855.00) (“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.

7. The following is added as Contract section C.2:

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.

8. Contract section C.3 is deleted in its entirety and replaced with the following:

C.3. Payment Methodology. The Contractor shall be compensated based on the payment rates herein for units of service authorized by the State in a total amount not to exceed the Contract Maximum Liability established in section C.1.

- a. The Contractor’s compensation shall be contingent upon the satisfactory completion of units, milestones, or increments of service defined in section A.
- b. The Contractor shall be compensated for said units, milestones, or increments of service based upon the following payment rates:
- c. Annual Hosting Fee and Licensure:

Annual Hosting Fee and Licensure	Amount (per compensable increment)
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Annual Hosting Fee, Years 1 to 4	\$56,000.00
Annual Hosting Fee, Year 5	\$14,000.00
Annual Hosting Fee, Year 6	\$ 17,500.00
Annual Hosting Fee, Year 7	\$ 17,500.00
Licensure, Years 1 to 4	\$216,000.00
Licensure, Year 5	\$54,000.00
Licensure, Year 6	\$ 70,000.00
Licensure, Year 7	\$ 70,000.00

d. Blended Hourly Rates for Change Orders:

The Contractor shall be compensated for changes requested and performed pursuant to Contract Section A.16, without a formal amendment of this contract based upon the payment rates detailed in the schedule below and as agreed pursuant to said Section A.16, PROVIDED THAT compensation to the Contractor for such "change order" work shall not exceed Fifty-Two Thousand Four Hundred Seventeen Dollars and No Cents (\$52,417.00). If, at any point during the Contract period, the State determines that the cost of necessary "change order" work would exceed said maximum amount, the State may amend this Contract to address the need.

Blended Hourly Rates	Amount (per compensable increment)
Blended Rate, Year 1	\$125.00 per hour
Blended Rate, Year 2	\$ 125.00 per hour
Blended Rate, Year 3	\$ 125.00 per hour
Blended Rate, Year 4	\$ 125.00 per hour
Blended Rate, Year 5	\$ 125.00 per hour
Blended Rate, Year 6	\$ 125.00 per hour
Blended Rate, Year 7	\$ 125.00 per hour

9. Contract section C.4 is deleted in its entirety and replaced with the following:

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

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

E.2. Communications and Contacts. All instructions, notices, consents, demands, or other communications required or contemplated by this Contract shall be in writing and shall be made by certified, first class mail, return receipt requested and postage prepaid, by overnight courier service with an asset tracking system, or by email or facsimile transmission with recipient confirmation. 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:

Clyde Phillips – ERP Project Director
Tennessee Department of Finance and Administration
312 Rosa L Parks Avenue
19th Floor
clyde.phillips@tn.gov
Telephone # 615-741-9800

The Contractor:



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

11. Contract section E.6 is deleted in its entirety.

12. The following is added as Contract section E.17.

E.17. 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.

13. The following is added as Contract section E.18.

E.18 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 and/or procure 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.

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

Amendment Effective Date. The revisions set forth herein shall be effective April 25, 2017. All other terms and conditions of this Contract not expressly amended herein shall remain in full force and effect.

IN WITNESS WHEREOF,



SIGNATURE

DATE

PRINTED NAME AND TITLE OF SIGNATORY (above)

DEPARTMENT OF FINANCE AND ADMINISTRATION:

LARRY B. MARTIN, COMMISSIONER

DATE



CONTRACT AMENDMENT COVER SHEET

Agency Tracking # 31701-17005	Edison ID 31516	Contract # FA-12-38941	Amendment # 1
Contractor Legal Entity Name [REDACTED]			Edison Vendor ID 19519

Amendment Purpose & Effect(s)
This amendment extends the contract by three years and increases the maximum liability.

Amendment Changes Contract End Date: YES NO **End Date:** April 24, 2017

TOTAL Contract Amount INCREASE or DECREASE per this Amendment (zero if N/A): \$ 218,607.00

Funding --					
FY	State	Federal	Interdepartmental	Other	TOTAL Contract Amount
2012			\$0.00		\$0.00
2013			\$7,438.00		\$7,438.00
2014			\$136,000.00		\$136,000.00
2015			\$110,805.67		\$110,805.67
2016			\$74,305.67		\$74,305.67
2017			\$74,305.66		\$74,305.66
TOTAL:			\$402,855.00		\$402,855.00

American Recovery and Reinvestment Act (ARRA) Funding: YES NO

Budget Officer Confirmation: There is a balance in the appropriation from which obligations hereunder are required to be paid that is not already encumbered to pay other obligations.

Maureen Abbey JH

CPO USE

Speed Chart (optional) FA00000070	Account Code (optional) 72201000
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AMENDMENT 1 OF CONTRACT 31516

This Amendment is made and entered by and between the State of Tennessee, Department of Finance and Administration, hereinafter referred to as the "State" and [REDACTED] hereinafter referred to as the "Contractor." For good and valuable consideration, the sufficiency of which is hereby acknowledged, it is mutually understood and agreed by and between said, undersigned contracting parties that the subject contract is hereby amended as follows:

1. Contract section A.4 is deleted in its entirety and replaced with the following:

A.4. Named Enhancements. The State may ask the Contractor to pursue the following named enhancements during the lifetime of the contract. All other enhancements not specifically named in this Section A.4 will be considered Change Orders and will be requested by the State pursuant to the process listed in Section A.16.

- a. Personnel Action Form - Save and Release (Approval) Audit Stamp.
The system shall create an audit stamp, to include date, time, and by which user the action was completed. This aforementioned audit stamp will be created for the specific action of saving and releasing the personnel action form. Furthermore, this audit stamp should be available as a field in Ad Hoc Reporting and displayed on the Personnel Action Form in Insight.
- b. Hires Awaiting Authorization Row (Maximum).
The system shall provide filtering functionality on the "Hired" page in Insight under the menu item "List". The filters shall provide filtering functionality such that a user may select from a drop-down of valid values for both department and authorization status fields.
- c. Outbound (NG to Edison) Interface.
The system shall provide an additional column to the integration export file (TN_HR099) that will reference the requisition number for any applicant with a personnel transaction. The field length of this column should allow for at least 7 digits.
- d. Column Sort Functionality
The system shall provide for directional sorting for both Exam # and Job Posting columns on the Candidate Track > Exam Plans page. This added sorting functionality for the aforementioned columns shall mirror the sorting functionality of other columns included on the Candidate Track > Exam Plans page.

2. Contract section B.1 is deleted in its entirety and replaced with the following:

B.1. This Contract shall be effective for the period beginning April 25, 2012, and ending on April 24, 2017. The Contractor hereby acknowledges and affirms that the State shall have no obligation for services rendered by the Contractor which were not performed within this specified contract period.

3. Contract section B.2 is deleted in its entirety and replaced with the following:

B.2. Term Extension. The State reserves the right to extend this Contract for an additional period or periods of time representing increments of no more than three years and a total contract term of no more than five (5) years, provided that such an extension of the contract term is effected prior to the current, contract expiration date by means of a



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

4. Contract section C.1 is deleted in its entirety and replaced with the following:

C. 1 Maximum Liability. In no event shall the maximum liability of the State under this contract exceed Four Hundred Two Thousand Eight Hundred Fifty-Five Dollars (\$402,855.00). The payment rates in section C.3 shall constitute the entire compensation due the Contractor for all service and Contractor obligations hereunder regardless of the difficulty, materials or equipment required. The payment rates include, but are not limited to, all applicable taxes, fees, overheads, and all other direct and indirect costs incurred or to be incurred by the Contractor.

The Contractor is not entitled to be paid the maximum liability for any period under the Contract or any extensions of the Contract for work not requested by the State. The maximum liability represents available funds for payment to the Contractor and does not guarantee payment of any such funds to the Contractor under this Contract unless the State requests work and the Contractor performs said work. In which case, the Contractor shall be paid in accordance with the payment rates detailed in section C.3. The State is under no obligation to request work from the Contractor in any specific dollar amounts or to request any work at all from the Contractor during any period of this Contract.

5. Contract section C.3 is deleted in its entirety and replaced with the following:

C.3. Payment Methodology. The Contractor shall be compensated based on the payment rates herein for units of service authorized by the State in a total amount not to exceed the Contract Maximum Liability established in section C.1.

- a. The Contractor's compensation shall be contingent upon the satisfactory completion of units, milestones, or increments of service defined in section A.
- b. The Contractor shall be compensated for said units, milestones, or increments of service based upon the following payment rates:
- c. Annual Hosting Fee and Licensure:

Annual Hosting Fee and Licensure	Amount (per compensable increment)
Annual Hosting Fee, Year 1	\$ 14,000.00 per year
Annual Hosting Fee, Year 2	\$ 14,000.00 per year
Annual Hosting Fee, Year 3	\$ 14,000.00 per year
Annual Hosting Fee, Year 4	\$ 14,000.00 per year
Annual Hosting Fee, Year 5	\$ 14,000.00 per year
Licensure, Year 1	\$ 54,000.00 per year
Licensure, Year 2	\$ 54,000.00 per year
Licensure, Year 3	\$ 54,000.00 per year
Licensure, Year 4	\$ 54,000.00 per year
Licensure, Year 5	\$ 54,000.00 per year



d. Named Enhancements:

Named Enhancements	Amount (per compensable increment)
Personnel Action Form – Save & Release (Approval) Audit Stamp	\$ 20,000.00
Hires Awaiting Authorization Row (Maximum)	\$9,000.00
Outbound (NG to Edison) Interface	\$6,000.00
Column Sort Functionality	\$1,500.00

e. Blended Hourly Rates for Change Orders:

The Contractor shall be compensated for changes requested and performed pursuant to Contract Section A.16, without a formal amendment of this contract based upon the payment rates detailed in the schedule below and as agreed pursuant to said Section A.16, PROVIDED THAT compensation to the Contractor for such "change order" work shall not exceed seven percent (7 %) of the sum of milestone payment rates detailed in Section C.3.b., above (which is the total cost for the milestones and associated deliverables set forth in Contract Section A). If, at any point during the Contract period, the State determines that the cost of necessary "change order" work would exceed said maximum amount, the State may amend this Contract to address the need.

Blended Hourly Rates	Amount (per compensable increment)
Blended Rate, Year 1	\$ 125.00 per hour
Blended Rate, Year 2	\$ 125.00 per hour
Blended Rate, Year 3	\$ 125.00 per hour
Blended Rate, Year 4	\$ 125.00 per hour
Blended Rate, Year 5	\$ 125.00 per hour
NOTE: The Contractor shall not be compensated for travel time to the primary location of service provision.	

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

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

Tennessee Department of Finance and Administration
 Division of Enterprise Resource Planning
 312 Rosa L. Parks Avenue
 17th Floor
 Nashville, TN 37243

a. Each invoice shall clearly and accurately detail all of the following required information (calculations must be extended and totaled correctly).



- (1) Invoice Number (assigned by the Contractor)
- (2) Invoice Date
- (3) Contract Number (assigned by the State)
- (4) Customer Account Name: Finance and Administration, Enterprise Resource Planning Division
- (5) Customer Account Number (assigned by the Contractor to the above-referenced Customer)
- (6) Contractor Name
- (7) Contractor Tennessee Edison Registration ID Number Referenced in Preamble of this Contract
- (8) Contractor Contact for Invoice Questions (name, phone, and/or fax)
- (9) Contractor Remittance Address
- (10) Description of Delivered Service
- (11) Complete Itemization of Charges, which shall detail the following:
 - i. Service or Milestone Description (including name & title as applicable) of each service invoiced
 - ii. Number of Completed Units, Increments, Hours, or Days as applicable, of each service invoiced
 - iii. Applicable Payment Rate (as stipulated in Section C.3.) of each service invoiced
 - iv. Amount Due by Service
 - v. Total Amount Due for the invoice period

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

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

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

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

The State:
Sandy Graf – ERP Director
Tennessee Department of Finance and Administration
312 Rosa L. Parks Avenue,
17th Floor
Nashville, TN 37243-1102
sandy.graf@tn.gov
615-253-2978 voice
615-253-2980 fax

The Contractor:



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

8. The following is added as Contract section E.16.

E.16. Tennessee Department of Revenue Registration. The Contractor shall be registered with the Department of Revenue for the collection of Tennessee sales and use tax. This registration requirement is a material requirement of this Contract.

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

Amendment Effective Date. The revisions set forth herein shall be effective April 25, 2014. All other terms and conditions of this Contract not expressly amended herein shall remain in full force and effect.

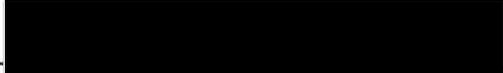
IN WITNESS WHEREOF,



4/10/2014

SIGNATURE

DATE



CEO

PRINTED NAME AND TITLE OF SIGNATORY (above)

DEPARTMENT OF FINANCE AND ADMINISTRATION

Larry B. Martin

4/10/14

LARRY B. MARTIN, COMMISSIONER

DATE



CONTRACT

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

Begin Date April 25, 2012	End Date April 24, 2014	Agency Tracking # 31701-17005	Edison Record ID 31516
Contractor Legal Entity Name [REDACTED]			Edison Vendor ID 19519

Service Caption (one line only)
Provision of Applicant Services support, licensure, and maintenance services.

Subrecipient or Vendor <input type="checkbox"/> Subrecipient <input checked="" type="checkbox"/> Vendor	CFDA #
---	---------------

Funding —					
FY	State	Federal	Interdepartmental	Other	TOTAL Contract Amount
2012	\$68,000.00				\$68,000.00
2013	\$104,200.00				\$104,200.00
2014	\$12,048.00				\$12,048.00
TOTAL:	\$184,248.00				\$184,248.00

American Recovery and Reinvestment Act (ARRA) Funding: YES NO

Ownership/Control

African American
 Asian
 Hispanic
 Native American
 Female
 Person w/Disability
 Small Business
 Government
 NOT Minority/Disadvantaged
 Other:

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

<input type="checkbox"/> RFP	The procurement process was completed in accordance with the approved RFP document and associated regulations.
<input type="checkbox"/> Competitive Negotiation	The predefined, competitive, impartial, negotiation process was completed in accordance with the associated, approved procedures and evaluation criteria.
<input type="checkbox"/> Alternative Competitive Method	The predefined, competitive, impartial, procurement process was completed in accordance with the associated, approved procedures and evaluation criteria.
<input checked="" type="checkbox"/> Non-Competitive Negotiation	The non-competitive contractor selection was completed as approved, and the procurement process included a negotiation of best possible terms & price.
<input type="checkbox"/> Other	The contractor selection was directed by law, court order, settlement agreement, or resulted from the state making the same agreement with <u>all</u> interested parties or <u>all</u> parties in a predetermined "class."

Budget Officer Confirmation: There is a balance in the appropriation from which obligations hereunder are required to be paid that is not already encumbered to pay other obligations.

[Signature]

OCR USE - FA

FA1238941

Speed Chart (optional) FA00000070	Account Code (optional) 70803000
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**CONTRACT
 BETWEEN THE STATE OF TENNESSEE,
 DEPARTMENT OF FINANCE AND ADMINISTRATION
 AND**

[REDACTED]

This Contract, by and between the State of Tennessee, Department of Finance and Administration, hereinafter referred to as the "State" and [REDACTED] hereinafter referred to as the "Contractor," is for the provision of Applicant Services (AS) software and related support, licensure and maintenance services, as further defined in the "SCOPE OF SERVICES."

The Contractor is a For-Profit Corporation.
 Contractor Place of Incorporation or Organization: California C-Corp
 Contractor Edison Registration ID # 0000019519

A. SCOPE OF SERVICES:

- A.1. The Contractor shall provide all service and deliverables as required, described, and detailed herein and shall meet all service and delivery timelines as specified by this Contract.
- A.2. The Contractor is required to provide, and if necessary, modify commercially-available Applicant Services functionality and associated software products and services to meet the requirements identified.
- A.3. Types of Services. The Contractor shall provide services including, but not limited to, the following:
 - a. Project Management
 - b. Business process design and software configuration
 - c. Customizations
 - (1) Reports analysis and development
 - (2) Enhancements and modifications
 - (3) Interface maintenance
 - (4) Workflow / security configuration
 - d. Ongoing support
- A.4. Named Enhancements. The State may ask the Contractor to pursue the following named enhancements during the lifetime of the contract. All other enhancements not specifically named in this Section A.4 will be considered Change Orders and will be requested by the State pursuant to the process listed in Section A.18.

a. Test Score Banding on Eligible and Referred Lists.

The system shall provide for the configurable banding of eligible and referred list scores by appropriate Insight users as defined by security role. The scores shall display along with the band in Insight. The band shall display in the Online Hiring Center, but not the score. Some consideration may need to be made for the minimum number that must be referred according to list type – this would be a result of potential legislative action. Further, the custom filtering functionality (Department/Division/List Type/County Location/Breakdown Code) shall operate in conjunction with this configurable functionality. Additional Bonus Points, whether Veteran or Performance Evaluation, should be added to the Exam Score before the banding takes place. Bands shall appear as configured, whether alpha or numeric values.

b. Configurable Display of Master Profile Information in Insight on Master Profile in OHC.



The system shall include a configurable setting to allow for the display of selected fields on the Master Profile screen in the Online Hiring Center based on the fields available in Insight. Further, the system shall only display those fields to those with HR Liaison access in the Online Hiring Center. Fields shall be view-only in the OHC. The system shall also include a search by name feature that should return the following: Candidate name, last 4 digits of the Social Security Number, Address, City, State, and Zip.

The system shall further display the entire candidate Master Profile with the following exceptions:

- (1) Applicant Profile/Applicant Master Record: Ethnicity; Age Group; Driver's License #; Gender
- (2) Additional Fields: Position Nbr; Person Birth Date
- (3) Applied For: Application Change Log, Edit, and Audit Trail
- (4) Eligible Lists: Counter
- (5) Referrals: Action/Show List

c. Configurable Date/Day/Time Function on Activating/Inactivating Job Postings.

The system shall include configurable settings on date, day and time during which applications may be submitted for job postings.

d. MQ Auto-Scoring enabled within Workflow.

The system shall be modified to automatically score applicants when the workflow action being processed is advancing candidates to an auto-scoring evaluation step.

e. Ongoing development items pending in the Vendor Customer Support System.

A.5. License Use/Unlimited Usage.

The State's rights to use the License granted in this contract is limited to the Enterprise Scope. The "Enterprise Scope" shall be as expressed as employees of the Executive, Legislative, and Judicial branches of the State of Tennessee and individuals using the Software in furtherance of the State's employment operations, such as applicants applying for a position with the State. This scope does not include employees of the Board of Regents, county and local governments, K-12 school districts and Local Education Associations (LEAs). The License allows an unlimited number of users of the Software and an unlimited number of employees/applicants/applications processed by the Software; provided such users, employees, and applicants are within the Enterprise Scope.

A.6. State roles and full-time equivalents (FTE's) that have been allocated to support the Applicant Services NeoGov solution are described below:

- a. Project Director. The Edison Project Director shall report directly to the Project Steering Committee. The Project Director is responsible for leadership and oversight of all project activities, tasks and plans, including staffing, budget, resource allocation, and strategic planning and communications. The Project Director is the primary contract manager for the Contractor during the project, and is the primary liaison to State executives and managers outside the project.
- b. Configuration Manager. The Configuration Managers serve on the Edison Project Team, working under the direction of the Project Director. The Configuration Managers are responsible for leading a large and diverse team focused on a specific ERP module such as Human Resources (Personnel), Payroll, Benefits, Financials, Procurement or Asset Management. The Configuration Manager is responsible for managing all aspects of the team's effective and successful work effort for software configuration, development, testing, and deployment of a specific ERP functional module, based on prior experiences with State processes and the knowledge and guidance provided by Contractor consultants.



- c. Configuration Lead. The Configuration Lead serves on the Edison Project Team, working under the direction of a Configuration Manager and the Project Director. The Configuration Lead is responsible for leading a small to medium-sized team focused on system configuration, development, testing, and deployment of a specific functional module, such as Applicant Services, based on prior experiences with State processes and the knowledge and guidance provided by Contractor consultants.
- A.7. Contractor's Staffing. The Contractor shall have full responsibility for providing staff sufficient to fulfill the contract requirements including application hosting, trouble-shooting, issue resolution, enhancement development, testing and quality assurance.
- A.8. Acceptable Use Policy. The Contractor, State-approved subcontractors, and their employees may be required to sign State Acceptable Use Policy agreements (see Contract Attachment B), in addition to complying with the confidentiality requirements stated herein.
- A.9. Backup and Recovery Plan. The Contractor shall update and maintain a Backup and Recovery Plan in support of the hosted solution. To prevent loss of data, the Contractor shall test and implement backup and recovery procedures. This plan shall include procedures for the periodic copying of data to other media and the process for restoring data to its original or prior form. Tests shall be performed to validate the backup and recovery procedures. The Contractor shall include provision for off-site storage of the Applicant Services application and data. The Contractor shall update this plan on a quarterly basis.
- A.10. Interface Support.

The Contractor will be responsible for the maintenance of a set of standard and secure inbound and outbound interfaces for the State to process transactions from and to other State administrative systems. Standard and secure inbound and outbound Applicant Services interfaces include, but are not limited to, the following interface examples:

SOURCE SYSTEM	TARGET SYSTEM	INFORMATION	CONTRACTOR – RESPONSIBILITY	STATE– RESPONSIBILITY	AGENCY – RESPONSIBILITY
Applicant Services	Edison ERP	Job Data (inbound)	Produce a file of job data in a format acceptable to Edison	Provide a standard inbound job data file format	Applicant Services
Applicant Services	Edison ERP	Personal Data (inbound)	Produce a file of personal data records in a format acceptable to Edison	Provide a standard inbound personal data file format	Applicant Services
Edison ERP	Applicant Services	Position Data (outbound)	Provide a standard inbound position data file format	Produce a file of position data in a format acceptable to the Applicant Services system	Edison ERP
Edison ERP	Applicant Services	Personal Data (outbound)	Provide a standard inbound personal data file format	Produce an extract from Edison in a format acceptable to the Applicant Services system	Edison ERP



SOURCE SYSTEM	TARGET SYSTEM	INFORMATION	CONTRACTOR – RESPONSIBILITY	STATE– RESPONSIBILITY	AGENCY – RESPONSIBILITY
Edison ERP	Applicant Services	Job Code Data (outbound)	Provide a standard inbound job code file format	Produce an extract from Edison in a format acceptable to the Applicant Services system	Edison ERP

The Contractor shall also be responsible for the nightly download of system data utilizing a secure method of file transfer such as SFTP to a designated State server. The Contractor shall provide procedures for ensuring the accuracy and completeness of the Applicant Services data set.

- A.11. Reports. The Contractor shall be responsible for the maintenance of standard delivered reports as well as the Ad Hoc and Ad Hoc Beta reporting tools.
- A.12. Security Plan. The Contractor shall maintain a detailed Security Plan describing how the system application security features shall be integrated with existing network user log-in ids. Recommended levels of security, limitations of capabilities, and required rules shall be provided.
- A.13. Disaster Recovery Plan. The Contractor shall maintain a Disaster Recovery Plan throughout the life of the contract. The plan must address recovery of business functions, business units, business processes, human resources, and the technology infrastructure. The Contractor shall continually review the Disaster Recovery Plan and make necessary updates to the plan at least annually to ensure the plan always contains accurate and up-to-date information.

The plan shall include, but not be limited to:

- a. Checkpoint/restart capabilities.
- b. Description of data file and backup retention.
- c. Backup procedures for all keying operations.
- d. Backup procedures for all other manual operations in the event of a computer or telecommunications outage or a disaster at any of the State offices.
- e. Backup procedures for online processing.
- f. Recovery procedures for loss of manual files and hardcopy documents.
- g. Annual test of the disaster recovery plan.

A.14. Application Service Levels.

- a. The hosted solution must meet the response time and availability standards described in this section. If response time and/or system availability degrades to a level of non-compliance during the periods specified, the State may request a Service Credit for each occurrence and the Contractor must take the necessary steps to bring the system back to the required level unless the State determines that factors outside the Contractor's control, such as the State's infrastructure, are the cause.

(1) Response Times.

Average response times of less than five (5) seconds for screen-to-screen for 95% of all transactions and less than three (3) seconds average for field-to-field activity is required.

(2) Standard Service Levels/Warranty.

In the event that the State experiences any of the service performance issues defined in this section as a result of the Contractor's failure to provide services, the Contractor will, upon the State's request in accordance with Section A.14.a(2)(vi) below, credit the State's account as described below (the "Service



Level Warranty"). The Service Level Warranty shall not apply to any services other than system availability, and shall not apply to performance issues (i) caused by factors outside of the Contractor's reasonable control; (ii) that resulted from any actions or inactions of the State or any third parties; or (iii) that resulted from the State's equipment and/or third party equipment (not within the sole control of the Contractor).

- i. Service Warranty Definitions. For purposes of this Contract, the following definitions shall apply:
 - (a) "Downtime" shall mean sustained System unavailability in excess of three (3) consecutive hours due to the failure of the Contractor to provide Service(s) for such period. System unavailability is defined as inability to login to the Contractor's systems (this does not include slow performance and/or intermittent system errors). Downtime shall not include any System unavailability during the Contractor's Scheduled Maintenance of the System, and Services, as described herein.
 - (b) "Scheduled Maintenance" shall mean a period of time where the System is unavailable to the State, and/or any third party, in order for the Contractor to perform maintenance of the System. System maintenance includes, but shall not be limited to (i) adding, modifying, or upgrading equipment software and/or System source code, and; (ii) adding, modifying, or upgrading equipment.
 - (c) "Service Credit" shall mean an amount equal to the pro-rata annual recurring service charges (i.e., all annual recurring charges) for one (1) day of Service.
- ii. Downtime Period. In the event the State experiences Downtime, the State shall be eligible to receive from the Contractor a Service Credit for each Downtime period. Only one Service Credit can be applied within a twenty-four (24) hour period. Examples: If the State experiences one Downtime period, it shall be eligible to receive one Service Credit. If the State experiences two Downtime periods, from multiple events at least twenty-four (24) hours apart, it shall be eligible to receive two Service Credits.
- iii. Remedy for Downtime. If the source of the Downtime is within the sole control of the Contractor, the Contractor will remedy the Downtime as soon as possible. If the source of the Downtime resides outside of the Contractor's System, the Contractor will use commercially reasonable efforts to notify the party(ies) responsible for the source of the Downtime and cooperate with it (them) to resolve such problem as soon as possible.
- iv. Failure to Determine Source and/or Remedy. In the event that the Contractor (A) is unable to determine the source of the Downtime within the time periods described herein and/or, (B) along with any hosting service on which the Contractor's system resides is the sole source of the Downtime and is unable to remedy such Downtime within time period described herein, the Contractor will deliver a Service Credit to the State according to Section A.14.a(2)(ii).
- v. The State Must Request Service Credit. In order to receive any of the Service Credits described herein, the State must notify the Contractor within seven (7) days from the time the State becomes eligible to receive



a Service Credit. Failure to comply with this requirement will forfeit the State's right to receive a Service Credit.

- vi. **Maximum Service Credit.** The aggregate maximum number of Service Credits to be issued by the Contractor to the State for any and all Downtime periods that occur in a single calendar month shall not exceed seven (7) Service Credits. A Service Credit shall be issued in the Contractor's invoice in the year following the Downtime, unless the Service Credit is due in the State's final year of service. In such case, a refund for the dollar value of the Service Credit will be mailed to the State.

b. Customer Service Response.

The State requires Contractor to be available for telephone customer support from 8:00 am to 8:00 pm Central time, Monday through Friday. Priority assignments, definitions and responses are defined as:

Priority 1 - System down. Acknowledgement and updates are governed by Standard Service Level requirements and liability

Priority 2 - Inability to conduct daily business - Acknowledgement Online and or via phone within eight (8) Contractor business hours

Priority 3 - Daily process is able to be completed, but not efficient - Acknowledgement Online and or via phone within sixteen (16) Contractor business hours

Failure to meet these standards shall result in the State receiving a Service Credit.

c. Service Credit.

A Service Credit is defined as an amount equal to the annual amount paid by the State to the Contractor divided by 365. This daily imputed amount is equal to the Service Credit amount. In no case will the Service Credits due to the State for a month exceed the amounts paid by the State to the Contractor. In the event the State terminates this contract with Service Credits still owed to the State, the Contractor shall compensate the State for the monetary value of these Service Credits.

A.15. Warranty of System Products/Services.

- a. This warranty language shall supersede any warranty language provided by the Uniform Computer Information Transactions Act (UCITA).

b. General Terms.

The Contractor expressly warrants that any components of the Applicant Services solution provided or configured by the Contractor, and any products or services resulting from change orders and enhancements produced or provided by the Contractor to the State, as being compliant in all material respects with the terms of the Contract or the change order or enhancement request, and warrants that these products or services will be free from material errors, defects, deficiencies or deviations, and that the products or services will perform in such a manner as the Contract, change order or enhancement request require, so that the intended function of the products or services is accomplished in all material respects as intended by the Contract, the change order or enhancement request, and is otherwise consistent with industry standards.

c. Warranty Periods.

- (1) The warranty period(s) shall be one (1) year, shall apply to all software accepted by the State and to products or services resulting from change orders and enhancements related to that software, and shall begin on the following dates:
 - i. The one (1) year warranty period on the applicable Applicant Services solution begins with the date the State approves in writing the System



Acceptance Checklist completed by the Contractor and the State at the end of the implementation phase.

- ii. If any enhancements are requested by the State subsequent to the implementation phase, the one (1) year warranty begins on the date the State provides written acceptance of the product or services resulting from an enhancement request.

- (2) The warranty shall be applicable when State staff performs any function under direction of the Contractor during any turnover, training or maintenance periods required in the Contract.

d. Warranty Coverage.

- (1) The warranty encompasses any errors, defects, deficiencies, realized or discovered application security vulnerabilities or deviations discovered in any products or services, and errors created in State data caused by such error, defect, deficiency or deviation.
- (2) The warranty requires the correction by the Contractor of all products or services containing any errors, defects, deficiencies or deviations, correction of errors in State data caused by such, and any necessary modifications or revisions to products or services, including, by example, and not by limitation, the design, coding, and operation of the system's software to perform any function required by the Contract, whether occurring in the original contract or whether resulting from a change order or enhancement requested by the State, or which is procured in any amendment to the Contract, in any interfaces that are created, and in any training manuals and all system documentation provided by the Contractor.
- (3) Any corrections of deficiencies relating to the Contract Scope of Services requirements or deliverables and any investigation necessary to determine the source of such deficiencies shall be completed by the Contractor at no cost to the State.

e. Time Frames for Warranty Services.

- (1) The Contractor must promptly, at the direction of, and within the time specified by, the State, correct any errors, defects, deficiencies or deviations from specifications and all the application system errors and performance or operational delays.
- (2) The Contractor shall provide emergency maintenance services to correct code problems or any performance or operational problems related to the design or coding of the system software, its functioning or interfaces on a twenty-four (24) hour, seven (7) days a week basis.
- (3) Products and services shall be either replaced, revised, repaired or corrected as agreed to by State and Contractor as of written notification by the State of the errors, defects, deficiencies or deviations; provided, however, that if the continued use of a defective or deficient product or service would cause damage to the State system(s) or associated data, or would otherwise seriously impair, as determined by the State and Contractor, the ability of users of the system(s) to do their jobs or the functions for which the system was established, then Contractor shall act to repair the deficiencies immediately, unless an extension is otherwise granted in writing, by the State.
- (4) The State has the sole discretion in determining if errors, defects, deficiencies or deviations have been resolved.

f. Resources Required for Warranty Service.



The Contractor shall apply all necessary resources to correct the errors, defects, deficiencies or deviations without cost or expense to the State, and shall make these corrections within the time-frame specified by the State.

g. Failure to Provide Effective Warranty Services.

If the Contractor fails to repair an error, defect, deficiency or deviation for products or services covered by the warranty, the State may, at its option, act to correct or repair the error, defect, deficiency or deviation, and the Contractor shall be required to reimburse the State for all costs incurred to conduct the repair, including notification to affected parties if required by State statute.

h. Contact for Warranty Services.

- (1) The Contractor will be the initial contact point for all warranty notifications and support requests, regardless of the perceived source of the problem.
- (2) The Contractor may elect to have telephone or on-site warranty repair or support services performed by subcontracted personnel; however, if this is the case, the Contractor shall be responsible for coordinating the effort so that the use of any third-party support is transparent to the State and so that the State shall not have to deal directly with the sub-contractor.
- (3) The State reserves the right to approve Subcontractors for warranty service, and such Subcontractors shall be approved in writing by the State.

i. Maintenance of Operations and Services During Warranty Work.

The correction of errors, defects, deficiencies or deviations in work products/services shall not detract from or interfere with software maintenance or operational tasks.

j. Problems Not Caused by Contractor Fault.

- (1) If Contractor personnel determine that the problem is not the fault of Contractor-provided software or hardware, then the Contractor shall notify State support personnel immediately.
- (2) If the State agrees that the problem is due to software or hardware provided by the State, the State shall resolve the problem. However, in this case, if requested by the State and agreed to by Contractor, Contractor personnel shall remain on-site and/or dedicated to the problem to perform any required joint functions until the problem is resolved, and the State shall compensate the Contractor, at the rates contained in Contract Section C.3, only for the time the Contractor has to remain on site.

A.16. Change Orders. The State may, at its sole discretion and with written notice (Statement of Work [SOW]) to the Contractor, request changes in the scope of services that are necessary but were unspecified in the scope of services of this Contract. The SOW will be assigned a project number, which will be used to track the services through completion. The SOW will describe the scope of the requested services including the specific information security and other state standard technologies involved and any special data handling due to issues such as confidentiality.

- a. Memorandum of Understanding— After receipt of an SOW for additional services from the State, the Contractor shall respond to the State, within a maximum of thirty (30) calendar days, with a written proposal for completing the service. Said 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);
- (4) the maximum number of person hours required for the change(s); and
- (5) the maximum cost for the change(s)— this maximum cost shall in no instance exceed the product of the person hours required multiplied by the appropriate payment rate proposed for such work.

The Contractor shall not perform any additional service until the State has approved the proposal. If approved, the State will sign the proposal within fifteen (15) calendar days, and it shall constitute a Memorandum of Understanding (MOU) between the Contract Parties pertaining to the specified change(s) and shall be incorporated, hereby, as a part of this Contract.

- b. **MOU Performance**— Subsequent to State approval of an MOU, the Contractor shall complete the required services. The Contractor shall track the progress of work on authorized services and report to the State upon request. The State will be the sole judge of the acceptable completion of work and, upon such determination, shall provide the Contractor written approval.
- c. **MOU Remuneration**— The State will remunerate the Contractor only for acceptable work. All acceptable work performed pursuant to an approved MOU, without a formal amendment of this contract, shall be remunerated in accordance with and further limited by contract section C.3.e., PROVIDED THAT, the State shall be liable to the Contractor only for the cost of the actual person hours worked to complete the necessary work, not to exceed the maximum cost for the change detailed in the MOU. In no instance shall the State be liable to the Contractor for the cost of any person hours worked in excess of the maximum person hours indicated in or of any amount exceeding the maximum cost specified by the approved MOU authorizing the service. Upon State approval of the work, the Contractor shall invoice the State in accordance with the relevant provisions of this Contract.

B. CONTRACT PERIOD:

- B.1. This Contract shall be effective for the period beginning April 25, 2012, and ending on April 24, 2014. The Contractor hereby acknowledges and affirms that the State shall have no obligation for services rendered by the Contractor which were not performed within this specified contract period.
- B.2. Term Extension. The State reserves the right to extend this Contract for an additional period or periods of time representing increments of no more than one year and a total contract term of no more than five (5) years, provided that such an extension of the contract term is effected prior to the current, contract expiration date by means of a contract amendment. If a term extension necessitates additional funding beyond that which was included in the original Contract, an increase of the State's maximum liability will also be effected through contract amendment, and shall be based upon payment rates provided in the original Contract.

C. PAYMENT TERMS AND CONDITIONS:

- C.1. Maximum Liability. In no event shall the maximum liability of the State under this Contract exceed One Hundred Eighty-Four Thousand Two Hundred Forty-Eight Dollars (\$184,248.00). The payment rates in section C.3 shall constitute the entire compensation due the Contractor for all service and Contractor obligations hereunder regardless of the difficulty, materials or equipment required. The payment rates include, but are not limited to, all applicable taxes, fees,



overheads, and all other direct and indirect costs incurred or to be incurred by the Contractor.

The Contractor is not entitled to be paid the maximum liability for any period under the Contract or any extensions of the Contract for work not requested by the State. The maximum liability represents available funds for payment to the Contractor and does not guarantee payment of any such funds to the Contractor under this Contract unless the State requests work and the Contractor performs said work. In which case, the Contractor shall be paid in accordance with the payment rates detailed in section C.3. The State is under no obligation to request work from the Contractor in any specific dollar amounts or to request any work at all from the Contractor during any period of this Contract.

- C.2. Compensation Firm. The payment rates and the maximum liability of the State under this Contract are firm for the duration of the Contract and are not subject to escalation for any reason unless amended.
- C.3. Payment Methodology. The Contractor shall be compensated based on the payment rates herein for units of service authorized by the State in a total amount not to exceed the Contract Maximum Liability established in section C.1.
 - a. The Contractor's compensation shall be contingent upon the satisfactory completion of units, milestones, or increments of service defined in section A.
 - b. The Contractor shall be compensated for said units, milestones, or increments of service based upon the following payment rates:
 - c. Annual Hosting Fee and Licensure:

Annual Hosting Fee and Licensure	Amount (per compensable increment)
Annual Hosting Fee, Year 1	\$ 14,000.00 per year
Annual Hosting Fee, Year 2	\$ 14,000.00 per year
Annual Hosting Fee, Optional Year 3	\$ 14,000.00 per year
Annual Hosting Fee, Optional Year 4	\$ 14,000.00 per year
Annual Hosting Fee, Optional Year 5	\$ 14,000.00 per year
Licensure, Year 1	\$ 54,000.00 per year
Licensure, Year 2	\$ 54,000.00 per year
Licensure, Optional Year 3	\$ 54,000.00 per year
Licensure, Optional Year 4	\$ 54,000.00 per year
Licensure, Optional Year 5	\$ 54,000.00 per year

- d. Named Enhancements:

Named Enhancements	Amount (per compensable increment)
Test Score Banding on Eligible and Referred Lists	\$ 8,028.20
Configurable Display of Master Profile Information in Insight on Master Profile in OHC	\$ 8,511.84
Configurable Date/Day/Time Function on Activating/Inactivating Job Postings	\$ 14,654.00



Named Enhancements	Amount (per compensable increment)
MQ Auto-Scoring enabled within Workflow	\$ 5,000.00

e. Blended Hourly Rates for Change Orders:

The Contractor shall be compensated for changes requested and performed pursuant to Contract Section A.16, without a formal amendment of this contract based upon the payment rates detailed in the schedule below and as agreed pursuant to said Section A.16, PROVIDED THAT compensation to the Contractor for such "change order" work shall not exceed seven percent (7 %) of the sum of milestone payment rates detailed in Section C.3.b., above (which is the total cost for the milestones and associated deliverables set forth in Contract Section A). If, at any point during the Contract period, the State determines that the cost of necessary "change order" work would exceed said maximum amount, the State may amend this Contract to address the need.

Blended Hourly Rates	Amount (per compensable increment)
Blended Rate, Year 1	\$ 125.00 per hour
Blended Rate, Year 2	\$ 125.00 per hour
Blended Rate, Optional Year 3	\$ 125.00 per hour
Blended Rate, Optional Year 4	\$ 125.00 per hour
Blended Rate, Optional Year 5	\$ 125.00 per hour
NOTE: The Contractor shall not be compensated for travel time to the primary location of service provision.	

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

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

Tennessee Department of Finance and Administration
 Division of Enterprise Resource Planning
 312 Rosa L. Parks Avenue
 19th Floor
 Nashville, TN 37243

a. Each invoice shall clearly and accurately detail all of the following required information (calculations must be extended and totaled correctly).

- (1) Invoice Number (assigned by the Contractor)
- (2) Invoice Date
- (3) Contract Number (assigned by the State)
- (4) Customer Account Name: Finance and Administration, Enterprise Resource Planning Division
- (5) Customer Account Number (assigned by the Contractor to the above-referenced Customer)
- (6) Contractor Name
- (7) Contractor Tennessee Edison Registration ID Number Referenced in Preamble of this Contract



- (8) Contractor Contact for Invoice Questions (name, phone, and/or fax)
- (9) Contractor Remittance Address
- (10) Description of Delivered Service
- (11) Complete Itemization of Charges, which shall detail the following:
 - i. Service or Milestone Description (including name & title as applicable) of each service invoiced
 - ii. Number of Completed Units, Increments, Hours, or Days as applicable, of each service invoiced
 - iii. Applicable Payment Rate (as stipulated in Section C.3.) of each service invoiced
 - iv. Amount Due by Service
 - v. Total Amount Due for the invoice period

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

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

C.6. Payment of Invoice. A payment by the State shall not prejudice the State's right to object to or question any payment, invoice, or matter in relation thereto. A payment by the State shall not be construed as acceptance of any part of the work or service provided or as approval of any amount invoiced.

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

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

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

- a. The Contractor shall complete, sign, and present to the State an "Authorization Agreement for Automatic Deposit (ACH Credits) Form" provided by the State. By doing so, the Contractor acknowledges and agrees that, once said form is received by the State, all payments to the Contractor, under this or any other contract the Contractor has with the State of Tennessee shall be made by Automated Clearing House (ACH).
- b. The Contractor shall complete, sign, and present to the State a "Substitute W-9 Form" provided by the State. The taxpayer identification number detailed by said form must agree with the Contractor's Federal Employer Identification Number or Tennessee Edison Registration ID referenced in this Contract.

D. **STANDARD TERMS AND CONDITIONS:**

D.1. Required Approvals. The State is not bound by this Contract until it is signed by the contract parties and approved by appropriate officials in accordance with applicable Tennessee laws and regulations (depending upon the specifics of this contract, said officials may include, but are not



limited to, the Commissioner of Finance and Administration, the Commissioner of Human Resources, and the Comptroller of the Treasury).

- D.2. Modification and Amendment. This Contract may be modified only by a written amendment signed by all parties hereto and approved by both the officials who approved the base contract and, depending upon the specifics of the contract as amended, any additional officials required by Tennessee laws and regulations (said officials may include, but are not limited to, the Commissioner of Finance and Administration, the Commissioner of Human Resources, and the Comptroller of the Treasury).
- D.3. Termination for Convenience. The State may terminate this Contract without cause for any reason. Said termination shall not be deemed a breach of contract by the State. The State shall give the Contractor at least thirty (30) days written notice before the effective termination date. The Contractor shall be entitled to compensation for satisfactory, authorized service completed as of the termination date, but in no event shall the State be liable to the Contractor for compensation for any service which has not been rendered. Upon such termination, the Contractor shall have no right to any actual general, special, incidental, consequential, or any other damages whatsoever of any description or amount.
- D.4. Termination for Cause. If the Contractor fails to properly perform its obligations under this Contract in a timely or proper manner, or if the Contractor violates any terms of this Contract, the State shall have the right to immediately terminate the Contract and withhold payments in excess of fair compensation for completed services. Notwithstanding the above, the Contractor shall not be relieved of liability to the State for damages sustained by virtue of any breach of this Contract by the Contractor.
- D.5. Subcontracting. The Contractor shall not assign this Contract or enter into a subcontract for any of the services performed under this Contract without obtaining the prior written approval of the State. If such subcontracts are approved by the State, each shall contain, at a minimum, sections of this Contract below pertaining to "Conflicts of Interest," "Nondiscrimination," and "Records" (as identified by the section headings). Notwithstanding any use of approved subcontractors, the Contractor shall be the prime contractor and shall be responsible for all work performed.
- D.6. Conflicts of Interest. The Contractor warrants that no part of the total Contract Amount shall be paid directly or indirectly to an employee or official of the State of Tennessee as wages, compensation, or gifts in exchange for acting as an officer, agent, employee, subcontractor, or consultant to the Contractor in connection with any work contemplated or performed relative to this Contract.

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

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



- a. The Contractor hereby attests, certifies, warrants, and assures that the Contractor shall not knowingly utilize the services of an illegal immigrant in the performance of this Contract and shall not knowingly utilize the services of any subcontractor who will utilize the services of an illegal immigrant in the performance of this Contract. The Contractor shall reaffirm this attestation, in writing, by submitting to the State a completed and signed copy of the document at Attachment A, hereto, semi-annually during the period of this Contract. Such attestations shall be maintained by the Contractor and made available to state officials upon request.
 - b. Prior to the use of any subcontractor in the performance of this Contract, and semi-annually thereafter, during the period of this Contract, the Contractor shall obtain and retain a current, written attestation that the subcontractor shall not knowingly utilize the services of an illegal immigrant to perform work relative to this Contract and shall not knowingly utilize the services of any subcontractor who will utilize the services of an illegal immigrant to perform work relative to this Contract. Attestations obtained from such subcontractors shall be maintained by the Contractor and made available to state officials upon request.
 - c. The Contractor shall maintain records for all personnel used in the performance of this Contract. Said records shall be subject to review and random inspection at any reasonable time upon reasonable notice by the State.
 - d. The Contractor understands and agrees that failure to comply with this section will be subject to the sanctions of *Tennessee Code Annotated*, Section 12-4-124, *et seq.* for acts or omissions occurring after its effective date. This law requires the Commissioner of Finance and Administration to prohibit a contractor from contracting with, or submitting an offer, proposal, or bid to contract with the State of Tennessee to supply goods or services for a period of one year after a contractor is discovered to have knowingly used the services of illegal immigrants during the performance of this Contract.
 - e. For purposes of this Contract, "illegal immigrant" shall be defined as any person who is not either a United States citizen, a Lawful Permanent Resident, or a person whose physical presence in the United States is authorized or allowed by the federal Department of Homeland Security and who, under federal immigration laws and/or regulations, is authorized to be employed in the U.S. or is otherwise authorized to provide services under the Contract.
- D.9. Records. The Contractor shall maintain documentation for all charges under this Contract. The books, records, and documents of the Contractor, insofar as they relate to work performed or money received under this Contract, shall be maintained for a period of three (3) full years from the date of the final payment and shall be subject to audit at any reasonable time and upon reasonable notice by the State, the Comptroller of the Treasury, or their duly appointed representatives. The financial statements shall be prepared in accordance with generally accepted accounting principles.
- D.10. Prevailing Wage Rates. All contracts for construction, erection, or demolition or to install goods or materials that involve the expenditure of any funds derived from the State require compliance with the prevailing wage laws as provided in *Tennessee Code Annotated*, Section 12-4-401, *et seq.*
- D.11. Monitoring. The Contractor's activities conducted and records maintained pursuant to this Contract shall be subject to monitoring and evaluation by the State, the Comptroller of the Treasury, or their duly appointed representatives.
- D.12. Progress Reports. The Contractor shall submit brief, periodic, progress reports to the State as requested.
- D.13. Strict Performance. Failure by any party to this Contract to insist in any one or more cases upon the strict performance of any of the terms, covenants, conditions, or provisions of this Contract



shall not be construed as a waiver or relinquishment of any such term, covenant, condition, or provision. No term or condition of this Contract shall be held to be waived, modified, or deleted except by a written amendment signed by the parties hereto.

- D.14. Independent Contractor. The parties hereto, in the performance of this Contract, shall not act as employees, partners, joint venturers, or associates of one another. It is expressly acknowledged by the parties hereto that such parties are independent contracting entities and that nothing in this Contract shall be construed to create an employer/employee relationship or to allow either to exercise control or direction over the manner or method by which the other transacts its business affairs or provides its usual services. The employees or agents of one party shall not be deemed or construed to be the employees or agents of the other party for any purpose whatsoever.

The Contractor, being an independent contractor and not an employee of the State, agrees to carry adequate public liability and other appropriate forms of insurance, including adequate public liability and other appropriate forms of insurance on the Contractor's employees, and to pay all applicable taxes incident to this Contract.

- D.15. State Liability. The State shall have no liability except as specifically provided in this Contract.
- D.16. Force Majeure. The obligations of the parties to this Contract are subject to prevention by causes beyond the parties' control that could not be avoided by the exercise of due care including, but not limited to, natural disasters, riots, wars, epidemics, or any other similar cause.
- D.17. State and Federal Compliance. The Contractor shall comply with all applicable State and Federal laws and regulations in the performance of this Contract.
- D.18. Governing Law. This Contract shall be governed by and construed in accordance with the laws of the State of Tennessee. The Contractor agrees that it will be subject to the exclusive jurisdiction of the courts of the State of Tennessee in actions that may arise under this Contract. The Contractor acknowledges and agrees that any rights or claims against the State of Tennessee or its employees hereunder, and any remedies arising therefrom, shall be subject to and limited to those rights and remedies, if any, available under *Tennessee Code Annotated*, Sections 9-8-101 through 9-8-407.
- D.19. Completeness. This Contract is complete and contains the entire understanding between the parties relating to the subject matter contained herein, including all the terms and conditions of the parties' agreement. This Contract supersedes any and all prior understandings, representations, negotiations, and agreements between the parties relating hereto, whether written or oral.
- D.20. Severability. If any terms and conditions of this Contract are held to be invalid or unenforceable as a matter of law, the other terms and conditions hereof shall not be affected thereby and shall remain in full force and effect. To this end, the terms and conditions of this Contract are declared severable.

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

E. SPECIAL TERMS AND CONDITIONS:

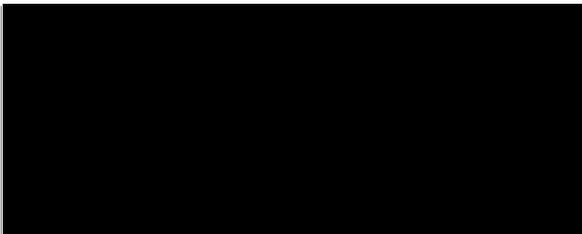
- E.1. Conflicting Terms and Conditions. Should any of these special terms and conditions conflict with any other terms and conditions of this Contract, these special terms and conditions shall control.
- E.2. Communications and Contacts. All instructions, notices, consents, demands, or other communications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



address as set forth below or to that of such other party or address, as may be hereafter specified by written notice.

The State:
Sandy Graf – ERP Director
Tennessee Department of Finance and Administration
312 Rosa L. Parks Avenue,
19th Floor
Nashville, TN 37243-1102
sandy.graf@tn.gov
615-253-2978 voice
615-253-2980 fax

The Contractor:



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

- E.3. Subject to Funds Availability. The Contract is subject to the appropriation and availability of State and/or Federal funds. In the event that the funds are not appropriated or are otherwise unavailable, the State reserves the right to terminate the Contract upon written notice to the Contractor. Said termination shall not be deemed a breach of Contract by the State. Upon receipt of the written notice, the Contractor shall cease all work associated with the Contract. Should such an event occur, the Contractor shall be entitled to compensation for all satisfactory and authorized services completed as of the termination date. Upon such termination, the Contractor shall have no right to recover from the State any actual, general, special, incidental, consequential, or any other damages whatsoever of any description or amount.
- E.4. Tennessee Consolidated Retirement System. The Contractor acknowledges and understands that, subject to statutory exceptions contained in *Tennessee Code Annotated*, Section 8-36-801, *et. seq.*, the law governing the Tennessee Consolidated Retirement System (TCRS), provides that if a retired member of TCRS, or of any superseded system administered by TCRS, or of any local retirement fund established pursuant to *Tennessee Code Annotated*, Title 8, Chapter 35, Part 3 accepts state employment, the member's retirement allowance is suspended during the period of the employment. Accordingly and notwithstanding any provision of this Contract to the contrary, the Contractor agrees that if it is later determined that the true nature of the working relationship between the Contractor and the State under this Contract is that of "employee/employer" and not that of an independent contractor, the Contractor, if a retired member of TCRS, may be required to repay to TCRS the amount of retirement benefits the Contractor received from TCRS during the period of this Contract.
- E.5. Confidentiality of Records. Strict standards of confidentiality of records and information shall be maintained in accordance with applicable state and federal law. All material and information, regardless of form, medium or method of communication, provided to the Contractor by the State or acquired by the Contractor on behalf of the State shall be regarded as confidential information in accordance with the provisions of applicable state and federal law, state and federal rules and regulations, departmental policy, and ethical standards. Such confidential information shall not be disclosed, and all necessary steps shall be taken by the Contractor to safeguard the confidentiality of such material or information in conformance with applicable state and federal law, state and federal rules and regulations, departmental policy, and ethical standards.



The Contractor's obligations under this section do not apply to information in the public domain; entering the public domain but not from a breach by the Contractor of this Contract; previously possessed by the Contractor without written obligations to the State to protect it; acquired by the Contractor without written restrictions against disclosure from a third party which, to the Contractor's knowledge, is free to disclose the information; independently developed by the Contractor without the use of the State's information; or, disclosed by the State to others without restrictions against disclosure. Nothing in this paragraph shall permit Contractor to disclose any information that is confidential under federal or state law or regulations, regardless of whether it has been disclosed or made available to the Contractor due to intentional or negligent actions or inactions of agents of the State or third parties.

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

- E.6. HIPAA Compliance. The State and Contractor shall comply with obligations under the Health Insurance Portability and Accountability Act of 1996 (HIPAA) and its accompanying regulations.
- a. Contractor warrants to the State that it is familiar with the requirements of HIPAA and its accompanying regulations, and will comply with all applicable HIPAA requirements in the course of this Contract.
 - b. Contractor warrants that it will cooperate with the State, including cooperation and coordination with State privacy officials and other compliance officers required by HIPAA and its regulations, in the course of performance of the Contract so that both parties will be in compliance with HIPAA.
 - c. The State and the Contractor will sign documents, including but not limited to business associate agreements, as required by HIPAA and that are reasonably necessary to keep the State and Contractor in compliance with HIPAA. This provision shall not apply if information received by the State under this Contract is NOT "protected health information" as defined by HIPAA, or if HIPAA permits the State to receive such information without entering into a business associate agreement or signing another such document.
- E.7. Printing Authorization. The Contractor agrees that no publication coming within the jurisdiction of *Tennessee Code Annotated*, Section 12-7-101, *et. seq.*, shall be printed pursuant to this contract unless a printing authorization number has been obtained and affixed as required by *Tennessee Code Annotated*, Section 12-7-103 (d).
- E.8. Data Ownership and Use. All data provided to Contractor by the State and all data generated by Contractor in the performance of this Contract (collectively, the "Data") shall remain the exclusive property of the State. Contractor's use of the Data is limited to that which is necessary to provide the services specified in this Contract. Contractor will not make the Data available to others or "mine" information from the Data for use by Contractor or others.
- E. 9. 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 temporary use under this Contract. Upon termination of this Contract, all property furnished shall be returned to the State in good order and condition as when received, reasonable use and wear thereof excepted. Should the property be destroyed, lost, or stolen, the Contractor shall be responsible to the State for the residual value of the property at the time of loss.
- E.10. Workpapers Subject to Review. The Contractor shall make all audit, accounting, or financial analysis workpapers, notes, and other documentation available for review by the Comptroller of the Treasury or his representatives, upon request, during normal working hours either while the analysis is in progress or subsequent to the completion of this Contract.



- E.11. Prohibited Advertising. The Contractor shall not refer to this Contract or the Contractor's relationship with the State hereunder in commercial advertising in such a manner as to state or imply that the Contractor or the Contractor's services are endorsed. It is expressly understood and agreed that the obligations set forth in this section shall survive the termination of this Contract in perpetuity.
- E.12. Limitation of Liability. The parties agree that the Contractor's liability under this Contract shall be limited to an amount equal to two (2) times the Maximum Liability amount detailed in section C.1. and as may be amended, PROVIDED THAT in no event shall this section limit the liability of the Contractor for intentional torts, criminal acts, or fraudulent conduct.
- E.13. Copyrights and Patents. The Contractor agrees to indemnify and hold harmless the State of Tennessee as well as its officers, agents, and employees from and against any and all claims or suits which may be brought against the State for infringement of any laws regarding patents or copyrights which may arise from the Contractor's performance of this Contract. In any such action brought against the State, the Contractor shall satisfy and indemnify the State for the amount of any final judgment for infringement. The Contractor further agrees it shall be liable for the reasonable fees of attorneys for the State in the event such service is necessitated to enforce the terms of this Contract or otherwise enforce the obligations of the Contractor to the State. The State shall give the Contractor written notice of any such claim or suit and full right and opportunity to conduct the Contractor's own defense thereof.
- E.14. Breach. A party shall be deemed to have breached the Contract if any of the following occurs:
- failure to perform in accordance with any term or provision of the Contract;
 - partial performance of any term or provision of the Contract;
 - any act prohibited or restricted by the Contract, or
 - violation of any warranty.

For purposes of this Contract, these items shall hereinafter be referred to as a "Breach."

- a. Contractor Breach— The State shall notify Contractor in writing of a Breach.
- (1) In event of a Breach by Contractor, the State shall have available the remedy of Actual Damages and any other remedy available at law or equity.
 - (2) Partial Default— In the event of a Breach, the State may declare a Partial Default. In which case, the State shall provide the Contractor written notice of: (1) the date which Contractor shall terminate providing the service associated with the Breach; and (2) the date the State will begin to provide the service associated with the Breach. Notwithstanding the foregoing, the State may revise the time periods contained in the notice written to the Contractor.

In the event the State declares a Partial Default, the State may withhold, together with any other damages associated with the Breach, from the amounts due the Contractor the greater of: (1) amounts which would be paid the Contractor to provide the defaulted service; or (2) the cost to the State of providing the defaulted service, whether said service is provided by the State or a third party. To determine the amount the Contractor is being paid for any particular service, the Department shall be entitled to receive within five (5) days any requested material from Contractor. The State shall make the final and binding determination of said amount.

The State may assess Liquidated Damages against the Contractor for any failure to perform which ultimately results in a Partial Default with said Liquidated Damages to cease when said Partial Default is effective. Upon Partial Default, the Contractor shall have no right to recover from the State any actual, general, special, incidental, consequential, or any other damages whatsoever of any description or amount. Contractor agrees to cooperate fully with the State in the event a Partial Default is taken.



(3) **Contract Termination**— In the event of a Breach, the State may terminate the Contract immediately or in stages. The Contractor shall be notified of the termination in writing by the State. Said notice shall hereinafter be referred to as Termination Notice. The Termination Notice may specify either that the termination is to be effective immediately, on a date certain in the future, or that the Contractor shall cease operations under this Contract in stages. In the event of a termination, the State may withhold any amounts which may be due Contractor without waiver of any other remedy or damages available to the State at law or at equity. The Contractor shall be liable to the State for any and all damages incurred by the State and any and all expenses incurred by the State which exceed the amount the State would have paid Contractor under this Contract. Contractor agrees to cooperate with the State in the event of a Contract Termination or Partial Takeover.

b. **State Breach**— In the event of a Breach of Contract by the State, the Contractor shall notify the State in writing within 30 days of any Breach of Contract by the State. Said notice shall contain a description of the Breach. Failure by the Contractor to provide said written notice shall operate as an absolute waiver by the Contractor of the State's Breach. In no event shall any Breach on the part of the State excuse the Contractor from full performance under this Contract. In the event of Breach by the State, the Contractor may avail itself of any remedy at law in the forum with appropriate jurisdiction; provided, however, failure by the Contractor to give the State written notice and opportunity to cure as described herein operates as a waiver of the State's Breach. Failure by the Contractor to file a claim before the appropriate forum in Tennessee with jurisdiction to hear such claim within one (1) year of the written notice of Breach shall operate as a waiver of said claim in its entirety. It is agreed by the parties this provision establishes a contractual period of limitations for any claim brought by the Contractor.

E.15. **Partial Takeover.** The State may, at its convenience and without cause, exercise a partial takeover of any service which the Contractor is obligated to perform under this Contract, including but not limited to any service which is the subject of a subcontract between Contractor and a third party, although the Contractor is not in breach (hereinafter referred to as "Partial Takeover"). Said Partial Takeover shall not be deemed a Breach of Contract by the State. Contractor shall be given at least 30 days prior written notice of said Partial Takeover with said notice to specify the area(s) of service the State will assume and the date of said assumption. Any Partial Takeover by the State shall not alter in any way Contractor's other obligations under this Contract. The State may withhold from amounts due the Contractor the amount the Contractor would have been paid to deliver the service as determined by the State. The amounts shall be withheld effective as of the date the State assumes the service. Upon Partial Takeover, the Contractor shall have no right to recover from the State any actual, general, special, incidental, consequential, or any other damages whatsoever of any description or amount.

IN WITNESS WHEREOF,

[Redacted Signature]

[Redacted Signature]

CONTRACTOR SIGNATURE

4/24/12
DATE

[Redacted Name]

President

PRINTED NAME AND TITLE OF CONTRACTOR SIGNATORY (above)

DEPARTMENT OF FINANCE AND ADMINISTRATION:



Mark A. Emkes

4-27-12

MARK A. EMKES, COMMISSIONER *of* *NOA*

DATE



ATTACHMENT A

ATTESTATION RE PERSONNEL USED IN CONTRACT PERFORMANCE

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

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.

[REDACTED]

CONTRACTOR SIGNATURE

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

[REDACTED]

President

PRINTED NAME AND TITLE OF SIGNATORY

4/27/12

DATE OF ATTESTATION



STATE OF TENNESSEE

**Acceptable Use Policy
Network Access Rights and Obligations****Purpose:**

To establish guidelines for State-owned hardware and software, computer network access and usage, Internet and email usage, telephony, and security and privacy for users of the State of Tennessee Wide Area Network.

Reference:

Tennessee Code Annotated, Section 4-3-5501, et seq., effective May 10, 1994.

Tennessee Code Annotated, Section 10-7-512, effective July 1, 2000.

Tennessee Code Annotated, Section 10-7-504, effective July 1, 2001.

State of Tennessee Security Policies.

Objectives:

- Ensure the protection of proprietary, personal, privileged, or otherwise sensitive data and resources that may be processed in any manner by the State, or any agent for the State.
- Provide uninterrupted network resources to users.
- Ensure proper usage of networked information, programs and facilities offered by the State of Tennessee networks.
- Maintain security of and access to networked data and resources on an authorized basis.
- Secure email from unauthorized access.
- Protect the confidentiality and integrity of files and programs from unauthorized users.
- Inform users there is no expectation of privacy in their use of State-owned hardware, software, or computer network access and usage.
- Provide Internet and email access to the users of the State of Tennessee networks.

Scope:

This Acceptable Use Policy applies to all individuals who have been provided access rights to the State of Tennessee networks, State provided email, and/or Internet via agency issued network or system User ID's. The scope does not include State phone systems, fax machines, copiers, State issued cell phones or pagers unless those services are delivered over the State's IP network.

Use and Prohibitions:**A. Data and Information Technology Resources**

State employees, vendors/business partners/subrecipients, local governments, and other governmental agencies may be authorized to access state data or Information Technology (IT) network resources to perform business functions with or on behalf of the State. Users must be acting within the scope of their employment or contractual relationship with the



State and must agree to abide by the terms of this agreement as evidenced by his/her signature. It is recognized that there may be incidental personal use of State IT Resources. This practice is not encouraged and employees should be aware that all usage may be monitored and that there is no right to privacy. Various transactions resulting from network usage are the property of the state and are thus subject to open records laws.

Prohibitions

- Sending or sharing with unauthorized persons any information that is confidential by law, rule or regulation.
- Installing software that has not been authorized by the Office for Information Resources of the Department of Finance and Administration.
- Attaching processing devices that have not been authorized by the Office for Information Resources of the Department of Finance and Administration.
- Using data and IT resources to play or download games, music or videos that are not in support of business functions.
- Leaving workstation unattended without engaging password protection for the keyboard or workstation.
- Utilizing unauthorized peer-to-peer networking or peer-to-peer file sharing.
- Using data and IT resources in support of unlawful activities as defined by federal, state, and local law.
- Utilizing data and IT resources for activities that violate conduct policies established by the Department of Human Resources or the Agency where the user is employed or under contract.

B. Email

Email and calendar functions are provided to expedite and improve communications among network users.

Prohibitions

- Sending unsolicited junk email or chain letters (e.g. "spam") to any users of the network.
- Sending any material that contains viruses, Trojan horses, worms, time bombs, cancel bots, or any other harmful or deleterious programs.
- Sending copyrighted materials via email that is either not within the fair use guidelines or without prior permission from the author or publisher.
- Sending or receiving communications that violate conduct policies established by the Department of Human Resources or the Agency where the user is employed or under contract.
- Sending confidential material to an unauthorized recipient, or sending confidential e-mail without the proper security standards (including encryption if necessary) being met.

Email created, sent or received in conjunction with the transaction of official business are public records in accordance with T.C.A 10-7-301 through 10-7-308, and the rules of the Public Records Commission. A public record is defined as follows:

"Public record(s)" or "state record(s)" means all documents, papers, letters, maps, books, photographs, microfilms, electronic data processing files and output, films, sound recordings or other material, regardless of physical form or characteristics made or received pursuant to law or ordinance or in connection



with the transaction of official business by any governmental agency. (T.C.A. 10-7-301 (6)).

State records are open to public inspection unless they are protected by State or Federal law, rule, or regulation. Because a court could interpret state records to include draft letters, working drafts of reports, and what are intended to be casual comments, be aware that anything sent as electronic mail could be made available to the public.

C. Internet Access

Internet access is provided to network users to assist them in performing the duties and responsibilities associated with their positions.

Prohibitions

- Using the Internet to access non-State provided web email services.
- Using Instant Messaging or Internet Relay Chat (IRC).
- Using the Internet for broadcast audio for non-business use.
- Utilizing unauthorized peer-to-peer networking or peer-to-peer file sharing.
- Using the Internet when it violates any federal, state or local law.

Statement of Consequences

Noncompliance with this policy may constitute a legal risk to the State of Tennessee, an organizational risk to the State of Tennessee in terms of potential harm to employees or citizen security, or a security risk to the State of Tennessee's Network Operations and the user community, and/or a potential personal liability. The presence of unauthorized data in the State network could lead to liability on the part of the State as well as the individuals responsible for obtaining it.

Statement of Enforcement

Noncompliance with this policy may result in the following immediate actions.

1. Written notification will be sent to the Agency Head and to designated points of contact in the User Agency's Human Resources and Information Technology Resource Offices to identify the user and the nature of the noncompliance as "cause". In the case of a vendor, subrecipient, or contractor, the contract administrator will be notified.
2. User access may be terminated immediately by the Systems Administrator, and the user may be subject to subsequent review and action as determined by the agency, department, board, or commission leadership, or contract administrator.



STATE OF TENNESSEE
Acceptable Use Policy
Network Access Rights and Obligations
User Agreement Acknowledgement

As a user of State of Tennessee data and resources, I agree to abide by the Acceptable Use Network Access Rights and Obligations Policy and the following promises and guidelines as they relate to the policy established:

1. I will protect State confidential data, facilities and systems against unauthorized disclosure and/or use.
2. I will maintain all computer access codes in the strictest of confidence; immediately change them if I suspect their secrecy has been compromised, and will report activity that is contrary to the provisions of this agreement to my supervisor or a State-authorized Security Administrator.
3. I will be accountable for all transactions performed using my computer access codes.
4. I will not disclose any confidential information other than to persons authorized to access such information as identified by my section supervisor.
5. I agree to report to the Office for Information Resources (OIR) any suspicious network activity or security breach.

Privacy Expectations

The State of Tennessee actively monitors network services and resources, including, but not limited to, real time monitoring. Users should have no expectation of privacy. These communications are considered to be State property and may be examined by management for any reason including, but not limited to, security and/or employee conduct.

I acknowledge that I must adhere to this policy as a condition for receiving access to State of Tennessee data and resources.

I understand the willful violation or disregard of any of these guidelines, statute or policies may result in my loss of access and disciplinary action, up to and including termination of my employment, termination of my business relationship with the State of Tennessee, and any other appropriate legal action, including possible prosecution under the provisions of the Computer Crimes Act as cited at TCA 39-14-601 et seq., and other applicable laws.

I have read and agree to comply with the policy set forth herein.

 Type or Print Name

9288
 Last 4 digits of Social Security Number

 Signature

4/24/12
 Date