**RFI ATTACHMENT 1**

***PRO FORMA* CONTRACT**

**CONTRACT  
BETWEEN THE STATE OF TENNESSEE,  
DEPARTMENT OF TREASURY  
AND  
[CONTRACTOR NAME]**

This Contract, by and between the State of Tennessee, Department of Treasury (“State”) and [CONTRACTOR LEGAL ENTITY NAME] (“Contractor”), is for the provision of certain banking services for the State of Tennessee, as further defined in the "SCOPE." The State and the 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 OF SERVICES:**

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. Operating Procedures. The Contractor shall assist the State in developing written Operating Procedures for the Contractor’s performance of each of the banking services set forth herein, in accordance with pages [PAGE NUMBERS FROM SUCCESSFUL PROPOSAL WHICH RESPOND TO SECTION C.2.1 of RFP ATTACHMENT 6.2] of the Contractor’s Proposal. Once developed, said Procedures shall be considered a part of this Contract as though fully set forth herein and the Contractor shall perform such services in accordance with the Operating Procedures, this Contract and the documents described in Section D.31 below. Said Procedures may be amended in writing from time to time by mutual agreement of the parties. The parties agree to amend the Operating Procedures should any changes be necessary in order to comply with any applicable State or Federal laws or regulations specifically relating to the services hereunder.

A.3. Times of Day. All times of day referred to throughout this Contract shall be Central Standard or Daylight Savings Time, as applicable.

A.4. Account Level Services.

a. Establishment of Account. The Contractor shall establish and maintain a bank account in the name of the State for the State’s transaction activity described in Sections A.5., A.6, and A.7 (the “Settlement Account”).

b. Account Balances. The Contractor agrees the State will receive earnings credit for the Settlement Account's average daily available account balance at the earnings rates determined from the rate adjustments proposed for each contract period, in accordance with the Contractor’s Proposal for Item 7 of RFP Attachment 6.3, Special Investment Vehicle Earnings Rate. If the Settlement Account is not also used for purposes of maintaining the State’s excess balances in a Deposit Account as defined in Section A.10.a. below, the earnings allowances on the Settlement Account shall be used to offset compensation payable to the Contractor pursuant to Section C of this Contract; and in the event the average collected balance for the month in the Settlement Account is negative, except for negative balances due to Contractor transaction posting errors or delays, the State agrees to pay a service charge which shall be the equivalent of the effective average Federal Funds rate plus 25 basis points multiplied by the negative collected balance divided by 12.

c. Collateral Level. Any funds remaining in the Settlement Account overnight shall be collateralized in accordance with the Collateral Pool for Public Deposits Act of 1990, which is codified in Tennessee Code Annotated, Title 9, Chapter 4, Part 5.

d. Bank Statements.

(1) Daily. By 8:00 a.m. on each business day or by such earlier time as may be specified on pages [PAGE NUMBERS FROM SUCCESSFUL PROPOSAL WHICH RESPOND TO SECTION C.2.2. of RFP ATTACHMENT 6.2] of the Contractor’s Proposal, the Contractor shall make available to the State via electronic access as provided in Section A.4.f. below, bank account statements of all transactions recorded against the Settlement Account for the previous business day. The bank account statements shall be in both BAI and text formats, and downloadable to commonly used spreadsheet applications such as Microsoft Excel. The content, timing and delivery of the bank statement as well as the number of transaction history days available shall be as further described in pages [PAGE NUMBERS FROM SUCCESSFUL PROPOSAL WHICH RESPOND TO SECTION C.2.2. of RFP ATTACHMENT 6.2] of the Contractor’s Proposal. The daily statement shall include, at a minimum, the previous day's beginning balance, the previous day's ending balance, the total number of debits and credits, the total dollar amount of debits and credits as well as transactions posted against the Settlement Account on the previous day. In addition, the Contractor shall make available to the State beginning no later than 9:00 a.m. via electronic access as provided in Section A.4.f. below, a report or statement of all transaction activity recorded against the Settlement Account throughout the current business day in text format and downloadable to commonly used spreadsheet applications such as Microsoft Excel. The content, timing, frequency and delivery of the current day report or statement shall be as further described in pages [PAGE NUMBERS FROM SUCCESSFUL PROPOSAL WHICH RESPOND TO SECTION C.2.2. of RFP ATTACHMENT 6.2] of the Contractor’s Proposal.

(2) Monthly. On a monthly basis, the Contractor shall make available to the State via electronic access as provided in Section A.4.f. below, a statement of the Settlement Account activity for the preceding calendar month as described in pages [PAGE NUMBERS FROM SUCCESSFUL PROPOSAL WHICH RESPOND TO SECTION C.2.2. of RFP ATTACHMENT 6.2] of the Contractor’s Proposal. The statement shall include, at a minimum, beginning and ending ledger balances for the month, debit and credit transaction detail and a summary of account activity. Such statement shall be made available within five (5) business days from the calendar month-end.

e. Account Analysis Statement. At the close of each month and by the fifth business day of the following month, the Contractor shall make available to the State via electronic access as provided in Section A.4.f.below, a Settlement Account analysis statement as described in pages [PAGE NUMBERS FROM SUCCESSFUL PROPOSAL WHICH RESPOND TO SECTION C.2.2. of RFP ATTACHMENT 6.2] of the Contractor’s Proposal.

f. On-line Banking, Reporting and Account Access. The Contractor shall provide State designated users with a single-point-of-access to all statements, data, information, reports, files and transactions requested under this service category through a secured, robust, web-based banking application having capabilities for segregating various administrative functions, such as designating different users to perform account transfer transaction initiation and others to perform statement download and reporting functions. The Contractor’s on-line banking, reporting and account access application will be as further described on pages [PAGE NUMBERS FROM SUCCESSFUL PROPOSAL WHICH RESPOND TO SECTION C.2.2. of RFP ATTACHMENT 6.2] of the Contractor’s Proposal.

g. Customer Service. The Contractor will maintain a system of customer service that is readily available and capable of responding immediately to the State on matters relating to its accounts and services during normal business hours. In addition, the Contractor will maintain a primary account relationship officer who is available to meet locally with the State at the State Treasury Department offices in Nashville, Tennessee. The Contractor agrees that such relationship officer will retain familiarity with the State’s accounts and services, and be capable of coordinating the necessary resources within the Contractor’s organization to address the State’s needs in matters concerning the State’s accounts and services under this Contract.

A.5. Wire Transfer Services.

a. Communication Process. Outgoing wire transfer requests made by the State shall be delivered to the Contractor in batch data files throughout each business day. The Contractor shall accept and process such outgoing wire transfer requests on behalf of the State, provide outgoing wire transfer confirmation data files and incoming wire transfer data files to the State throughout the business day via the industry standard secure connection established by the Contractor as provided in Section A.13 below and in accordance with pages [PAGE NUMBERS FROM SUCCESSFUL PROPOSAL WHICH RESPOND TO SECTION C.2.3. of RFP ATTACHMENT 6.2] of the Contractor's Proposal, and in accordance with the Operating Procedures developed pursuant to Section A.2 above. Advance notification of incoming wire transfers to the State shall entail an immediate e-mail transmission to the State upon receipt of the incoming wire by the Contractor. The Contractor shall provide an electronic interface between the Contractor’s wire transfer system and the State’s in-house wire system, which in-house system is known as the Automated Cash Management Entry system (ACME). Such interface shall ensure that no re-keying of data in the ACME system by the State will be necessary to (i) send wires, (ii) confirm the execution of outgoing wires, or (iii) to receive wires in the ACME system. The Contractor shall provide a communication process for the State to securely and timely request international outgoing wire transfers where either the U.S. dollar amounts need to be converted to a foreign currency, or certain foreign currency amounts need to be converted to U.S dollars. Such communication process for international outgoing wire transfer requests shall enable the State to access timely and accurate information for conversion of the foreign currency amount to the U.S dollar amount when necessary for the wire request, and shall be in accordance with pages [PAGE NUMBERS FROM SUCCESSFUL PROPOSAL WHICH RESPOND TO SECTION C.2.3. of RFP ATTACHMENT 6.2] of the Contractor’s Proposal, and in accordance with the Operating Procedures developed pursuant to Section A.2 above.

b. Transaction Timing. The Contractor shall accept communication of outgoing wire transfer instructions each business day by no later than 7:30 a.m. and ending no earlier than 4:00 p.m. for same day settlement. No more than thirty (30) minutes shall elapse between the receipt of outgoing wire transfer instructions by the Contractor and the corresponding confirmation to the State of the transfer of funds, except when either (i) the Federal Reserve Wire Transfer System is inoperable, (ii) the State has reached its net debit position referred to in Section A.11 hereof, or (iii) when the State, at the Contractor's written request, has delivered to the Contractor a written waiver thereof. Any such waiver by the State shall only be applicable to the one occasion waived and shall not be construed as a waiver of such requirement on any future occasion. If the Contractor's attempt to execute the transfer of funds fails, the Contractor shall notify the State by telephone at the time the Contractor is made aware of such failure. All incoming wires received by the Contractor in proper format shall be posted to the State’s Settlement Account within thirty (30) minutes of the Contractor’s receipt of the same. By 8:00 a.m. on each business day, the Contractor shall provide to the State via electronic delivery a file in BAI format that includes all incoming wire receipt activity occurring the previous business day.

c. Outgoing WireTransaction Confirmation. After all outgoing wire transfer instructions have been executed, or in the case of a failure to execute, after the State has been notified of the failure, the Contractor shall confirm the status of each wire transfer as either executed or failed. Each outgoing wire initiated by the State shall be confirmed by the Contractor according to the Operating Procedures developed pursuant to Section A.2 above.

d. Transaction Processing. All domestic outgoing and incoming wire transfers made on behalf of the State shall be processed and confirmed by the Contractor in the same manner as provided above regardless of the payee or payor. If the Contractor must make any modification to outgoing wire transfer instructions to accommodate delivery to the proper party, the Contractor shall notify the State within twenty-four (24) hours of the changes made. For wires received by the Contractor that are not in proper format, every effort shall be made by the Contractor to post the wires to the State’s Settlement Account on the date of receipt in accordance with Tennessee Code Annotated, Section 47-4A-207.

e. Security and Recovery. The Contractor shall maintain risk control procedures to protect against unauthorized access of both computer resources and data to reduce erroneous or fraudulent wire transfer activities. The Contractor shall further maintain a robust, alternate wire transfer service resumption plan, which addresses events affecting the Contractor’s site, the Strategic Technology Solutions (STS) Data Center and the State’s offices. Such risk control procedures and service resumption plan shall be developed by the Contractor and the State and shall be included in the Operating Procedures described in Section A.2 above. Such plan shall provide for the timeframe and procedures for resumption of wire transfer processing in the event of a disaster, which affects the Contractor’s primary service delivery office(s). The plan shall also require the Contractor to coordinate with STS and the State’s Disaster Recovery site vendor to assure the redirection of the wire transfer communications link to the State’s Disaster Recovery hot site along with any State leased circuits and the availability of encrypted transmission capability to the State Disaster Recovery site due to an event requiring STS to shift State operations to its Disaster Recovery site. The plan shall also include a plan for the physical exchange of wire transfer files, or an alternate communication method with the State, in the event that electronic delivery is not feasible.

A.6. Automated Clearing House (ACH) Services. Effective TBD, or at such later date as determined at the sole discretion of the State, the Contractor shall perform the following services on behalf of the State:

a. Communication and Confirmation Process. The Contractor shall accept and process ACH activity on behalf of the State, and settle the same as “on-us” or with the Federal Reserve Bank, or with other settlement partners, in accordance with applicable rules and regulations governing the ACH Network. Data files containing ACH origination entries shall be authorized and delivered by the State to the Contractor, and data files containing ACH receipts, origination returns, and corrections entries, as well as the ACH E-Payment Routing Directory, shall be delivered by the Contractor to the State, via the industry standard secure connection established by the Contractor as provided in Section A.13 below, in the format and at the times specified in pages [PAGE NUMBERS FROM SUCCESSFUL PROPOSAL WHICH RESPOND TO SECTION C.2.4. of RFP ATTACHMENT 6.2] of the Contractor's Proposal. Detailed procedures for this process shall be contained in the Operating Procedures developed pursuant to Section A.2 above.

b. Communications of State-initiated Returns and Corrections. The Contractor shall provide the State with a procedure to request the deletion or reversal of ACH origination entries after they are transmitted to the Contractor, and shall provide the State with procedures to request the return of ACH receipt entries and dishonor of return entries, in accordance with pages [PAGE NUMBERS FROM SUCCESSFUL PROPOSAL WHICH RESPOND TO SECTION C.2.4.6) of RFP ATTACHMENT 6.2] of the Contractor’s Proposal. Detailed procedures for these processes shall be contained in the Operating Procedures developed pursuant to Section A.2 above.

c. Settlement of ACH. The Contractor shall serve as the Receiving Depository Financial Institution (RDFI) in processing and settling the State’s ACH receipts activity. The Contractor shall serve as the Originating Depository Financial Institution (ODFI) for the State’s ACH origination activity. The ACH data files referenced in Section A.6.a above shall provide the ACH entries included in the amounts posted to and settling on the State's Settlement Account that day. The Contractor shall provide or make available to the State a current day report or statement that enables the State to balance the ACH activity posting to the Settlement Account each day, and includes all ACH activity recorded against the Settlement Account throughout the current day, beginning no later than 9:00 a.m. and as described on pages [PAGE NUMBERS FROM SUCCESSFUL PROPOSAL WHICH RESPOND TO SECTION C.2.4.4) of RFP ATTACHMENT 6.2] of the Contractor’s Proposal.

d. File Retransmission. The Contractor shall retain ACH data transmission files for a rolling thirty-day period. Should the State need an ACH receipts, returns and corrections file retransmitted for any reason, the Contractor shall retransmit the same within twenty-four (24) hours of the State's request so long as such file is still retained on the Contractor's system.

e. ACH Receipts Processing. The Contractor shall act as the RDFI in processing and settling the State’s ACH receipts and related activity through the Federal Reserve Bank and the ACH network. In this capacity, the Contractor shall perform all processing functions and responsibilities of the RDFI under NACHA Rules, including, but not limited to, screening of International ACH Transactions (IAT) and associated Office of Foreign Assets Control (OFAC) compliance. Detailed procedures relative to ACH receipts processing shall be contained in the Operating Procedures developed pursuant to Section A.2 above.

f. Same Day Settlement. The Contractor shall process for the State Same Day settlement items for (i) ACH Originations and (ii) ACH receipts in accordance with pages [PAGE NUMBERS FROM SUCCESSFUL PROPOSAL WHICH RESPOND TO SECTION C.2.4.7) of RFP ATTACHMENT 6.2] of the Contractor's Proposal. Detailed procedures for this process shall be contained in the Operating Procedures developed pursuant to Section A.2 above.

g. ACH Processing Services. The Contractor shall perform on behalf of the State ACH processing services, which shall include, but not be limited to, originations, returns and receipts. As a part of this process, the Contractor shall ensure the State retains the ability to track and monitor origination files, reconcile the State’s origination activity as it is occurring, and balance the settlement of the origination activity daily. The Contractor acknowledges and agrees that the state of Tennessee has over two hundred (200) specific ACH accounts and that the State intends to continue to use these accounts. The Contractor will provide reporting and online access to state employees as requested by the State of Tennessee Treasury Department. Detailed procedures for these processes shall be contained in the Operating Procedures developed pursuant to Section A.2 above. As part of the security described in Section A.6.h below and in accordance with pages [PAGE NUMBERS FROM SUCCESSFUL PROPOSAL WHICH RESPOND TO SECTION C.2.5.2) of RFP ATTACHMENT 6.2] of the Contractor's Proposal, the Contractor shall ensure that the specific state of Tennessee agencies will only be able to access the accounts for which the agencies have been granted authorization to access.

h. Security and Recovery. The Contractor shall maintain risk control procedures to protect against unauthorized access of both computer resources and data to reduce erroneous or fraudulent ACH transfer activities. The Contractor shall further maintain a robust, alternate ACH service resumption plan, which addresses events affecting the Contractor’s site, the STS Data Center and the State’s offices. Such risk control procedures and service resumption plan shall be developed by the Contractor and the State and shall be included in the Operating Procedures described in Section A.2 above. Such plan shall provide for timeframe(s) and procedures for resumption of ACH processing in the event of a disaster, which affects the Contractor’s primary service delivery office(s). The plan shall also require the Contractor to coordinate with STS and the State’s Disaster Recovery site vendor to assure the redirection of the ACH communications link to the State’s Disaster Recovery hot site along with any State leased circuits and the availability of encrypted transmission capability to the State Disaster Recovery site due to an event requiring STS to shift State operations to its Disaster Recovery site. The plan shall also include a plan for the physical exchange of ACH files with the State in the event that electronic delivery is not feasible.

i. Requests of ACH Rules and Regulations. Upon request by the State, the Contractor shall provide a copy of any requested rules, regulations and guidelines issued by regulatory authorities or governing bodies that are applicable to ACH services.

A.7. Settlement of State Checks and Warrants, In-clearing Items and Related FRB Service Fees.

a. Correspondent for the State. The Contractor shall serve as Correspondent for the State with the Federal Reserve Bank to accept and settle State checks and warrants, in-clearing and return cash letter items, and related debit and credit adjustments, and for Billing Service Fees as presented by the Federal Reserve Bank for the State as Respondent. Said presentments will be posted to the Settlement Account as defined in Section A.4.a above, and will be reported to the State in accordance with pages [PAGE NUMBERS FROM SUCCESSFUL PROPOSAL WHICH RESPOND TO SECTION C.2.7 of RFP ATTACHMENT 6.2] of the Contractor's Proposal, and in accordance with the current Federal Reserve Bank operating procedures relative to such items. The Contractor shall communicate the FRB cash letter amounts and provide payment files to the State by 1:00 p.m. each banking day in order for the State to balance to its system’s update of the daily warrant and check payment files.

b. Warrant and Check Processing Services. Effective TBD or on such later date as shall be determined at the sole discretion of the State, the Contractor shall perform on behalf of the State check and warrant processing services, which shall include presentment point, image and archive services, Check21 cash letter presentment and settlement, adjustment, returns processing and enhanced positive pay options. Detailed procedures for these processes shall be contained in the Operating Procedures developed pursuant to Section A.2 above.

c. Negotiable Items Settling at the Aggregate Level in the State Settlement Bank Account**.** The Contractor agrees that checks and warrants shall settle against the routing transit number that is assigned to the State at the Federal Reserve and the ACH Credits and Debits shall settle at the RDFI that is assigned to the Contractor specifically for the State’s ACH entries. Both of these functions shall settle at the Contractor bank at the aggregate level. The Contractor agrees that no individual negotiable items such as checks, warrants or ACH entries will settle against the State’s Settlement Account. The Contractor shall provide and maintain a monitoring service that will reject any individual check, warrant or ACH negotiable item from settling in the Settlement Account held by the Contractor.

1. Security and Recovery. The Contractor shall maintain risk control procedures to protect against unauthorized access of both computer resources and data to reduce erroneous or fraudulent check or warrant clearing activities. The Contractor shall further maintain a robust, alternate check or warrant clearing service resumption plan, which addresses events affecting the Contractor’s site, the STS Data Center and the State’s offices. Such risk control procedures and service resumption plan shall be developed by the Contractor and the State and shall be included in the Operating Procedures described in Section A.2 above. Such plan shall provide for timeframe(s) and procedures for resumption of check processing in the event of a disaster, which affects the Contractor’s primary service delivery office(s). The plan shall also require the Contractor to coordinate with STS and the State’s Disaster Recovery site vendor to assure the redirection of the communications link to the State’s Disaster Recovery hot site along with any State leased circuits and the availability of encrypted transmission capability to the State Disaster Recovery site due to an event requiring STS to shift State operations to its Disaster Recovery site. The plan shall also include a plan for the physical exchange of check and warrant issue files with the State in the event that electronic delivery is not feasible.

A.8. Image Cash Letter (ICL) Check Deposit Services.

* + 1. Communication and Confirmation Process. The Contractor shall accept, process, and confirm Image Cash Letter (ICL) check deposit activity from the State, and shall send related return files to the State via the industry standard secure connection established by the Contractor as provided in Section A.13 below and in the format and at the times specified in pages [PAGE NUMBERS FROM SUCCESSFUL PROPOSAL WHICH RESPOND TO SECTION C.2.9. of RFP ATTACHMENT 6.2] of the Contractor’s Proposal. Detailed procedures for this process shall be contained in the Operating Procedures developed pursuant to Section A.2 above.
    2. Account Maintenance. The Contractor shall designate and maintain separate State Depository accounts for the settlement of credit activity associated with ICL check deposits, as designated by the State, and for the posting of any debit and credit ICL check deposit adjustments, rejects and subsequent returned item charge-backs related to the Image Cash letter deposits. The State may request separate depository accounts to support various ICL check deposit applications within the State. Such accounts will be maintained in accordance with provisions and procedures outlined within the State Depository agreement between the Treasurer of the State of Tennessee and the Contractor.
    3. Processing, Settlement and Funds Availability. The Contractor shall process the ICL check deposits presented by the State in the manner described in pages [PAGE NUMBERS FROM SUCCESSFUL PROPOSAL WHICH RESPOND TO SECTION C.2.9 of RFP ATTACHMENT 6.2] of the Contractor’s Proposal, and in accordance with industry practices and standards for such deposits, applicable laws and banking regulations associated with image presentment. The Contractor shall further process the deposit items presented by the State for collection in an expeditious manner and provide available funds accordingly. Detailed procedures for this process shall be contained in the Operating Procedures developed pursuant to Section A.2 above.
    4. ICL Item Reject Notification, Returns and Adjustments. The Contractor shall provide immediate notification of file rejects electronically to appropriate contacts as shall be designated in the Operating Procedures developed pursuant to Section A.2 above. In addition, the Contractor shall provide notification of item rejects due to unacceptable image quality, ineligible or non-negotiable item, or failure to meet other edits of the Contractor’s ICL processing to the State’s designated contacts on or before the business day following the receipt of the ICL deposit containing the rejected item(s). The Contractor shall provide the State with one daily ICL returns file for each ICL deposit point of origin, subject to maximum file limits, for items that require charge-back, such as NSF items, stop payment items, closed account items, etc. The Contractor shall otherwise process and settle file rejects, item rejects and deposit adjustments in accordance with the timing and methods for such processing and settlement as described in pages [PAGE NUMBERS FROM SUCCESSFUL PROPOSAL WHICH RESPOND TO SECTION C.2.9 of RFP ATTACHMENT 6.2] of the Contractor’s Proposal. Detailed procedures for this process shall be contained in the Operating Procedures developed pursuant to Section A.2 above.
    5. Risk Management. The Contractor shall provide the State with applicable policies, procedures, requirements, recommendations, guidelines and security measures with respect to the handling, safekeeping, retention and proper destruction of physical deposit items by the State following the image capture processing and transmittal of items to the Contractor. Based on this information, the Contractor and the State will agree upon specific procedures to be communicated to the State’s processing locations and included in the Operating Procedures to be developed pursuant to Section A.2 above.

f. File Retransmission. The Contractor shall retain ICL data transmission files for a rolling thirty-day period. Should the State need an ICL returns file retransmitted for any reason, the Contractor shall retransmit the same within twenty-four (24) hours of the State's request so long as such file is still retained on the Contractor's system.

g. Security and Recovery. The Contractor shall maintain risk control procedures to protect against unauthorized access of both computer resources and data to reduce erroneous or fraudulent ICL activities. The Contractor shall further maintain a robust, alternate ICL service resumption plan, which addresses events affecting the Contractor’s site, the STS Data Center and the State’s offices. Such risk control procedures and service resumption plan shall be developed by the Contractor and the State and shall be included in the Operating Procedures described in Section A.2 above. Such plan shall provide for the timeframe(s) and the procedures for resumption of ICL processing in the event of a disaster, which affects the Contractor’s primary service delivery office(s). The plan shall also require the Contractor to coordinate with STS and the State’s Disaster Recovery site vendor to assure the redirection of the ICL communications link to the State’s Disaster Recovery hot site along with any State leased circuits and the availability of encrypted transmission capability to the State Disaster Recovery site due to an event requiring STS to shift State operations to its Disaster Recovery site. The plan shall also include a plan for the physical exchange of ICL files with the State in the event that electronic delivery is not feasible.

A.9. Custodial Services.

a. Accounts. The Contractor agrees to establish and maintain three (3) separate custody accounts in the name of the State (the "Custody Accounts"). One such account shall contain exclusively the Securities of the State Pooled Investment Fund (SPIF); the second account shall contain exclusively the Securities of the Intermediate Term Investment Fund (ITIF); the third account shall contain exclusively the Securities of the Tennessee Wildlife Resources (TWRA) investment fund. For purposes of this Contract, "Securities" shall mean commercial paper, book entry United States Government agencies' securities, banker's acceptances, securities transferred through the Depository Trust Company, and any certificates, receipts, warrants or other instruments representing rights to receive, purchase or subscribe for the same or evidencing or representing any other rights or interests therein or other similar property from time to time received by the Contractor or its subcustodians in accordance herewith. The Contractor further agrees to provide “contractual” settlement of the Securities, or immediate funds availability to the State each morning for its maturing Securities, subject to the State making the Contractor whole by the following business day in the event the Contractor is not paid for a maturing Security by the issuer. The Custody Accounts for the SPIF and ITIF shall be divided into two sub-accounts each. One such sub-account shall be referred to as the “Fed Book Entry” sub-account and contain the book entry United States Government agencies' securities and the remaining sub-account shall be referred to as the “DTC” sub-account and contain all other Securities. Any and all cash received by the Contractor on behalf of the State pursuant to this Section A.9 shall be held in the Settlement Account established and maintained by the Contractor in the name of the State pursuant to Section A.4.a hereof, the cash so held not being subject to withdrawal by draft or check.

b. Responsibility. The Contractor shall not make any other use or disposition or take any action with respect to Securities and cash received hereunder except in accordance with the terms of this Contract.

c. Maintenance of Accounts. Except as provided in Section A.9.d. below, the Contractor shall hold all Securities at [CONTRACTOR’S ADDRESS/LOCATION].

d. Subcustodians.

(1) Upon direction by the State and in accordance with the terms of this Paragraph d, the Contractor is authorized to hold Securities in the Depository Trust Company, in the Federal Reserve Book Entry System or at such other financial institution as may be authorized by the State in writing, hereinafter collectively referred to as "subcustodians", or singularly referred to as "subcustodian".

(2) The Contractor shall identify on its books as belonging to the State any Securities held by a subcustodian. In the event any of the Securities is to be held by a subcustodian, such subcustodian shall be required by its agreement with the Contractor to identify on its books such Securities as being held for the account of the Contractor for its customers. The Contractor shall only deposit Securities in an account with a subcustodian which includes exclusively the assets held by the Contractor for its customers, and the Contractor shall cause such account to be designated by such subcustodian as a special custody account for the exclusive benefit of customers of the Contractor.

(3) The Contractor shall be liable to the State for any losses incurred through any subcustodian to which physical possession of Securities are entrusted to the same extent that it would be liable to the State if the Contractor had retained physical possession of the same.

(4) The Contractor will authorize the holding of Securities by a subcustodian only to the extent that the Securities are not subject to any right, charge, security interest, lien or claim of any kind in favor of such subcustodian and only to the extent that beneficial ownership of such Securities is freely transferable without the payment of money or value. Any costs, fees or expenses associated with the safekeeping and servicing of the Securities by a subcustodian shall be the responsibility of the Contractor.

e. Purchases. Upon instructions from the State as communicated in accordance with pages [PAGE NUMBERS FROM SUCCESSFUL PROPOSAL WHICH RESPOND TO SECTION C.2.10. of RFP ATTACHMENT 6.2] of the Contractor’s Proposal, the Contractor shall accept delivery of Securities purchased by the State "in good delivery form" and make payment for such Securities upon receipt. The Contractor shall charge the cost of such purchased Securities to the Settlement Account established and maintained pursuant to Section A.4 hereof on the date payment for such Securities is made by the Contractor. With respect to any directions to receive Securities, the Contractor shall advise the State of non-receipt of such Securities but shall have no duty or responsibility to take any steps to obtain delivery of securities from brokers or others either against payment or free of payment.

f. Sales.

(1) Upon the instructions of the State as communicated in accordance with pages [PAGE NUMBERS FROM SUCCESSFUL PROPOSAL WHICH RESPOND TO SECTION C.2.10. of RFP ATTACHMENT 6.2] of the Contractor’s Proposal, the Contractor shall deliver Securities as the State shall direct.

(2) Payment from the sale of Securities shall be promptly credited by the Contractor to the Settlement Account. Any direct loss to the State including, but not limited to, penalties paid by the State, transaction costs and interest earnings lost by the State caused by the Contractor's failure or delay in collecting or crediting payments shall be reimbursed to the State by the Contractor to the extent such failure or delay could have been avoided by the Contractor's exercise of due care.

(3) The Contractor shall credit the proceeds from the sale of Securities to the Settlement Account established and maintained pursuant to Section A.4 hereof on the date of collection of the same by the Contractor.

g. Dividends and Interest. The Contractor shall collect and receive all interest and other income from the Securities held in the Custody Accounts. Interest shall be credited to the Settlement Account promptly on the interest due date. The Contractor shall promptly notify the State of any default in the payment of interest. The Contractor is authorized, as the State's agent, to sign any declarations, affidavits, certificates of ownership or other documents which are now or may hereafter be required with respect to all coupons, registered interest, or other income on Securities now or hereafter held or received for the State.

h. Collection of Principal and Maturities. The Contractor is authorized to collect and receive the principal of all Securities which may from time to time be within its custody when and as they may mature, or as they may be redeemed, or as they may be sold upon the instructions of the State. In the event the Contractor is unable to effect collection, it shall promptly notify the State. Notwithstanding any provision of this Contract to the contrary, the proceeds resulting from the maturity of Securities held in the Custody Accounts shall be wired and credited to the State’s Settlement Account established and maintained by the Contractor pursuant to Section A.4.a hereof by no later than 8:00 a.m. on maturity date. The settlement of proceeds between the Contractor and the State resulting from the maturity of all Securities held in the Custody Accounts shall occur in the Settlement Account established and maintained pursuant to Section A.4 on the date the Securities mature. The parties acknowledge that the actual settlement of such Securities will not occur until approximately 3:00 p.m. on the maturity date. As a result, the State agrees that upon notification from the Contractor of non-receipt of the proceeds by 3:00 p.m. on maturity date, the State shall wire to the Contractor the principal amount of such proceeds, plus interest on such amount equal to the equivalent of the effective average Federal Funds rate plus 25 basis points multiplied by the principal amount of the proceeds divided by 360, multiplied by 1. The State shall wire said amount to the Contractor by no later than 10:00 a.m. on the next Business Day after notification of non-receipt from the Contractor.

i. Correction of Errors. In the event an error is made by the Contractor in crediting monies to the Settlement Account to which the State is not entitled, the State will return such monies to the Contractor within a reasonable period of time upon notification of the error.

j. Financial Statements. The Contractor shall forward to the State all financial statements or other literature received by it in connection with or relating to Securities held by the Contractor for the State immediately upon receipt.

k. Exchanges. The Contractor is authorized to make routine exchanges of Securities. The exchanges contemplated hereunder include exchanges of Securities in temporary form for definitive securities and exchanges in order to reflect changes in names of the issuers. The Contractor shall make such further exchanges of Securities as the State shall direct.

l. Reports. The Contractor shall provide to the State on a monthly basis a report containing the transaction activity of the State occurring pursuant to this Section A.9 during the previous month and a report of holdings as of month end. The specific data to be provided and the format in which it is to be transmitted shall be agreed to by both parties. Such report shall be provided to the State within ten (10) business days after the end of the month with respect to which the report refers.

m. Security and Recovery. The Contractor shall maintain risk control procedures to protect against unauthorized access of both computer resources and data to reduce erroneous or fraudulent custodial trade activities. The Contractor shall further maintain a robust, alternate service resumption plan, which addresses events affecting the Contractor’s site, the STS Data Center and the State’s offices. Such risk control procedures and service resumption plan shall be developed by the Contractor and the State and shall be included in the Operating Procedures described in Section A.2 above. Such plan shall provide for resumption of custody services and processing in the event of a disaster, which affects the Contractor’s primary service delivery office(s). The plan shall also require the Contractor to coordinate with STS and the State’s Disaster Recovery site vendor to assure the redirection of the custodial trade communications link to the State’s Disaster Recovery hot site along with any State leased circuits and the availability of encrypted transmission capability to the State Disaster Recovery site due to an event requiring STS to shift State operations to its Disaster Recovery site. The plan shall also include a plan for the physical exchange of custodial trade files, or an alternate communication method with the State, in the event that electronic delivery is not feasible.

n. Investment Trade Compliance. At the State’s option, the Contractor shall provide to the State investment trade monitoring services that are made available through the Contractor, if any, as described in pages [PAGE NUMBERS FROM SUCCESSFUL PROPOSAL WHICH RESPOND TO SECTION C.2.17. of RFP ATTACHMENT 6.2] of the Contractor’s Proposal. Detailed procedures for the implementation of these services shall be included in the Operating Procedures developed pursuant to Section A.2 above.

A.10. Special Investment Vehicle.

a. Description. In addition to, or in conjunction with, the Settlement Account established pursuant to Section A.4.a., the Depository Accounts established pursuant to Section A.8.b and the Custody Accounts established pursuant to Section A.9 hereof, the Contractor shall either establish and maintain on behalf of the State, a separate collateralized interest bearing deposit account (Deposit Account), or maintain the State’s excess balances in the Settlement Account, as described in pages [PAGE NUMBERS FROM SUCCESSFUL PROPOSAL WHICH RESPOND TO SECTION C.2.11 of RFP ATTACHMENT 6.2] of the Contractor's Proposal. Said account shall be held in the name of the State and shall be for the purpose of receiving and investing funds, or maintaining the overnight balance of the Settlement Account in excess of the amount needed to fund the normal account activity. Interest on the balance of up to $100,000,000 in the interest bearing account shall be payable by the Contractor on a daily basis, calculated by multiplying that day’s applicable rate by the invested balance amount that day, divided by 365, unless the State and the Contractor mutually agree to apply balances for any day or period of days within the contract term that exceed $100,000,000 to the same interest rate and provisions. The aggregate of each day’s interest for a month shall be credited to the Settlement Account on a monthly basis, on the first day of the following month. The interest rate shall equal the Federal Funds Target Rate as set from time to time by the Federal Open Market Committee (FOMC) [PLUS OR MINUS, AND PERCENTAGE NUMBER IN ITEM 7 OF THE SUCCESSFUL RESPONDENT’S COST PROPOSAL]. If the FOMC sets the rate using a range, the rate that will be used shall be the highest rate in the range.

b. No Reserve Requirement. The Contractor represents and warrants that all funds remaining in either a separate Deposit Account, or the Settlement Account at the end of each day shall be invested in the collateralized interest bearing deposit account and shall not be subject to any reserve requirements imposed by the Federal Reserve.

c. Collateral Level. All funds invested in the collateralized interest bearing Deposit Account shall be collateralized in accordance with the Collateral Pool for Public Deposits Act of 1990, which is codified in Tennessee Code Annotated, Title 9, Chapter 4, Part 5.

A.11. Maintenance of Settlement and Deposit Account Balance. The State shall maintain a sufficient balance in the Settlement Account plus, if applicable, the Deposit Account, to ensure that the State does not exceed a net debit position of one hundred million dollar ($100,000,000) or such higher amount as may be specified on page [PAGE NUMBER FROM SUCCESSFUL PROPOSAL WHICH RESPOND TO SECTION C.2.12 of RFP ATTACHMENT 6.2] of the Contractor's Proposal.

A.12. Communications Link and Data Security. The Contractor and the State will conduct communication of Wire, ACH, ICL, and Custody trade transactions in accordance with pages [PAGE NUMBERS FROM SUCCESSFUL PROPOSAL WHICH RESPOND TO SECTION C.2.14 of RFP ATTACHMENT 6.2] of the Contractor’s Proposal. The Contractor shall implement and maintain on behalf of the State at least one secure communication link between the Contractor and the State for the purpose of transmitting and receiving ACH, Wire, Custody and ICL transaction files. Said communication link(s) must be acceptable to the State, compatible with the Federal Reserve Bank’s Level 1 Security Procedures in Appendix A of the FRB Operating Circular 4, and must be encrypted in compliance with current ACH Rules. Further, confidential data must be encrypted in transit and in flight in accordance with NIST publication 140-2.

The Contractor agrees that its authentication system for interactive file transmission shall provide for dual factor authentication. The Contractor further agrees to maintain all data in the United States. In addition, the Contractor agrees that its processing environment will be ISO 27000, SOC 2 Type 2 or FEDRAMP compliant and will provide to the State proof of compliance on an annual basis. At the end of the contract term or as directed by the State, the Contractor shall destroy confidential State data in accordance with NISP Special Publication 800-88. The Contractor agrees to connect to the State's environment through a B2B VPN.

The Contractor shall also provide an alternative, independent transmission capability that is acceptable to the State and which can be available within one (1) hour. Detailed procedures relative to the communications link and the data security alternative communication process shall be included in the Operating Procedures developed pursuant to Section A.2 above.

A.13. Business Continuity and Disaster Recovery Plan. In addition to the alternative wire transfer, ACH, ICL, checks and warrants, and Custodial service resumption plans described in Sections A.5.e., A.6.h., A.7.d., A.8.g. and A.9.m., the Contractor shall maintain a Business Continuity and Disaster Recovery Plan that will provide for the continuous and uninterrupted delivery of services hereunder. Said plan shall be in substantially the same form as the plan outlined on pages [PAGE NUMBERS FROM SUCCESSFUL PROPOSAL WHICH RESPOND TO SECTION C.2.15 of RFP ATTACHMENT 6.2] of the Contractor's Proposal. In the event that any material change to the form of the plan is proposed by the Contractor, the Contractor shall so advise the State in writing. For the purposes of this Paragraph, "material change" shall include, but shall not be limited to, the time required for restoration of services or in the location of the hot-site. Each year during the term of this Contract, the Contractor shall participate with the State in the State’s annual disaster recovery testing. The Contractor shall annually certify to the State in writing, that the Contractor continues to maintain its Business Continuity and Disaster Recovery Plan and related Security Standards at or above the minimum standards of the banking industry for the services provided to the State, and has successfully exercised its Business Continuity and Disaster Recovery Plan.

The Contractor agrees to support the State and a financial institution that may be designated by the State in the future as a backup for providing the services under this Contract.

A.14. Separate Contract. The State acknowledges that the Contractor, in providing services to the State hereunder, shall be operating within a separate contract between the Contractor and the Federal Reserve. Further, the State recognizes that the Contractor must be a party to such an arrangement in order to provide such services to the State.

A.15. Financial Condition Reporting. The Contractor shall electronically file its quarterly Consolidated Report of Condition and Income “Call Report” with the State Treasurer at the same time it is filed with the Federal Deposit Insurance Corporation (FDIC) or the Office of Thrift Supervision (OTS), whichever is applicable, in accordance with pages [PAGE NUMBERS FROM SUCCESSFUL PROPOSAL WHICH RESPOND TO SECTION C.2.16 of RFP ATTACHMENT 6.2] of the Contractor’s Proposal. In addition, any amendment to the Call Report must be filed in the same manner with the State Treasurer on the same day the amendment is filed with the FDIC or OTS. The format and layout of such filing shall otherwise be in accordance with pages [PAGE NUMBERS FROM SUCCESSFUL PROPOSAL WHICH RESPOND TO SECTION C.2.16 of RFP ATTACHMENT 6.2] of the Contractor’s Proposal.

A.16. ACH and FED Wire. The State and the Contractor shall comply with all applicable laws, rules and regulations, including the rules of the National Automated Clearinghouse, in its processing and initiation of ACH transactions and requests for transfers of funds under this Contract.

A.17. Optional Gold and Other Precious Metal Storage Services. At the option of the State, the Contractor shall securely store any gold or other precious metals purchased by the State in accordance with pages [PAGE NUMBERS FROM SUCCESSFUL PROPOSAL WHICH RESPOND TO SECTION C.2.18 of RFP ATTACHMENT 6.2] of the Contractor’s Proposal and as further detailed in the Operating Procedures developed pursuant to Section A.2 above.

A.18. Optional Check Cashing/Dispensing and Automated Teller Machine Services. At the option of the State, the Contractor shall provide and otherwise maintain an automated solution for check cashing to include cash dispensing combined with Automated Teller Services or KIOSK services in the General Assembly office building, in the State Capitol and other select State central government facilities for members of the Tennessee General Assembly and select other state of Tennessee officials who need access to such services. The services shall be provided in accordance with pages [PAGE NUMBERS FROM SUCCESSFUL PROPOSAL WHICH RESPOND TO SECTION C.2.19 of RFP ATTACHMENT 6.2] of the Contractor’s Proposal and as further detailed in the Operating Procedures developed pursuant to Section A.2 above. The State shall supply the Contractor with a list of such authorized officials/employees who may request a check to be cashed. The services shall be available twenty-four (24) hours a day, three hundred sixty-five (365) days a year, except for reasonable down time for maintenance. The Contractor acknowledges and agrees that the checks must either be a state of Tennessee warrant or check or a personal check. The State shall maintain a petty cash account with the Contractor for purposes of cashing and depositing the checks. These services shall be provided at no cost to the persons cashing checks and at no additional cost to the State.

A.19. Authorized Individuals. Each party hereto has provided the other party hereto with a list identifying the individuals from whom the other party is authorized to accept any notices, requests, demands, or other advice which may be given hereunder by the party providing such list. Said lists, which are attached hereto as Attachment 1, shall be valid until revoked or amended by further written notice. The parties hereto shall only be entitled to rely on notices, requests, demands, or other advice given by such individuals.

A.20. Performance Standards Guarantee.

a. Standards. The Contractor agrees the following performance standards shall be met or exceeded and that if such standards are not met, the Contractor’s compensation shall be reduced pursuant to Section A.21.b below:

(1) The use of manual (versus electronic) transfer and confirmation of Wire Transfer, ACH, ICL or Custody trade transactions, caused by the Contractor, shall not occur for more than two (2) consecutive days.

(2) The statements required in Sections A.4.d and A.4.e shall be provided to the State within the time frames specified in those Sections.

(3) Assuming the Federal Reserve Wire Transfer System is functioning properly, all wire instructions given by the State shall be confirmed within the time requirements specified in Section A.5.

(4) The quarterly Call Reports shall be filed with the State Treasurer within the time requirements specified in Section A.16.

(5) The service resumption timeframes as designated in the Operating Procedures pursuant to Sections A.5.e, A.6.h, A.7.d, A.8.g, and A.9.m shall be met.

(6) The ACH settlement amounts for reconciliation shall be provided to the State by no later than 9:00 a.m. as specified in Section A.6.c.

(7) The ICL deposit items shall be provided to the State in an expeditious manner, and the ICL items reject notifications, return and adjustments shall be provided to the State as designated in the Operating Procedures for ICL pursuant to Sections A.8.c and A.8.d.

(8) The proceeds from the maturity of Securities held in the Custody Accounts shall be wired and credited to the State’s Settlement Account by 8:00 a.m. on maturity date as specified in Section A.9.h.

(9) Notifications shall be provided to the State within twenty-four (24) hours of any modifications to outgoing wire transfer instructions in accordance with Section A.5.d.

b. Guarantee. If the Contractor does not meet or exceed the performance standard in Subdivision a(1) above, the amount of compensation payable to the Contractor during the month in which the standard was not met shall be reduced by five hundred dollars ($500.00) for each day the standard was not met. If the Contractor does not meet or exceed the performance standard in Subdivision a(2) above, the amount of compensation payable to the Contractor during the month in which the standard was not met shall be reduced by one hundred dollars ($100.00) for each day a statement is late. If the Contractor does not meet or exceed any of the performance standards in Subdivision a(3), a(6), a(7), and a(9) above, the amount of compensation payable to the Contractor during the month in which the standard was not met shall be reduced by one hundred dollars ($100.00) for each time the standard was not met. If the Contractor does not meet or exceed the performance standard in Subdivision a(4) above, the amount of compensation payable to the Contractor during the month in which the standard was not met shall be reduced by one hundred dollars ($100.00) for each day the filing is late. If the Contractor does not meet or exceed the performance standard in Subdivision a(5) above, the amount of compensation payable to the Contractor during the month in which the standard was not met shall be reduced by one thousand dollars ($1,000.00) for the initial occurrence plus an additional one thousand dollars ($1,000.00) per day thereafter for every day after day one that service is interrupted. If the Contractor does not meet or exceed the performance standard in Subdivision a(8) above, the amount of compensation payable to the Contractor during the month in which the standard was not met shall be reduced by one thousand dollars ($1,000.00) for each occurrence.

c. Waiver of Reduction. The State shall notify the Contractor in writing of any reduction in compensation to be made pursuant to this Section. Any amount assessed hereunder may be waived by the State upon presentation of adequate documentation from the Contractor indicating the standard was not met because of a unique problem or situation. Such documentation must be submitted to the State within ten (10) days of the issuance of a notice of reduction.

d. No Limit of Liability. This Section shall not be construed to limit the liability of the Contractor for damages sustained by the State by virtue of any breach of this Contract by the Contractor nor shall such obligation be construed to limit any other remedies available to the State in equity, at law or otherwise.

A.21. Representations and Covenants of the Contractor.

a. The Contractor represents and warrants that (1) it is a state depository pursuant to Tennessee Code Annotated, Section 9-4-107; (2) it is a participant in the Collateral Pool created pursuant to Tennessee Code Annotated, Title 9, Chapter 4, Part 5; (3) it is an on-line member of the Federal Reserve Bank’s Fedwire System with Fedwire transfer transaction volumes exceeding five thousand (5,000) incoming Fedwire funds transfers per month and five thousand (5,000) outgoing Fedwire funds transfers per month; (4) it is a member of the National Automated Clearing House Association (NACHA) and is Originating Depository Financial Institution (ODFI) with ACH transaction volumes exceeding one million (1,000,000) origination entries per month, and is a Receiving Depository Financial Institution (RDFI) with ACH transaction volumes exceeding one million (1,000,000) receipts entries per month; and (5) it agrees to serve as Correspondent, with the State as Respondent, for the purpose of allowing the Federal Reserve Bank (FRB) to charge and credit the Contractor’s FRB account to settle the State’s warrant/check cash letters and related adjustment entries, as well as the State’s FRB payor bank service charges, for pass-through to the State, and to execute the FRB’s Appendix 5 to Operating Circular 1 as it relates to this relationship. The Contractor shall register the State’s designated ACH routing number under its financial institution with the Routing Number Administrative Board for the duration of this Contract and to transfer the ACH Routing Number to the State’s successor ACH vendor bank at the conclusion of this Contract. In addition, the Contractor agrees to serve as Correspondent, with the State as Respondent, with the Federal Reserve Bank, for the purpose of serving as the RDFI for ACH entries received on the Routing Number registered to the State.

b. The Contractor further represents and warrants to the State that (1) it is duly authorized to execute and deliver this Contract, and to perform its obligations hereunder and has taken all necessary action to authorize such execution, delivery and performance; (2) the person signing this Contract on its behalf is duly authorized to do so on its behalf; (3) it has obtained all authorizations of any governmental body required in connection with this Contract and the transactions hereunder and such authorizations are in full force and effect; and (4) the execution, delivery and performance of this Contract will not violate any law, ordinance, charter, by-law or rule applicable to it or any agreement by which it is bound or by which any of its assets are affected.

c. The Contractor also represents and warrants to the State that (1) any and all collateral pledged to the State hereunder shall be free from any lien or encumbrance; (2) that this Contract has been approved by its Board of Directors at its meeting of [DATE OF MEETING], and that the approval of the Board of Directors is reflected in the minutes of said meeting (copies of said resolution and relevant portion of the minutes of said meeting are attached hereto as Attachment 4 and made a part hereof); (3) that this Contract shall be continuously maintained, from the time of its execution, as an official record of the Contractor; (4) that any collateral pledge transaction under this Contract will fully comply with all the requirements of Section 1823(e) of Title 12 of the United States Code, as amended; (5) that this Contract and all confirmations and other writings relating to any collateral pledged hereunder constitute and will constitute an official record of the Contractor within the meaning of Section 1823(e) of Title 12 of the United States Code, as amended; and (6) that upon any transfer of collateral hereunder, the Contractor will have good and clear title to the collateral transferred and that the collateral will be and will remain free and clear of any and all claims, liens or encumbrances, except the State’s security interest hereunder, and that it will do all such acts and things as the State may reasonably request, from time to time, to ensure that the State’s security interest in the collateral remains valid and perfected under Tennessee state law and under the above cited Section 1823(e).

A.22. Certification. This Contract shall be accompanied by a resolution of the Contractor’s Board of Directors and a certified copy of the minutes of the meeting showing the Board’s acceptance of the terms and conditions of this Contract, and of the authority of the individual executing this Contract on behalf of the Contractor.

A.23. Changes in Ownership. If at any time during this Contract the Contractor merges with another entity or a change of ownership is effected, the Contractor shall give written notice of such merger or change to the State within five (5) business days of receiving approval of such merger or change from the appropriate regulatory authorities. The Contractor agrees to give the State written notice within five (5) business days of filing for applicable regulatory approval if the status or viability of this Contract will be affected by such merger or change.

A.24. Transition of Services Upon Termination. Upon the natural expiration of this Contract or in the event of its termination for any reason, the Contractor shall transfer in accordance with the State's instructions all cash, records and other property of the State to whomever the State may designate in writing to the Contractor. The Contractor agrees to cooperate with the State, and any subsequent contractor selected by the State to perform the services hereunder, in the transition and conversion of such services. The Contractor shall remain liable to the State under this Contract for any acts or omissions occurring on or prior to the date on which all property of the State and all services hereunder have been successfully transferred or converted in accordance with this Section.

A.25. 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 general 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.26. Inspection and Acceptance. The State shall have the right to inspect all goods or services provided by Contractor under this Contract. If, upon inspection, the State determines that the goods or services are Defective, the State shall notify Contractor, and Contractor shall re-deliver the goods or provide the services at no additional cost to the State. If after a period of thirty (30) days following delivery of goods or performance of services the State does not provide a notice of any Defects, the goods or services shall be deemed to have been accepted by the State.

**B. TERM OF CONTRACT:**

This Contract shall be effective on [DATE WILL BE INSERTED] (“Effective Date”) and extend for a period of sixty (60) months after the Effective Date (“Term”). The State shall have no obligation for goods or services provided by the Contractor prior to the Effective Date.

**C. PAYMENT TERMS AND CONDITIONS:**

C.1. Maximum Liability. In no event shall the maximum liability of the State under this Contract exceed [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. of this Contract shall constitute the entire compensation due the Contractor for all goods or services provided under this Contract regardless of the difficulty, materials or equipment required. The payment methodology includes all applicable taxes, fees, overhead, and all other direct and indirect costs incurred or to be incurred by the Contractor.

C.3. Payment Methodology. The Contractor shall be compensated based on the payment methodology for goods or services authorized by the State in a total amount as set forth in Section C.1.

1. The Contractor’s compensation shall be contingent upon the satisfactory provision of goods or services as set forth in Section A.
2. The Contractor shall be compensated based upon the following payment methodology, less the amount of earnings credited to the Settlement Account pursuant to Section A.4.b:

| **Goods or Services**  **Description** | **Amount**  (per compensable increment) | | | | |
| --- | --- | --- | --- | --- | --- |
|  | [FIRST YEAR OF CONTACT WILL BE INSERTED] | [SECOND YEAR OF CONTACT WILL BE INSERTED] | [THIRD YEAR OF CONTACT WILL BE INSERTED] | [FOURTH YEAR OF CONTACT WILL BE INSERTED] | [FIFTH YEAR OF CONTACT WILL BE INSERTED] |
| **1. Account Services** as described inSections A.4, A.8.b, and A.10. | **↓** | **↓** | **↓** | **↓** | **↓** |
| (i) Monthly Account Maintenance | $[Number]  per month | $[Number]  per month | $[Number]  per month | $[Number]  per month | $[Number]  per month |
| **2. Wire Transfer Services** as described in Section A.5. | **↓** | **↓** | **↓** | **↓** | **↓** |
| (i) Outgoing Domestic Wire  (ii) Incoming Domestic  Wire  (iii)Outgoing International  Wire  (iv)Incoming International Wire  (v) Internal Bank Transfers | $[Number]  each  $[Number] each  $[Number]  each  $[Number] each  $[Number]  each | $[Number]  each  $[Number]  each  $[Number]  each  $[Number] each  $[Number]  each | $[Number]  each  $[Number]  each  $[Number]  each  $[Number] each  $[Number]  each | $[Number]  each  $[Number]  each  $[Number]  each  $[Number] each  $[Number]  each | $[Number]  each  $[Number]  each  $[Number]  each  $[Number] each  $[Number]  each |
| **3. Automated Clearing House (ACH) Services** as described in Section A.6. | **↓** | **↓** | **↓** | **↓** | **↓** |
| (i) ACH Receipt Entries  (ii) ACH Originations (excludes Same Day ACH originations)  (iii) Notification of Change (NOC)/Returns  (iv) Manual Receipt Returns  (v) Origination Reversals  (vi) Same Day Settlement for ACH Originations  (vi) Expanded ACH Processing Services | $[Number]  each  $[Number]  each  $[Number]  each  $[Number]  each  $[Number]  each  $[Number]  each  $[Number]  per file | $[Number]  each  $[Number]  each  $[Number]  each  $[Number] each  $[Number]  each  $[Number]  each  $[Number]  per file | $[Number]  each  $[Number]  each  $[Number]  each  $[Number]  each  $[Number]  each    $[Number]  each  $[Number]  per file | $[Number]  each  $[Number]  each  $[Number]  each  $[Number]  each  $[Number]  each  $[Number]  each  $[Number]  per file | $[Number]  each  $[Number]  each  $[Number]  each  $[Number]  each  $[Number]  each  $[Number]  each  $[Number]  per file |
| **4. Image Cash Letter (ICL) Check Deposit Services** as described in Section A.8 | **↓** | **↓** | **↓** | **↓** | **↓** |
| (i) ICL Check Deposit (includes both front and back of image)  (ii) ICL Return Deposit Item on Daily Return Files | $[Number]  each  $[Number]  each | $[Number]  each  $[Number]  each | $[Number]  each  $[Number]  each | $[Number]  each  $[Number]  each | $[Number]  each  $[Number]  each |
| **5. Custodial Services** as described in Section A.9 | **↓** | **↓** | **↓** | **↓** | **↓** |
| (i) DTC Items  Percentage amount that will be multiplied by the average daily balance of DTC items held in custody during the month for which the compensation relates, divided by 360 days, multiplied by the actual number of days in the respective month | [NUMBER]% | [NUMBER]% | [NUMBER]% | [NUMBER]% | [NUMBER]% |
| (ii) Book Entry Securities  Percentage amount that will be multiplied by the average daily balance of Book Entry items held in custody during the month for which the compensation relates, divided by 360 days, multiplied by the actual number of days in the respective month | [NUMBER]% | [NUMBER]% | [NUMBER]% | [NUMBER]% | [NUMBER]% |
| **6. Warrant & Check Processing Expanded Services as described in Section A.7.b** | **↓** | **↓** | **↓** | **↓** | **↓** |
| (i) Expanded Warrant and Check Processing Services | N/A | $[Number]  per item cleared | $[Number]  per item cleared | $[Number]  per item cleared | $[Number]  per item cleared |
| **7. Optional Services** | **↓** | **↓** | **↓** | **↓** | **↓** |
| (i) Optional Gold and Other Precious Metal Storage Services as described in Section A.18 | $[Number]  per month | $[Number]  per month | $[Number]  per month | $[Number]  per month | $[Number]  per month |

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

C.5. Invoice Requirements. The Contractor shall invoice the State only for goods delivered and accepted by the State or services satisfactorily provided at the amounts stipulated in Section C.3., above. Contractor shall submit invoices and necessary supporting documentation, no more frequently than once a month, and no later than thirty (30) days after goods or services have been provided to the following address (NOTE: account analysis statements may be substituted if they contain the required information described in Section C.5.a below):

Accounts Payable Section

Division of Administrative Services

Tennessee Treasury Department  
14th Floor, Andrew Jackson State Office Building

502 Deaderick Street

Nashville, Tennessee 37243

1. Each invoice, on Contractor’s letterhead, shall clearly and accurately detail all of the following information (calculations must be extended and totaled correctly):

1. Invoice number (assigned by the Contractor);
2. Invoice date;
3. Contract number (assigned by the State);
4. Customer account name: Tennessee Treasury Department, Division of Cash Management;
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.
15. Contractor’s invoices shall:
16. 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;
17. 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;
18. 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
19. 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:  
  
Kevin Gentry, Director of Investment Operations  
Tennessee Treasury Department  
13th Floor, Andrew Jackson State Office Building

502 Deaderick Street

Nashville, Tennessee 37243-0208  
kevin.l.gentry@tn.gov  
Telephone # (615) 979-1949

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 2, 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 for 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, money, goodwill, or any indirect, special, incidental, punitive, exemplary or consequential damages of any nature, whether based on warranty, contract, statute, regulation, tort (including but not limited to negligence), or any other legal theory that may arise under this Contract or otherwise. The State’s total liability under this Contract (including any exhibits, schedules, amendments or other attachments to the Contract) or otherwise shall under no circumstances exceed the Maximum Liability. This limitation of liability is cumulative and not per incident.

D.18. Limitation of Contractor’s Liability. In accordance with Tenn. Code Ann. § 12-3-701, the Contractor’s liability for all claims arising under this Contract shall be limited to an amount equal to two (2) times the Maximum Liability amount detailed in Section C.1. and as may be amended, PROVIDED THAT in no event shall this Section limit the liability of the Contractor for: (i) intellectual property or any Contractor indemnity obligations for infringement for third-party intellectual property rights; (ii) any claims covered by any specific provision in the Contract providing for liquidated damages; or (iii) any claims for intentional torts, criminal acts, fraudulent conduct, or acts or omissions that result in personal injuries or death.

D.19. Insurance. Contractor shall provide the State a certificate of insurance (“COI”) evidencing the coverages and amounts specified below. The COI shall be provided ten (10) business days prior to the Effective Date and again upon renewal or replacement of coverages required by this Contract. If insurance expires during the Term, the State must receive a new COI at least thirty (30) calendar days prior to the insurance’s expiration date. If the Contractor loses insurance coverage, does not renew coverage, or for any reason becomes uninsured during the Term, the Contractor shall notify the State immediately.

The COI shall be on a form approved by the Tennessee Department of Commerce and Insurance (“TDCI”) and signed by an authorized representative of the insurer. The COI shall list each insurer’s national association of insurance commissioners (also known as NAIC) number and list the State of Tennessee, Risk Manager, 312 Rosa L. Parks Ave., 3rd floor Central Procurement Office, Nashville, TN 37243 in the certificate holder section. At any time, the State may require the Contractor to provide a valid COI detailing coverage description; insurance company; policy number; exceptions; exclusions; policy effective date; policy expiration date; limits of liability; and the name and address of insured. The Contractor’s failure to maintain or submit evidence of insurance coverage is considered a material breach of this Contract.

If the Contractor desires to self-insure, then a COI will not be required to prove coverage. In place of the COI, the Contractor must provide a certificate of self-insurance or a letter on the Contractor’s letterhead detailing its coverage, liability policy amounts, and proof of funds to reasonably cover such expenses. Compliance with Tenn. Code Ann. § 50-6-405 and the rules of the TDCI is required for the Contractor to self-insure workers’ compensation.

All insurance companies must be: (a) acceptable to the State; (b) authorized by the TDCI to transact business in the State of Tennessee; and (c) rated A- VII or better by A. M. Best. The Contractor shall provide the State evidence that all subcontractors maintain the required insurance or that the subcontractors are included under the Contractor’s policy.

The Contractor agrees to name the State as an additional insured on any insurance policies with the exception of workers’ compensation (employer liability) and professional liability (errors and omissions) (“Professional Liability”) insurance.  Also, all policies shall contain an endorsement for a waiver of subrogation in favor of the State.

The deductible and any premiums are the Contractor’s sole responsibility. Any deductible over fifty thousand dollars ($50,000) must be approved by the State. 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.

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.

All coverage required shall be on a primary basis and noncontributory with any other insurance coverage or self-insurance carried by the State. The State reserves the right to amend or require additional endorsements, types of coverage, and higher or lower limits of coverage depending on the nature of the work. Purchases or contracts involving any hazardous activity or equipment, tenant, concessionaire and lease agreements, alcohol sales, cyber-liability risks, environmental risks, special motorized equipment, or property may require customized insurance requirements (e.g. umbrella liability insurance) in addition to the general requirements listed below.

The Contractor shall obtain and maintain, at a minimum, the following insurance coverages and policy limits.

a. Commercial General Liability Insurance

* 1. The Contractor shall maintain commercial general liability insurance, which shall be written on an Insurance Services Office, Inc. (also known as ISO) occurrence form (or a substitute form providing equivalent coverage) and shall cover liability arising from property damage, premises/operations, independent contractors, contractual liability, completed operations/products, personal and advertising injury, and liability assumed under an insured contract (including the tort liability of another assumed in a business contract).
  2. The Contractor shall maintain bodily injury/property damage with a combined single limit not less than one million dollars ($1,000,000) per occurrence and two million dollars ($2,000,000) aggregate for bodily injury and property damage, including products and completed operations coverage with an aggregate limit of at least two million dollars ($2,000,000).

b. Workers’ Compensation and Employer Liability Insurance

* 1. For Contractors statutorily required to carry workers’ compensation and employer liability insurance, the Contractor shall maintain:
     1. Workers’ compensation and employer liability insurance in the amounts required by appropriate state statutes.
  2. If the Contractor certifies that it is exempt from the requirements of Tenn. Code Ann. §§ 50-6-101 – 103, then the Contractor shall furnish written proof of such exemption for one or more of the following reasons:
     1. The Contractor employs fewer than five (5) employees;
     2. The Contractor is a sole proprietor;
     3. The Contractor is in the construction business or trades with no employees;
     4. The Contractor is in the coal mining industry with no employees;
     5. The Contractor is a state or local government; or
     6. The Contractor self-insures its workers’ compensation and is in compliance with the TDCI rules and Tenn. Code Ann. § 50-6-405.

c. Professional Liability Insurance

* 1. Professional liability insurance shall be written on an occurrence basis. This coverage may be written on a claims-made basis but must include an extended reporting period or “tail coverage” of at least two (2) years after the Term;
  2. Any professional liability insurance policy shall have a limit not less than one million dollars ($1,000,000) per claim and two million dollars ($2,000,000) in the aggregate; and
  3. If the Contract involves the provision of services by medical professionals, a policy limit not less than two million ($2,000,000) per claim and three million dollars ($3,000,000) in the aggregate for medical malpractice insurance.

1. Technology Errors and Omissions and Cyber Liability Insurance. The Contractor shall maintain technology errors and omissions and cyber liability insurance in an amount not less than $1,000,000 per claim and annual aggregate of $1,000,000. This insurance shall cover all acts, errors, omissions, negligence, infringement of intellectual property (except patent and trade secret); network security and privacy risks, including but not limited to, unauthorized access, failure of security, breach of privacy perils, wrongful disclosure, collection, or other negligence in the handling of confidential information, privacy perils, and including coverage for related regulatory defense and penalties; data breach, expenses, and payable whether incurred by the Contractor including, but not limited, to consumer notification, whether or not required by law, computer forensic investigations, public relations and crisis management firm fees, credit file or identity monitoring or remediation services in the performance of services for the State or on behalf of the State hereunder. The policy shall contain an affirmative coverage grant for contingent bodily injury and property damage emanating from the failure of the technology services or an error or omission in the content/information provided. This coverage shall be written on a claims-made basis, but shall include an extended reporting period or tail coverage of at least two years after the Contract Term.

D.20. 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 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.21.    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.22. 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.23. 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.24. 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.25. 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 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.26. State and Federal Compliance. The Contractor shall comply with all applicable state and federal laws and regulations in the performance of this Contract.

D.27. Governing Law. This Contract shall be governed by and construed in accordance with the laws of the State of Tennessee. 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 - 407.

D.28. 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.29. 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.30. Headings. Section headings of this Contract are for reference purposes only and shall not be construed as part of this Contract.

D.31. 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:

1. any amendment to this Contract, with the latter in time controlling over any earlier amendments;
2. this Contract with any attachments or exhibits (excluding the items listed at subsections c. through f., below), which includes Attachments 1 - 4;
3. any clarifications of or addenda to the Contractor’s proposal seeking this Contract;
4. the State solicitation, as may be amended, requesting responses in competition for this Contract;
5. any technical specifications provided to proposers during the procurement process to award this Contract; and
6. the Contractor’s response seeking this Contract.

D.32. Iran Divestment Act. The requirements of Tenn. Code Ann. § 12-12-101 et.seq., addressing contracting with persons as defined at T.C.A. §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.

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

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

E.3. 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 RFP-30901-[RFP # TO BE INSERTED] (Attachment 6.2, Section B.15) 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, and Tennessee service-disabled veterans.  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>.

E.4. Partial Takeover of Contract. The State may, at its convenience and without cause, exercise a partial takeover of any service that the Contractor is obligated to perform under this Contract, including any service which is the subject of a subcontract between Contractor and a third party (a “Partial Takeover”). A Partial Takeover of this Contract by the State shall not be deemed a breach of contract. The Contractor shall be given at least thirty (30) days prior written notice of a Partial Takeover. The notice shall specify the areas of service the State will assume and the date the State will be assuming. The State’s exercise of a Partial Takeover shall not alter the Contractor’s other duties and responsibilities under this Contract. The State reserves the right to withhold from the Contractor any amounts the Contractor would have been paid but for the State’s exercise of a Partial Takeover. The amounts shall be withheld effective as of the date the State exercises its right to a Partial Takeover. The State’s exercise of its right to a Partial Takeover of this Contract shall not entitle the Contractor to any actual, general, special, incidental, consequential, or any other damages irrespective of any description or amount.

E.5. 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.

E.6. Applicable Gifts and Solicitations Policy. The Contractor shall not offer to give, or give, any gift to any employee of the State or to any member of a Board, Commission or Committee administratively attached to the State that would violate the State’s Gifts and Solicitations Policy, included as Attachment 3 to this Contract.

|  |  |
| --- | --- |
| **IN WITNESS WHEREOF,** | |
| **[CONTRACTOR LEGAL ENTITY NAME]:** | |
|  | |
| **CONTRACTOR SIGNATURE** | **DATE** |
|  | |
| **PRINTED NAME AND TITLE OF CONTRACTOR SIGNATORY (above)** | |

|  |  |
| --- | --- |
| **DEPARTMENT OF TREASURY:** | |
|  | |
| **DAVID H. LILLARD, JR., STATE TREASURER** | **DATE** |

**CONTRACT** **ATTACHMENT 1**

Pursuant to Section A.20 of the Contract between the State of Tennessee, Treasury Department, hereinafter referred to as the “State”, and [CONTRACTOR LEGAL ENTITY NAME], hereinafter referred to as the “Contractor”, each party has outlined below the individuals from whom the other party is authorized to accept any notices, requests, demands, or other advice which may be given under the Contract. This Contract Attachment 1 shall be valid until revoked or amended by further written notice. The parties shall only be entitled to rely on notices, requests, demands, or other advice given by such individuals.

**AUTHORIZED INDIVIDUALS OF THE STATE**

|  |  |
| --- | --- |
| Authorized Individual | Position |
| Rick DuBray | Deputy Treasurer |
| Kevin Gentry | Director of Investment Operations for Cash Management |
| Brian Derrick  Connie Gibson | Director of Accounting  Deputy Director of Accounting |
| Michael Brakebill | Chief Investment Officer |

The individuals listed above, auditors employed by the State of Tennessee, and the individuals designated on Schedule 1 of the State Depository Contract between the Treasurer of the State of Tennessee and the Contractor are authorized to make inquiries concerning the Contract. Inquiries include requests for Account balances, inquiries concerning Account transactions, and requests for information concerning statements and confirmations. Such requests may be written or verbal.

Date Effective David H. Lillard, Jr., State Treasurer

**AUTHORIZED INDIVIDUALS OF CONTRACTOR**

|  |  |
| --- | --- |
| Authorized Individual | Position |
|  |  |
|  |  |
|  |  |
|  |  |
|  |  |

Date Effective

|  |  |
| --- | --- |
| **CONTRACT ATTACHMENT 2** | |
| **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** | |

**CONTRACT ATTACHMENT 3**

**TREASURY DEPARTMENT GIFTS AND SOLICITATION POLICY**

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

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

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

* A gift given for nonbusiness purpose and motivated by a close personal friendship and not by the position of the employee, and specifically authorized and defined by the Ethics Commission;
* Informational materials in the form of books, articles, periodicals, other written materials, audiotapes, videotapes, or other forms of communication;
* Sample merchandise, promotional items, and appreciation tokens if they are routinely given to customers, suppliers or potential customers or suppliers in the ordinary course of business;
* Unsolicited tokens or awards of appreciation, honorary degrees, or bona fide awards in recognition of public service in the form of a plaque, trophy, desk item, wall memento, and similar items, provided that any such item shall not be in a form which can readily be converted to cash;
* Benefits resulting from business, employment, or other outside activities of the employee or the employee’s immediate family, if such benefits are customarily provided to others in similar circumstances and are not enhanced due to the status of the employee;
* Opportunities and benefits made available to all members of an appropriate class of the general public, including but not limited to, discounts afforded to the general public or prizes and awards given out in public contests;
* Expenses of out-of-state travel, if such expenses are paid for or reimbursed by a governmental entity or an established and recognized organization of elected or appointed state government officials;
* Food, refreshments, amenities, goody bags, entertainment, or beverages provided as part of a meal, reception or similar event including tradeshows and professional meetings; and
* Food, refreshments, meals, foodstuffs, entertainment, beverages that are provided in connection with the following: an event where the employee is a speaker or part of a panel discussion at a scheduled meeting of an established or recognized membership organization which regularly meets at in-state events in which invitations are extended to legislative or executive branch employees. The value of the items shall not exceed fifty dollars ($50.00) per person, per day.\*

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

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