



**STATE OF TENNESSEE
DEPARTMENT OF COMMERCE AND INSURANCE**

SOLICITATION # 33501-244502

**FOR FIELD SERVICE REPRESENTATIVES FOR THE COMMISSION
ON FIREFIGHTING PERSONNEL STANDARDS AND EDUCATION**

1. INTRODUCTION

The State of Tennessee, Department of Commerce and Insurance, hereinafter referred to as "the State," has issued this Solicitation with the intent of awarding contracts to provide services as a Field Representative for the Commission on Firefighting Personnel Standards and Education (the "Commission"). In accordance with rules of the Commission, the Contractor shall administer separate and/or combined written and practical tests in accordance with National Fire Protection Association ("NFPA") standards approved by the Commission for certification at local fire departments in West Tennessee, Middle Tennessee, and East Tennessee as set forth in Tenn. R. & Regs. 0360-01-01, et seq. Contractor shall grade Fire Officer 1 Examinations in accordance with Tenn. R. & Regs. 0360-03-01-.09 and 0360-06-01-.01. Contracts will be procured for the following regions:

- West Tennessee
- East Tennessee
- Middle Tennessee

For the purposes of this Solicitation, "West Tennessee" shall be defined to include the following counties: Benton, Carroll, Chester, Crockett, Decatur, Dyer, Fayette, Gibson, Hardeman, Hardin, Haywood, Henderson, Henry, Lake, Lauderdale, Madison, McNairy, Obion, Shelby, Tipton and Weakley.

For the purposes of this Solicitation, "Middle Tennessee" shall be defined to include the following counties: Bedford, Cannon, Cheatham, Clay, Coffee, Davidson, DeKalb, Dickson, Fentress, Franklin, Giles, Grundy, Hickman, Houston, Humphreys, Jackson, Lawrence, Lewis, Lincoln, Macon, Marshall, Maury, Montgomery, Moore, Overton, Perry, Pickett, Putnam, Robertson, Rutherford, Sequatchie, Smith, Stewart, Sumner, Trousdale, Van Buren, Warren, Wayne, White, Williamson, and Wilson County.

For the purposes of this Solicitation, "East Tennessee" shall be defined to include the following counties: Anderson, Bledsoe, Blount, Bradley, Campbell, Carter, Claiborne, Cocke, Cumberland, Grainger, Greene, Hamblen, Hamilton, Hancock, Hawkins, Jefferson, Johnson, Knox, Loudon, McMinn, Marion, Meigs, Monroe, Morgan, Polk, Rhea, Roane, Scott, Sevier, Sullivan, Unicoi, Union, and Washington County.

2. SCOPE OF SERVICE, CONTRACT PERIOD, TERMS AND CONDITIONS

The Pro Forma Contract attached to this Solicitation (Attachment C) represents the contract document that the contractor selected by the state must sign. It specifically details the State's required:

- Scope (Section A);
- Term of Contract (Section B);
- Payment Terms and Conditions (Sections C);
- Mandatory Terms and Conditions (Section D); and
- Special Terms and Conditions (Section E).

3. PROCUREMENT SCHEDULE

The following schedule represents the State's best estimates for this procurement, however, the State reserves the right, at its sole discretion, to adjust the schedule at any time, or to cancel or reissue a similar solicitation.

EVENT	DATE
1. Solicitation Issued	September 19, 2023
2. Solicitation Deadline	August 1, 2024
3. State Completion of Application Evaluation	Within 30 days receipt of the required documentation
4. State sends contract to Contractor for signature	Once evaluated, approved and awarded
5. Contractor Signature Deadline	Within 7 days receipt of the contract
6. Contract Start Date	Once approved by the Commissioner and the Office of the Comptroller

4. RESPONSE REQUIREMENTS

- 4.1. An offer in response to this solicitation must respond only as required by this Solicitation document.

The State may determine an offer to be non-responsive and ineligible for contract award if it fails to address all items or is not organized to properly reference the Qualifications Evidence Guide.

- 4.2. Qualifications Evidence Guide - The Qualifications Evidence Guide (Attachment A) details specific mandatory requirements for an offer in response to this Solicitation. Potential Contractor must use the completed Qualifications Evidence Guide (Attachment A), as a table of contents to organize and reference the supporting documentation for this portion of the Solicitation response.

- 4.3. **Response Prohibitions.** An offer in response to this Solicitation MUST NOT:

- Include the Potential Contractor's own contract terms and conditions;
- Restrict the rights of the State or otherwise qualify either the offer to deliver services as required by this Solicitation; or
- Include, for consideration in this procurement process or subsequent contract negotiations, incorrect information that the Potential Contractor knew or should have known was materially incorrect.

- 4.4. **Response Delivery.** No later than the Response Deadline (refer to section 3, above), a Potential Contractor must deliver to the State ALL documentation required in the Qualifications Evidence Guide in response to this Solicitation. It must be delivered to:

Allie Stevens, Associate General Counsel
 Department of Commerce and Insurance
 Davy Crockett Tower, Legal Division
 500 James Robertson Parkway
 Nashville, Tennessee 37243
 Email: ci.procurement@tn.gov
 Phone: (615) 532-3812

5. EVALUATION & CONTRACT AWARD

An evaluation team of at least three (3) state employees will review the Qualifications Evidence Guide and any supporting documentation timely submitted. For a response to be acceptable and eligible for contract award, all evaluators must determine that the Qualifications Evidence documents provided by the Potential Contractor meets the minimum requirements specified by this Solicitation and is, at least, minimally acceptable as a contractor for the subject services.

6. GENERAL INFORMATION & REQUIREMENTS

Nondiscrimination. No person shall be excluded from participation in, be denied benefits of, or be otherwise subjected to discrimination in the performance of a Contract pursuant to this Solicitation or in the employment practices of the Contractor on the grounds of handicap or disability, age, race, color, religion (subject to Tennessee Code Annotated, Sections 4-21-401 and 405), sex, national origin, or any other classification protected by federal, Tennessee state constitutional, or statutory law. The Contractor pursuant to this Solicitation shall post in conspicuous places, available to all employees and applicants, notices of nondiscrimination.

Communications. Reference Solicitation # 33501-244502, in all communications relating to this Solicitation, and direct any such communications to the following person designated as the Solicitation Coordinator.

Allie Stevens, Associate General Counsel
 Department of Commerce and Insurance
 Davy Crockett Tower, Legal Division
 500 James Robertson Parkway
 Nashville, Tennessee 37243
 Email: ci.procurement@tn.gov
 Phone: (615) 532-3812

Unauthorized contact about this solicitation with other employees or officials of the State of Tennessee may result in disqualification from consideration as a contractor.

Notwithstanding the foregoing, potential responders may also contact the following as appropriate:

- Staff of the Governor's Office of Diversity Business Enterprise for assistance available to minority-owned, women-owned, and small businesses as well as general, public information relating to this solicitation; and
- The following individual designated by the State to coordinate compliance with the nondiscrimination requirements of the State of Tennessee, Title VI of the Civil Rights Act of 1964, the Americans with Disabilities Act of 1990, and associated federal regulations:

Maliaka Bass, Deputy General Counsel
 Department of Commerce and Insurance
 Davy Crocket Tower, Legal Division
 500 James Robertson Parkway
 Nashville, Tennessee 37243
 Email: Maliaka.bass@tn.gov
 Telephone: (615) 741-9594
 Fax: (615) 741-4000

6.3. **Conflict of Interest.** The State shall not consider an offer from, and this Solicitation shall not result in a contract with:

- An individual who is, or within the past six (6) months has been, an employee of the State of Tennessee or who is a volunteer member of a State board or commission that votes for, lets out, overlooks, or any manner superintends the services being procured in this Solicitation;
- A company, corporation, or any other contracting entity in which an ownership of two percent (2%) or more is held by an individual who is, or within the past six (6) months has been, an employee of the State of Tennessee (this will not apply either to financial interests that have

been placed in a “blind trust” arrangement pursuant to which the employee does not have knowledge of the retention or disposition of such interests or to the ownership of publicly traded stocks or bonds where such ownership constitutes less than two percent (2%) of the total outstanding amount of the stocks or bonds of the issuing entity);

- A company, corporation, or any other contracting entity which employs an individual who is, or within the past six (6) months has been, an employee of the State of Tennessee in a position that would allow the direct or indirect use or disclosure of information, which as obtained through or in connection with his or her employment and not made available to the general public, for the purpose of furthering the private interest or personal profit of any person; or,
- Any individual, company, or any other entity involved in assisting the State in the development, formulation, or drafting of this Solicitation or its scope of services (such person or entity being deemed by the State as having information that would afford an unfair advantage).

For these purposes, the state will deem an individual to be an employee of the State of Tennessee until such time as all compensation for salary, termination pay, and annual leave has been paid.

- 6.4. **Disclosure of Proposal Contents.** All materials submitted to the State in response to this Solicitation become the property of the State of Tennessee. Selection for award does not affect this right. Upon completion of evaluations, indicated by the award notification (refer to Section 3, above), the full contents and associated documents submitted in response to this solicitation will be open for review by the public. By submitting an offer, a Potential Contractor acknowledges and accepts that the full contents and associated documents submitted in response to this solicitation will become open to public inspection.
- 6.5. Before the Contract resulting from this Solicitation is signed, the apparent successful Potential Contractor must be registered with the Department of Revenue for the collection of Tennessee sales and use tax or exempt from such registration. The State shall not approve a contract unless the Potential Contractor provides proof of such registration or proof of exemption. The foregoing is a mandatory requirement of an award of a contract pursuant to this Solicitation.

QUALIFICATIONS EVIDENCE GUIDE

The response to this Solicitation must address all items detailed below and provide, in sequence, the information and documentation as required (referenced with the associated item references).

In addition to the items below, the State will review each response for compliance with all solicitation requirements, including but not limited to:

- The response must be delivered to the State no later than the Response Deadline
- The *Qualifications Evidence* must be submitted as required.
- The response must NOT contain any qualification, limitation, or other restrictions.

POTENTIAL CONTRACTOR LEGAL ENTITY NAME		
Reference	Item	<u>Signature- By signing in this column, Potential Contractor indicates affirmatively to the respective item or acknowledging that required information has been attached or otherwise included.</u>
A.1.	<p><i>Name:</i> _____</p> <p><i>Company Name:</i> _____ (if applicable)</p> <p><i>E-mail Address:</i> _____</p> <p><i>Mailing Address:</i> _____</p> <p>_____</p> <p>_____</p> <p><i>Telephone Number:</i> _____</p>	<i>Signature:</i> _____
A.2.	<p>The Potential Contractor has included Solicitation Attachment B, <i>Statement of Certifications and Assurances</i> completed and signed by an individual empowered to bind Potential Contractor to the provisions of this Solicitation and any resulting contract. The document must be signed without exception or qualification.</p>	<i>Signature:</i> _____
A.3.	<p>Neither the Potential Contractor nor any individual who shall perform work under the contract has a possible conflict of interest (e.g., employment by the State of Tennessee). If there is a possible conflict of interest, an explanation has been included below.</p> <p><i>Any questions of conflict of interest shall be solely within the discretion of the State, and the State reserves the right to reject any response or cancel any award.</i></p>	<i>Signature:</i> _____
	<i>Explanation:</i>	

A.4.	<p>Neither the Potential Contractor nor, to the Potential Contractor's knowledge, any of the Potential Contractor's employees, agents, independent contractors, or subcontractors, proposed to provide work on a contract pursuant to this Solicitation, have been convicted of, pled guilty to, or pled <i>nolo contendere</i> to any felony. If there has been any such conviction or plea, an explanation has been included below.</p> <p><i>Any issues relating to such a matter shall be solely within the discretion of the State, and the State reserves the right to reject any response or cancel any award.</i></p>	<p>Signature: _____</p>
	<p><i>Explanation:</i></p>	
A.5.	<p>There is not any material, pending litigation that the Potential Contractor should reasonably believe could adversely affect its ability to meet contract requirements pursuant to this Solicitation or is likely to have a material adverse effect on the Potential Contractor's financial condition.</p> <p>If such exists, list each separately below, explain the relevant details, and attach the opinion of counsel addressing whether and to what extent it would impair the Potential Contractor's performance in a contract pursuant to this solicitation.</p> <p><i>Any issues relating to such a matter shall be solely within the discretion of the State, and the State reserves the right to reject any response or cancel any award.</i></p>	<p>Signature: _____</p>
	<p><i>Explanation:</i></p>	
A.6.	<p>The Potential Contractor or any individual who shall perform work under a contract resulting from this Solicitation has a high school diploma or GED® certificate.</p>	<p>Signature: _____</p>

<p>A.7.</p>	<p>The Potential Contractor shall possess the ability to travel to the following counties to administer the examinations:</p> <p>a. East Tennessee Field Representative: Anderson, Bledsoe, Blount, Bradley, Campbell, Carter, Claiborne, Cumberland, Grainger, Greene, Hamblen, Hamilton, Hancock, Hawkins, Jefferson, Johnson, Knox, Loudon, Marion, McMinn, Meigs, Monroe, Morgan, Polk, Rhea, Roane, Scott, Sevier, Sullivan, Unicoi, Union, Washington, AND/OR</p> <p>b. West Tennessee Field Representative: Benton, Carroll, Chester, Crockett, Decatur, Dyer, Fayette, Gibson, Hardeman, Hardin, Haywood, Henderson, Henry, Lake, Lauderdale, Madison, McNairy, Obion, Shelby, Tipton and Weakley, AND/OR</p> <p>c. Middle Tennessee Field Representative: "Middle Tennessee" shall be defined to include the following counties: Bedford, Cannon, Cheatham, Clay, Coffee, Davidson, DeKalb, Dickson, Fentress, Franklin, Giles, Grundy, Hickman, Houston, Humphreys, Jackson, Lawrence, Lewis, Lincoln, Macon, Marshall, Maury, Montgomery, Moore, Overton, Perry, Pickett, Putnam, Robertson, Rutherford, Sequatchie, Smith, Stewart, Sumner, Trousdale, Van Buren, Warren, Wayne, White, Williamson, and Wilson County.</p>	<p><i>Signature:</i> _____</p>
<p>A.8.</p>	<p>The Potential Contractor shall provide a copy of a valid Fire Instructor 1 and Fire Officer 1 Certification from the Tennessee Commission on Firefighting Personnel Standards and Education.</p> <p>Alternatively, the Potential contractor shall possess an associate degree, or higher, in fire science.</p> <p>A copy of the applicable certification or degree is attached.</p>	<p><i>Signature:</i> _____</p>
<p>A.9.</p>	<p>The Potential Contractor shall provide a statement indicating that the Applicant has at least five (5) years of experience as a firefighter in a volunteer or full-time fire department. Experience as a Fire Department Instructor for at least three (3) years is preferred.</p> <p>The statement is attached.</p>	<p><i>Signature:</i> _____</p>

A.10.	<p>The Potential Contractor shall provide a statement indicating that the Applicant has not been the subject of any professional discipline in any jurisdiction within the last three (3) years.</p> <p>The statement is attached.</p>	Signature: _____
A.11.	<p>The Potential Contractor has and will maintain a computer or tablet with Wi-Fi capabilities, or other similar technology approved by the Department, which allowed for accessing the State's online portal.</p>	Signature: _____
A.12.	<p>The Potential Contractor has and will maintain a cellular phone with a minimum of wireless 4g mobile capability for voicemail, texting, emailing, or other similar technology approved by the Department, which allowed for the receiving of calls.</p>	Signature: _____
A.13.	<p>The Potential Contractor shall provide a statement indicating that the Applicant possesses the necessary level of understanding of operational skills and techniques of the Fire Service, in order to effectively evaluate practical skills.</p> <p>The statement is attached.</p>	Signature: _____
A.14.	<p>The Potential Contractor shall maintain current Certification as a Firefighter in the ACADIS Database.</p> <p>A copy of the certification is attached.</p>	Signature: _____
A.15.	<p>The Potential Contractor has never had his/her employment with the State terminated or been asked to resign.</p>	Signature: _____
A.16.	<p>The Potential Contractor shall possess the following abilities:</p> <ol style="list-style-type: none"> 1. Walk or stand for moderate periods of time; 2. Lift up to 30 lbs.; 3. Information technology (IT) proficiency with Excel, PDF, and Email. 	Signature: _____
A.17.	<p>The Potential Contractor shall possess the following skills:</p> <ol style="list-style-type: none"> 1. Maintain FFC test banks in accordance with FFC Rules and regulations for test bank security; 2. Plan and organize work; 3. Evaluate and analyze issues, problems, and operational programs; 4. Communicate efficiently in writing and orally; 5. Mentor and coach others; 6. Critical thinking in order to complete complex assignments; 7. Time management. 	Signature: _____

A.18.	<p>The Potential Contractor shall provide a statement that he or she has not have been a party to a previous contract with the State that was terminated for any reason. Please note that any disqualification due to a prior termination for convenience may, within the sole discretion of the State, be waivable.</p> <p>The Potential Contract shall also provide a statement that he or she have not been previously terminated or resigned in lieu of termination from employment from the State of local government.</p> <p>A statement is attached</p>	<p><i>Signature:</i> _____</p>
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Solicitation 33501-244502

Solicitation Attachment B

STATEMENT OF CERTIFICATIONS AND ASSURANCES

An individual legally empowered to contractually bind the Potential Contractor must complete and sign the *Statement of Certifications and Assurances* below as required, and this signed statement must be included with the offer as required by the Solicitation Attachment A.

The Potential Contractor does, hereby, expressly affirm, declare, confirm, certify, and assure ALL of the following:

1. The Potential Contractor will comply with all of the provisions and requirements of the solicitation.
2. The Potential Contractor will provide, for the total contract period, all services defined in the Scope of Services specified by the *Pro Forma Contract* attached to the Solicitation.
3. The Potential Contractor accepts and agrees, without qualification, to all terms and conditions set out by the Pro Forma Contract attached to the Solicitation.
4. The Potential Contractor acknowledges and agrees that a contract resulting from the Solicitation shall incorporate, by reference, the offer in response to the solicitation as a part of the contract.
5. The Potential Contractor will comply, as applicable, with:
 - a) The laws of the State of Tennessee;
 - b) Title VI of the federal Civil Rights Act of 1972;
 - c) Title IX of the federal Education Amendments Act of 1972;
 - d) The Equal Employment Opportunity Act and the regulations issued there under by the federal government.
6. To the knowledge of the undersigned, the information detailed within the offer in response to the Solicitation is accurate.
7. The offer submitted in response to the Solicitation was independently prepared, without collusion, under penalty of perjury.
8. No 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 Potential Contractor in connection with the Solicitation or any resulting contract.

By signature below, the signatory certifies legal authority to bind the proposing entity to the provisions of this solicitation and any contract awarded pursuant to it. The State may, at its sole discretion and at any time, require evidence documenting the signatory's authority to legally bind the proposing entity.

DO NOT SIGN THIS DOCUMENT IF YOU ARE NOT LEGALLY AUTHORIZED TO BIND THE INDIVIDUAL OR ENTITY MAKING AN OFFER IN RESPONSE TO THE SUBJECT SOLICITATION

SIGNATURE & DATE: _____

PRINTED NAME & TITLE: _____

LEGAL ENTITY NAME: _____

FEIN or SSN: _____

Solicitation 33501-244502 Attachment C

***PRO FORMA* CONTRACT**

The *Pro Forma* Contract detailed in following pages of this exhibit contains some “blanks” that will be completed with appropriate information in the final contract resulting from the Solicitation.

CONTRACT
BETWEEN THE STATE OF TENNESSEE,
DEPARTMENT OF COMMERCE AND INSURANCE
AND
CONTRACTOR NAME

This Contract, by and between the State of Tennessee, Department of Commerce and Insurance ("State") and **Contractor Legal Entity Name** ("Contractor"), is for the provision of the administration of written and practical tests in accordance with National Fire Protection Association standards approved by the Commission on Firefighting Personnel Standards and Education, as further defined in the "SCOPE." State and Contractor may be referred to individually as a "Party" or collectively as the "Parties" to this Contract.

The Contractor is **a/an Individual, For-Profit Corporation, Non-Profit Corporation, Special Purpose Corporation or Association, Partnership, Joint Venture, Or Limited Liability Company.**

Contractor Place of Incorporation or Organization: **Location**

Contractor Edison Registration ID # **Number**

A. SCOPE:

A.1. The Contractor shall provide all goods or services and deliverables as required, described, and detailed below and shall meet all service and delivery timelines as specified by this Contract.

A.2. Definitions. For purposes of this Contract, definitions shall be as follows and as set forth in the Contract:

- a. Commission on Firefighting Personnel Standards and Education (the "Commission") is administratively attached to the State Fire Marshal's Office and is responsible for the certification of volunteer and paid firefighters in the State of Tennessee. The Commission also administers the Educational Incentive Pay Program for participating firefighters in Tennessee. The Commission is responsible for approving training programs to meet the requirements of T.C.A. 4-24-112 ("the Minimum Training Statute") and proof of compliance with this Statute must be submitted to the Commission.
- b. Grand Divisions refers to one of three geographic regions in Tennessee, each constituting roughly one-third of the state's land area, that are geographically, culturally, legally, and economically distinct. The Grand Divisions are legally recognized in the state constitution and state law and are represented on the Flag of Tennessee by the flag's three prominent stars. The Grand Divisions are also referred to as East, Middle, and West Tennessee.
- c. National Fire Protection Association ("NFPA") standards are standards set forth by the nonprofit organization, established to minimize the possibility and effects of fire and other risks.
- d. Tennessee Fire and Codes Academy ("TFACA") is the state academy established for the training, testing and certification of codes enforcement officials, firefighters and other homeland security first responders under the authority of the State Fire Marshal's office.

A.3. The Contractor shall:

- a. Administer separate and/or combined written and practical tests in accordance with NFPA standards approved by the Commission for certification at local fire departments in the assigned Grand Division as set forth in Tenn. Comp. R. & Regs. 0360-01-01, *et seq.*

However, the Contractor shall not administer examinations to any individual(s) that the Contractor has trained for the purpose of taking the examination being administered by the Contractor. The Contractor acknowledges, understands, and agrees that this contract shall be null and void if the Contractor administers any examination(s) of any individual(s) that the Contractor has trained.

- b. Return, via mailing service, completed test sheets, practical sheets, and rosters to the Commission office at 2161 Unionville-Deason Road, Bell Buckle, TN 37020, no later than two (2) business days after completion of a test event.
 - c. Certify all tests and testing materials are maintained in a secure manner to ensure exam security. Contractor shall not make copies of exams without prior written approval from the Director of the Commission. Contractor shall notify the Director within twenty-four (24) hours after the completion of a test event if they suspect test security was compromised.
 - d. Notify the Director and Regional Coordinator by email and phone call if the Contractor is unable to attend a scheduled test event. The Contractor shall make contact no later than twenty-four (24) hours prior to the test event, unless an emergency prevents the required notice. As soon as is practical, the Contractor shall provide written explanation of the emergency detailing why providing adequate notice was not possible.
 - e. Notify both the Director and Regional Coordinator by the close of business on the first day of the month if the Contractor will be unavailable for more than fourteen (14) days in any one (1) month.
 - f. Notify Department Contact no later than two (2) business days prior to the assigned date of the administration of examinations to coordinate location requirements, evaluators, necessary equipment, and any other details the Department and Contractor deem necessary for the efficient administration of exams. Contractor shall arrive at examination locations no later than thirty (30) minutes prior to the scheduled examination time. Contractor shall mail completed testing documents to the Department Contact no more than two (2) business days after the completion of a test event.
 - g. Provide the requested services in other counties or Grand Divisions in Tennessee on an as-needed basis upon when requested by the Assistant Commissioner for Fire Prevention.
 - h. Disclose actual or perceived conflicts of interest to the Director of the Commission prior to performing its duties under the contract.
- A.5. Contractor understands and acknowledges that he/she will be available to travel at least one (1) time per year to the Tennessee Fire and Codes Academy ("TFACA") for training and/or orientation, wherein lodging and meals will be provided at TFACA, and mileage will be reimbursed for travel between Contractor's home address to and from TFACA, subject to amounts and limitations specified in the "State Comprehensive Travel Regulations," as they are amended from time to time.
- A.6. Contractor understands and acknowledges that any and all work performed under this contract is assigned by the Assistant Commissioner for Fire Prevention based upon the following criteria:
- a. Whether the Assistant Commissioner for Fire Prevention believes there is an actual, potential, or perceived conflict of interest;
 - b. The proximity of the Contractor to the geographic territory and the testing location; and
 - c. The volume of work, if any, previously assigned to the Contractor.
- A.7. Warranty. Contractor represents and warrants that the term of the warranty ("Warranty Period") shall be the greater of the Term of this Contract or any other warranty generally offered by Contractor, its suppliers, or manufacturers to customers of its goods or services. The goods or services provided under this Contract shall conform to the terms and conditions of this Contract throughout the Warranty Period. Any nonconformance of the goods or services to the terms and conditions of this Contract shall constitute a "Defect" and shall be considered "Defective." If Contractor receives notice of a Defect during the Warranty Period, then Contractor shall correct the Defect, at no additional charge.

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

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

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

- A.8. Inspection and Acceptance. The State shall have the right to inspect all goods or services provided by Contractor under this Contract. If, upon inspection, the State determines that the goods or services are Defective, the State shall notify Contractor, and Contractor shall re-deliver the goods or provide the services at no additional cost to the State. If after a period of thirty (30) days following delivery of goods or performance of services the State does not provide a notice of any Defects, the goods or services shall be deemed to have been accepted by the State.

B. TERM OF CONTRACT:

This Contract shall be effective for the period beginning on **DATE** ("Effective Date") and ending on September 14, 2028, ("Term"). The State shall have no obligation for goods delivered or services provided by the Contractor prior to the Effective Date.

C. PAYMENT TERMS AND CONDITIONS:

- C.1. Maximum Liability. In no event shall the maximum liability of the State under this Contract exceed **Written Dollar Amount (\$Number)** ("Maximum Liability"). This Contract does not grant the Contractor any exclusive rights. The State does not guarantee that it will buy any minimum quantity of goods or services under this Contract. Subject to the terms and conditions of this Contract, the Contractor will only be paid for goods or services provided under this Contract after a purchase order is issued to Contractor by the State or as otherwise specified by this Contract.
- C.2. Compensation Firm. The payment methodology in Section C.3 and the Travel Compensation provided in Section C.4 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 or indirect costs incurred or to be incurred by the Contractor.
- C.3. Payment Methodology. The Contractor shall be compensated based on the payment methodology for goods or services authorized by the State in a total amount as set forth in Section C.1.
- a. The Contractor's compensation shall be contingent upon the satisfactory provision of goods or services as set forth in Section A.
 - b. The Contractor shall be compensated based upon the following payment methodology:

Goods or Services Description	Amount (per compensable increment)
Administration of Written Exam	\$ 300.00 per exam administration
Administration of Practical Exam	\$ 300.00 per exam administration
Administration of Combined Written and Practical Exam	\$ 520.00 per exam administration

- C.4. Travel Compensation. Compensation to the Contractor for travel, meals, or lodging shall be subject to amounts and limitations specified in the current "State Comprehensive Travel Regulations." Compensation for travel provided for under the terms of this section shall be limited to reimbursement for mileage to and from testing locations that require travel of 100 miles in one

direction or more, subject to pre-approval by Assistant Commissioner.

The Contractor must include (in addition to other invoice requirements of this Contract) a complete itemization of requested travel compensation and appropriate documentation and receipts as required by the "State Comprehensive Travel Regulations."

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

Department of Commerce and Insurance
 Attention: Accounts Payable
 500 James Robertson Parkway
 Nashville, Tennessee 37243
 Email: ciaccounts.payable@tn.gov

- a. Each invoice, on Contractor's letterhead, shall clearly and accurately detail all of the following information (calculations must be extended and totaled correctly):
 - (1) Invoice number (assigned by the Contractor);
 - (2) Invoice date;
 - (3) Contract number (assigned by the State);
 - (4) Customer account name: Department of Commerce and Insurance, Fire Prevention Division;
 - (5) Customer account number (assigned by the Contractor to the above-referenced Customer);
 - (6) Contractor name;
 - (7) Contractor Tennessee Edison registration ID number;
 - (8) Contractor contact for invoice questions (name, phone, or email);
 - (9) Contractor remittance address;
 - (10) Description of delivered goods or services provided and invoiced, including identifying information as applicable;
 - (11) Number of delivered or completed units, increments, hours, or days as applicable, of each good or service invoiced;
 - (12) Applicable payment methodology (as stipulated in Section C.3.) of each good or service invoiced;
 - (13) Amount due for each compensable unit of good or service; and
 - (14) Total amount due for the invoice period.
- b. Contractor's invoices shall:
 - (1) Only include charges for goods delivered or services provided as described in Section A and in accordance with payment terms and conditions set forth in Section C;
 - (2) Only be submitted for goods delivered or services completed and shall not include any charge for future goods to be delivered or services to be performed;
 - (3) Not include Contractor's taxes, which includes without limitation Contractor's sales and use tax, excise taxes, franchise taxes, real or personal property taxes, or income taxes; and
 - (4) Include shipping or delivery charges only as authorized in this Contract.
- c. The timeframe for payment (or any discounts) begins only when the State is in receipt of an invoice that meets the minimum requirements of this Section C.5.

- C.6. Payment of Invoice. A payment by the State shall not prejudice the State's right to object to or question any payment, invoice, or other matter. A payment by the State shall not be construed as

acceptance of goods delivered, any part of the services provided, or as approval of any amount invoiced.

- C.7. Invoice Reductions. The Contractor's invoice shall be subject to reduction for amounts included in any invoice or payment that is determined by the State, on the basis of audits conducted in accordance with the terms of this Contract, to not constitute proper compensation for goods delivered or services provided.
- C.8. Deductions. The State reserves the right to deduct from amounts, which are or shall become due and payable to the Contractor under this or any contract between the Contractor and the State of Tennessee, any amounts that are or shall become due and payable to the State of Tennessee by the Contractor.
- C.9. Prerequisite Documentation. The Contractor shall not invoice the State under this Contract until the State has received the following, properly completed documentation.
- a. The Contractor shall complete, sign, and present to the State the "Authorization Agreement for Automatic Deposit Form" provided by the State. By doing so, the Contractor acknowledges and agrees that, once this form is received by the State, payments to the Contractor, under this or any other contract the Contractor has with the State of Tennessee, may be made by ACH; and
 - b. The Contractor shall complete, sign, and return to the State the State-provided W-9 form. The taxpayer identification number on the W-9 form must be the same as the Contractor's Federal Employer Identification Number or Social Security Number referenced in the Contractor's Edison registration information.

D. MANDATORY TERMS AND CONDITIONS:

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

The State:

Shane Clark, Director of Firefighting Commission
 Department of Commerce and Insurance
 500 James Robertson Parkway
 Nashville, Tennessee 37243
 shane.clark@tn.gov
 Telephone # 931-294-4138

The Contractor:

Contractor Contact Name & Title
 Contractor Name
 Address
 Email Address
 Telephone # Number

FAX # **Number**

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

- D.3. Modification and Amendment. This Contract may be modified only by a written amendment signed by all Parties and approved by all applicable State officials.
- D.4. Subject to Funds Availability. The Contract is subject to the appropriation and availability of State or federal funds. In the event that the funds are not appropriated or are otherwise unavailable, the State reserves the right to terminate this Contract upon written notice to the Contractor. The State's exercise of its right to terminate this Contract shall not constitute a breach of Contract by the State. Upon receipt of the written notice, the Contractor shall cease all work associated with the Contract. If the State terminates this Contract due to lack of funds availability, the Contractor shall be entitled to compensation for all conforming goods requested and accepted by the State and for all satisfactory and authorized services completed as of the termination date. Should the State exercise its right to terminate this Contract due to unavailability of funds, the Contractor shall have no right to recover from the State any actual, general, special, incidental, consequential, or any other damages of any description or amount.
- D.5. Termination for Convenience. The State may terminate this Contract for convenience without cause and for any reason. The State shall give the Contractor at least thirty (30) days written notice before the termination date. The Contractor shall be entitled to compensation for all conforming goods delivered and accepted by the State or for satisfactory, authorized services completed as of the termination date. In no event shall the State be liable to the Contractor for compensation for any goods neither requested nor accepted by the State or for any services neither requested by the State nor satisfactorily performed by the Contractor. In no event shall the State's exercise of its right to terminate this Contract for convenience relieve the Contractor of any liability to the State for any damages or claims arising under this Contract.
- D.6. Termination for Cause. If the Contractor fails to properly perform its obligations under this Contract in a timely or proper manner, or if the Contractor materially violates any terms of this Contract ("Breach Condition") the State shall have the right to immediately terminate the Contract and withhold payments in excess of compensation for completed services or provided goods. Notwithstanding the above, the Contractor shall not be relieved of liability to the State for damages sustained by virtue of any Breach Condition and the State may seek other remedies allowed at law or in equity for breach of this Contract.
- D.7. Assignment and Subcontracting. The Contractor shall not assign this Contract or enter into a subcontract for any of the goods or services provided under this Contract without the prior written approval of the State. Notwithstanding any use of the approved subcontractors, the Contractor shall be the prime contractor and responsible for compliance with all terms and conditions of this Contract. The State reserves the right to request additional information or impose additional terms and conditions before approving an assignment of this Contract in whole or in part or the use of subcontractors in fulfilling the Contractor's obligations under this Contract.
- D.8. Conflicts of Interest. The Contractor warrants that no part of the Contractor's compensation shall be paid directly or indirectly to an employee or official of the State of Tennessee as wages, compensation, or gifts in exchange for acting as an officer, agent, employee, subcontractor, or consultant to the Contractor in connection with any work contemplated or performed under this Contract.

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

- D.9. Nondiscrimination. The Contractor hereby agrees, warrants, and assures that no person shall be excluded from participation in, be denied benefits of, or be otherwise subjected to discrimination in the performance of this Contract or in the employment practices of the Contractor on the

grounds of handicap or disability, age, race, creed, color, religion, sex, national origin, or any other classification protected by federal or state law. The Contractor shall, upon request, show proof of nondiscrimination and shall post in conspicuous places, available to all employees and applicants, notices of nondiscrimination.

- D.10. Prohibition of Illegal Immigrants. The requirements of Tenn. Code Ann. § 12-3-309 addressing the use of illegal immigrants in the performance of any contract to supply goods or services to the state of Tennessee, shall be a material provision of this Contract, a breach of which shall be grounds for monetary and other penalties, up to and including termination of this Contract.
- a. The Contractor agrees that the Contractor shall not knowingly utilize the services of an illegal immigrant in the performance of this Contract and shall not knowingly utilize the services of any subcontractor who will utilize the services of an illegal immigrant in the performance of this Contract. The Contractor shall reaffirm this attestation, in writing, by submitting to the State a completed and signed copy of the document at Attachment A, semi-annually during the Term. If the Contractor is a party to more than one contract with the State, the Contractor may submit one attestation that applies to all contracts with the State. All Contractor attestations shall be maintained by the Contractor and made available to State officials upon request.
 - b. Prior to the use of any subcontractor in the performance of this Contract, and semi-annually thereafter, during the Term, the Contractor shall obtain and retain a current, written attestation that the subcontractor shall not knowingly utilize the services of an illegal immigrant to perform work under this Contract and shall not knowingly utilize the services of any subcontractor who will utilize the services of an illegal immigrant to perform work under this Contract. Attestations obtained from subcontractors shall be maintained by the Contractor and made available to State officials upon request.
 - c. The Contractor shall maintain records for all personnel used in the performance of this Contract. Contractor's records shall be subject to review and random inspection at any reasonable time upon reasonable notice by the State.
 - d. The Contractor understands and agrees that failure to comply with this section will be subject to the sanctions of Tenn. Code Ann. § 12-3-309 for acts or omissions occurring after its effective date.
 - e. For purposes of this Contract, "illegal immigrant" shall be defined as any person who is not: (i) a United States citizen; (ii) a Lawful Permanent Resident; (iii) a person whose physical presence in the United States is authorized; (iv) allowed by the federal Department of Homeland Security and who, under federal immigration laws or regulations, is authorized to be employed in the U.S.; or (v) is otherwise authorized to provide services under the Contract.
- D.11. Records. The Contractor shall maintain documentation for all charges under this Contract. The books, records, and documents of the Contractor, for work performed or money received under this Contract, shall be maintained for a period of five (5) full years from the date of the final payment and shall be subject to audit at any reasonable time and upon reasonable notice by the State, the Comptroller of the Treasury, or their duly appointed representatives. The financial statements shall be prepared in accordance with generally accepted accounting principles.
- D.12. Monitoring. The Contractor's activities conducted and records maintained pursuant to this Contract shall be subject to monitoring and evaluation by the State, the Comptroller of the Treasury, or their duly appointed representatives.
- D.13. Progress Reports. The Contractor shall submit brief, periodic, progress reports to the State as requested.
- D.14. Strict Performance. Failure by any Party to this Contract to require, in any one or more cases, the strict performance of any of the terms, covenants, conditions, or provisions of this Contract

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

- D.15. Independent Contractor. The Parties shall not act as employees, partners, joint venturers, or associates of one another. The Parties are independent contracting entities. Nothing in this Contract shall be construed to create an employer/employee relationship or to allow either Party to exercise control or direction over the manner or method by which the other transacts its business affairs or provides its usual services. The employees or agents of one Party are not employees or agents of the other Party.
- D.16. Patient Protection and Affordable Care Act. The Contractor agrees that it will be responsible for compliance with the Patient Protection and Affordable Care Act ("PPACA") with respect to itself and its employees, including any obligation to report health insurance coverage, provide health insurance coverage, or pay any financial assessment, tax, or penalty for not providing health insurance. The Contractor shall indemnify the State and hold it harmless from any costs to the State arising from Contractor's failure to fulfill its PPACA responsibilities for itself or its employees.
- D.17. Limitation of State's Liability. The State shall have no liability except as specifically provided in this Contract. In no event will the State be liable to the Contractor or any other party for any lost revenues, lost profits, loss of business, decrease in the value of any securities or cash position, time, goodwill, or any indirect, special, incidental, punitive, exemplary or consequential damages of any nature, whether based on warranty, contract, statute, regulation, tort (including but not limited to negligence), or any other legal theory that may arise under this Contract or otherwise. The State's total liability under this Contract (including any exhibits, schedules, amendments or other attachments to the Contract) or otherwise shall under no circumstances exceed the Maximum Liability. This limitation of liability is cumulative and not per incident.
- D.18. Limitation of Contractor's Liability. In accordance with Tenn. Code Ann. § 12-3-701, the Contractor's liability for all claims arising under this Contract shall be limited to an amount equal to two (2) times the Maximum Liability amount detailed in Section C.1. and as may be amended, PROVIDED THAT in no event shall this Section limit the liability of the Contractor for: (i) intellectual property or any Contractor indemnity obligations for infringement for third-party intellectual property rights; (ii) any claims covered by any specific provision in the Contract providing for liquidated damages; or (iii) any claims for intentional torts, criminal acts, fraudulent conduct, or acts or omissions that result in personal injuries or death. For clarity, except as otherwise expressly set forth in this Section, Contractor's indemnification obligations and other remedies available under this Contract are subject to the limitations on liability set forth in this Section.
- D.19. Hold Harmless. The Contractor agrees to indemnify and hold harmless the State of Tennessee as well as its officers, agents, and employees from and against any and all claims, liabilities, losses, and causes of action which may arise, accrue, or result to any person, firm, corporation, or other entity which may be injured or damaged as a result of acts, omissions, or negligence on the part of the Contractor, its employees, or any person acting for or on its or their behalf relating to this Contract. The Contractor further agrees it shall be liable for the reasonable cost of attorneys' fees, court costs, expert witness fees, and other litigation expenses for the State to enforce the terms of this Contract.

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

- D.20. HIPAA Compliance. The State and Contractor shall comply with obligations under the Health Insurance Portability and Accountability Act of 1996 ("HIPAA"), Health Information Technology for

Economic and Clinical Health (“HITECH”) Act and any other relevant laws and regulations regarding privacy (collectively the “Privacy Rules”). The obligations set forth in this Section shall survive the termination of this Contract.

- a. Contractor warrants to the State that it is familiar with the requirements of the Privacy Rules, and will comply with all applicable requirements in the course of this Contract.
 - b. Contractor warrants that it will cooperate with the State, including cooperation and coordination with State privacy officials and other compliance officers required by the Privacy Rules, in the course of performance of the Contract so that both parties will be in compliance with the Privacy Rules.
 - c. The State and the Contractor will sign documents, including but not limited to business associate agreements, as required by the Privacy Rules and that are reasonably necessary to keep the State and Contractor in compliance with the Privacy Rules. This provision shall not apply if information received or delivered by the parties under this Contract is NOT “protected health information” as defined by the Privacy Rules, or if the Privacy Rules permit the parties to receive or deliver the information without entering into a business associate agreement or signing another document.
 - d. The Contractor will indemnify the State and hold it harmless for any violation by the Contractor or its subcontractors of the Privacy Rules. This includes the costs of responding to a breach of protected health information, the costs of responding to a government enforcement action related to the breach, and any fines, penalties, or damages paid by the State because of the violation.
- D.21. Tennessee Consolidated Retirement System. Subject to statutory exceptions contained in Tenn. Code Ann. §§ 8-36-801, *et seq.*, the law governing the Tennessee Consolidated Retirement System (“TCRS”), provides that if a retired member of TCRS, or of any superseded system administered by TCRS, or of any local retirement fund established under Tenn. Code Ann. §§ 8-35-101, *et seq.*, accepts State employment, the member's retirement allowance is suspended during the period of the employment. Accordingly and notwithstanding any provision of this Contract to the contrary, the Contractor agrees that if it is later determined that the true nature of the working relationship between the Contractor and the State under this Contract is that of “employee/employer” and not that of an independent contractor, the Contractor, if a retired member of TCRS, may be required to repay to TCRS the amount of retirement benefits the Contractor received from TCRS during the Term.
- D.22. Tennessee Department of Revenue Registration. The Contractor shall comply with all applicable registration requirements contained in Tenn. Code Ann. §§ 67-6-601 – 608. Compliance with applicable registration requirements is a material requirement of this Contract.
- D.23. Debarment and Suspension. The Contractor certifies, to the best of its knowledge and belief, that it, its current and future principals, its current and future subcontractors and their principals:
- a. are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any federal or state department or agency;
 - b. have not within a three (3) year period preceding this Contract been convicted of, or had a civil judgment rendered against them from commission of fraud, or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, state, or local) transaction or grant under a public transaction; violation of federal or state antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification, or destruction of records, making false statements, or receiving stolen property;
 - c. are not presently indicted or otherwise criminally or civilly charged by a government entity (federal, state, or local) with commission of any of the offenses detailed in section b. of this certification; and

- d. have not within a three (3) year period preceding this Contract had one or more public transactions (federal, state, or local) terminated for cause or default.

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

- D.24. Force Majeure. "Force Majeure Event" means fire, flood, earthquake, elements of nature or acts of God, wars, riots, civil disorders, rebellions or revolutions, acts of terrorism or any other similar cause beyond the reasonable control of the Party except to the extent that the non-performing Party is at fault in failing to prevent or causing the default or delay, and provided that the default or delay cannot reasonably be circumvented by the non-performing Party through the use of alternate sources, workaround plans or other means. A strike, lockout or labor dispute shall not excuse either Party from its obligations under this Contract. Except as set forth in this Section, any failure or delay by a Party in the performance of its obligations under this Contract arising from a Force Majeure Event is not a default under this Contract or grounds for termination. The non-performing Party will be excused from performing those obligations directly affected by the Force Majeure Event, and only for as long as the Force Majeure Event continues, provided that the Party continues to use diligent, good faith efforts to resume performance without delay. The occurrence of a Force Majeure Event affecting Contractor's representatives, suppliers, subcontractors, customers or business apart from this Contract is not a Force Majeure Event under this Contract. Contractor will promptly notify the State of any delay caused by a Force Majeure Event (to be confirmed in a written notice to the State within one (1) day of the inception of the delay) that a Force Majeure Event has occurred, and will describe in reasonable detail the nature of the Force Majeure Event. If any Force Majeure Event results in a delay in Contractor's performance longer than forty-eight (48) hours, the State may, upon notice to Contractor: (a) cease payment of the fees for the affected obligations until Contractor resumes performance of the affected obligations; or (b) immediately terminate this Contract or any purchase order, in whole or in part, without further payment except for fees then due and payable. Contractor will not increase its charges under this Contract or charge the State any fees other than those provided for in this Contract as the result of a Force Majeure Event.
- D.25. State and Federal Compliance. The Contractor shall comply with all State and federal laws and regulations applicable to Contractor in the Contractor's performance of this Contract.
- D.26. Governing Law. This Contract shall be governed by and construed in accordance with the laws of the State of Tennessee, without regard to its conflict or choice of law rules. The Tennessee Claims Commission or the state or federal courts in Tennessee shall be the venue for all claims, disputes, or disagreements arising under this Contract. The Contractor acknowledges and agrees that any rights, claims, or remedies against the State of Tennessee or its employees arising under this Contract shall be subject to and limited to those rights and remedies available under Tenn. Code Ann. §§ 9-8-101 - 408.
- D.27. Entire Agreement. This Contract is complete and contains the entire understanding between the Parties relating to its subject matter, including all the terms and conditions of the Parties' agreement. This Contract supersedes any and all prior understandings, representations, negotiations, and agreements between the Parties, whether written or oral.
- D.28. Severability. If any terms and conditions of this Contract are held to be invalid or unenforceable as a matter of law, the other terms and conditions of this Contract shall not be affected and shall remain in full force and effect. The terms and conditions of this Contract are severable.
- D.29. Headings. Section headings of this Contract are for reference purposes only and shall not be construed as part of this Contract.
- D.30. Incorporation of Additional Documents. Each of the following documents is included as a part of this Contract by reference. In the event of a discrepancy or ambiguity regarding the Contractor's duties, responsibilities, and performance under this Contract, these items shall govern in order of precedence below:

- a. any amendment to this Contract, with the latter in time controlling over any earlier amendments;
 - b. this Contract with any attachments or exhibits (excluding the items listed at subsections c. through f., below), which includes Attachment A and B;
 - c. any clarifications of or addenda to the Contractor's proposal seeking this Contract;
 - d. the State solicitation, as may be amended, requesting responses in competition for this Contract;
 - e. any technical specifications provided to proposers during the procurement process to award this Contract; and
 - f. the Contractor's response seeking this Contract.
- D.31. Iran Divestment Act. The requirements of Tenn. Code Ann. § 12-12-101, *et seq.*, addressing contracting with persons as defined at Tenn. Code Ann. §12-12-103(5) that engage in investment activities in Iran, shall be a material provision of this Contract. The Contractor certifies, under penalty of perjury, that to the best of its knowledge and belief that it is not on the list created pursuant to Tenn. Code Ann. § 12-12-106.
- D.32. Insurance. Contractor shall maintain insurance coverage as specified in this Section. The State reserves the right to amend or require additional insurance coverage, coverage amounts, and endorsements required under this Contract. Contractor's failure to maintain or submit evidence of insurance coverage, as required, is a material breach of this Contract. If Contractor loses insurance coverage, fails to renew coverage, or for any reason becomes uninsured during the Term, Contractor shall immediately notify the State. All insurance companies providing coverage must be: (a) acceptable to the State; (b) authorized by the Tennessee Department of Commerce and Insurance ("TDCI"); and (c) rated A- / VII or better by A.M. Best. All coverage must be on a primary basis and noncontributory with any other insurance or self-insurance carried by the State. Contractor agrees to name the State as an additional insured on any insurance policy with the exception of workers' compensation (employer liability) and professional liability (errors and omissions) insurance. All policies must contain an endorsement for a waiver of subrogation in favor of the State. Any deductible or self insured retention ("SIR") over fifty thousand dollars (\$50,000) must be approved by the State. The deductible or SIR and any premiums are the Contractor's sole responsibility. The Contractor agrees that the insurance requirements specified in this Section do not reduce any liability the Contractor has assumed under this Contract including any indemnification or hold harmless requirements.

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

Contractor shall provide the State a certificate of insurance ("COI") evidencing the coverages and amounts specified in this Section. The COI must be on a form approved by the TDCI (standard ACORD form preferred). The COI must list each insurer's National Association of Insurance Commissioners (NAIC) number and be signed by an authorized representative of the insurer. The COI must list the State of Tennessee – CPO Risk Manager, 312 Rosa L. Parks Ave., 3rd floor Central Procurement Office, Nashville, TN 37243 as the certificate holder. Contractor shall provide the COI ten (10) business days prior to the Effective Date and again thirty (30) calendar days before renewal or replacement of coverage. Contractor shall provide the State evidence

that all subcontractors maintain the required insurance or that subcontractors are included under the Contractor's policy. At any time, the State may require Contractor to provide a valid COI. The Parties agree that failure to provide evidence of insurance coverage as required is a material breach of this Contract. If Contractor self-insures, then a COI will not be required to prove coverage. Instead Contractor shall provide a certificate of self-insurance or a letter, on Contractor's letterhead, detailing its coverage, policy amounts, and proof of funds to reasonably cover such expenses. The State reserves the right to require complete copies of all required insurance policies, including endorsements required by these specifications, at any time.

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

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

a. Commercial General Liability ("CGL") Insurance

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

The Contractor shall maintain single limits not less than five hundred thousand dollars (\$500,000.00). If a general aggregate limit applies, either the general aggregate limit shall apply separately to this policy or location of occurrence or the general aggregate limit shall be twice the required occurrence limit.

b. Automobile Liability Insurance

- 1) The Contractor shall maintain automobile liability insurance which shall cover liability arising out of any automobile (including owned, leased, hired, and non-owned automobiles).
- 2) The Contractor shall maintain bodily injury/property damage with a limit not less than five hundred thousand dollars (\$500,000.00) per occurrence or combined single limit.

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

D.34. Confidentiality of Records. Strict standards of confidentiality of records and information shall be maintained in accordance with applicable state and federal law. All material and information, regardless of form, medium or method of communication, provided to the Contractor by the State or acquired by the Contractor on behalf of the State that is regarded as confidential under state or federal law shall be regarded as "Confidential Information." Nothing in this Section shall permit Contractor to disclose any Confidential Information, regardless of whether it has been disclosed

or made available to the Contractor due to intentional or negligent actions or inactions of agents of the State or third parties. Confidential Information shall not be disclosed except as required or permitted under state or federal law. Contractor shall take all necessary steps to safeguard the confidentiality of such material or information in conformance with applicable state and federal law.

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

- D.35. Boycott of Israel. The Contractor certifies that it is not currently engaged in, and covenants that it will not, for the duration of the Contract, engage in a Boycott of Israel, as that term is defined in Tenn. Code Ann. § 12-4-119.
- D.36. Prohibited Contract Terms. The prohibited contract terms and conditions enumerated in Pub. Ch. 113, § 5, shall be a material provision of this Contract. The Contractor acknowledges, understands, and agrees that the inclusion of a term or condition prohibited by Pub. Ch. 113, § 5, shall be null and void and the Contract shall be enforceable as if the Contract did not contain such term or condition.

E. SPECIAL TERMS AND CONDITIONS:

- E.1. Conflicting Terms and Conditions. Should any of these special terms and conditions conflict with any other terms and conditions of this Contract, the special terms and conditions shall be subordinate to the Contract's other terms and conditions.
- E.2. Contractor Commitment to Diversity. The Contractor shall comply with and make reasonable business efforts to exceed the commitment to diversity represented by the Contractor's Response to Solicitation 33501-244502 (Attachment B) and resulting in this Contract.

The Contractor shall assist the State in monitoring the Contractor's performance of this commitment by providing, as requested, a monthly report of participation in the performance of this Contract by small business enterprises and businesses owned by minorities, women, service-disabled veterans, and persons with disabilities. Such reports shall be provided to the State of Tennessee Governor's Office of Diversity Business Enterprise in the TN Diversity Software available online at:

<https://tn.diversitysoftware.com/FrontEnd/StartCertification.asp?TN=tn&XID=9810>.

IN WITNESS WHEREOF,

CONTRACTOR LEGAL ENTITY NAME:

CONTRACTOR SIGNATURE

DATE

PRINTED NAME AND TITLE OF CONTRACTOR SIGNATORY (above)

DEPARTMENT OF COMMERCE AND INSURANCE:

CARTER LAWRENCE, COMMISSIONER

DATE

Pro Forma ATTACHMENT A

ATTESTATION RE PERSONNEL USED IN CONTRACT PERFORMANCE

SUBJECT CONTRACT NUMBER:	
CONTRACTOR LEGAL ENTITY NAME:	
EDISON VENDOR IDENTIFICATION NUMBER:	

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

CONTRACTOR SIGNATURE

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

PRINTED NAME AND TITLE OF SIGNATORY

DATE OF ATTESTATION