



STATE OF TENNESSEE  
TREASURY DEPARTMENT

**REQUEST FOR PROPOSALS # 30901-47120  
AMENDMENT # 1  
FOR THIRD PARTY ADMINISTRATOR FOR TORT,  
CIC, SAFE AND EMIF PROGRAMS**

**DATE: September 1, 2020**

**RFP # 30901-47120 IS AMENDED AS FOLLOWS:**

- This RFP Schedule of Events updates and confirms scheduled RFP dates. Any event, time, or date containing revised or new text is highlighted.**

<b>EVENT</b>	<b>TIME (central time zone)</b>	<b>DATE</b>	<b>UPDATED OR CONFIRMED</b>
1. RFP Issued		August 3, 2020	CONFIRMED
2. Disability Accommodation Request Deadline	2:00 p.m.	August 6, 2020	CONFIRMED
3. Pre-response Teleconference	10:00 a.m.	August 11, 2020	CONFIRMED
4. Notice of Intent to Respond Deadline	2:00 p.m.	August 12, 2020	CONFIRMED
5. Written "Questions & Comments" Deadline	2:00 p.m.	August 19, 2020	CONFIRMED
6. State Response to Written "Questions & Comments"		September 1, 2020	CONFIRMED
7. Technical Response Deadline	2:00 p.m.	September 15, 2020	CONFIRMED
8. State Completion of Technical Response Evaluations		September 28, 2020	CONFIRMED
9. State Schedules Respondent Oral Presentations (Respondent Finalists Only)		September 29, 2020	CONFIRMED
10. Cost Proposal Deadline (Respondent Finalists Only)	2:00 p.m.	October 16, 2020	CONFIRMED

11. Respondent Oral Presentation (Respondent Finalists Only)	8:00 a.m. - 4:30 p.m.	October 12 – 16, 2020	CONFIRMED
12. State Opening & Scoring of Cost Proposals (Respondent Finalists Only)		October 19, 2020	CONFIRMED
13. Negotiations (Optional to the State)		October 20 – 22, 2020	CONFIRMED
14. State Notice of Intent to Award Released <u>and</u> RFP Files Opened for Public Inspection		October 27, 2020	CONFIRMED
15. End of Open File Period		November 3, 2020	CONFIRMED
16. State sends contract to Contractor for signature		November 4, 2020	CONFIRMED
17. Contractor Signature Deadline	2:00 p.m.	November 10, 2020	CONFIRMED

**2. State responses to questions and comments in the table below amend and clarify this RFP.**

Any restatement of RFP text in the Question/Comment column shall NOT be construed as a change in the actual wording of the RFP document.

QUESTION / COMMENT	STATE RESPONSE
1 If TPA already has a claim system that can provide the data and handling capabilities for all claim types requested in this RFP, can this system be used and the information passed to Origami instead of all claims being actually handled in the Origami system?	No. The TPA must use Origami as its system to enter on a real-time basis all claims data including all claims-related investigative documents relative to CIC, SAFE and EMIF claims. For the tort services described in this RFP, the TPA must electronically interface the TPA's system with Origami to download on a daily basis all claims data including all claims-related investigative documents.
2 If the capability exists to handle the claims in the TPA's proprietary claim system and send the data to Origami, would the Origami fees outlined in the RFP apply (i.e. the \$15k - \$30k fees, etc.).	See response to Question 1 above.
3 If the TPA already has a connection with Origami for the State program, would the additional Origami fees mentioned in the RFP apply?	If the TPA already has an electronic interface between its system and Origami, then the cost to interface for the tort services described in the RFP will not apply. As explained in the RFP, the cost of the interface is a one-time charge, which will include takeover claims and setup for the daily load. Depending on the complexity of the interface, Origami has estimated

QUESTION / COMMENT	STATE RESPONSE
	<p>the cost to range from \$15,000 to \$30,000.</p> <p>However and since the TPA must use Origami as its system to enter on a real-time basis all claims data including all claims-related investigative documents relative to CIC, SAFE and EMIF claims, the TPA will be responsible for paying the associated license charged by Origami.</p>
4 Can investigative services be billed to the claim files?	Yes.
5 To clarify, is there a requirement for the claims staff to be housed in the Nashville area? In Tennessee?	No.
6 Is it a requirement for the TPA to have signed agreements with all body shops in Tennessee for repairs and a network in place?	<p>On the date of the proposal submission, each sub-contractor and required services included within the Respondent's proposed network(s) must be either:</p> <p>a. under contract with the Respondent and currently participating as a provider in the Respondent's network and service operations; <u>or</u></p> <p>b. under contract with the Respondent in which the provider commits to participate in the Respondent's network or service operations, the contract being contingent solely on the Respondent being awarded a contract with the State pursuant to this RFP.</p>
7 Can "Other Investigative Services" be performed by a vendor partner of the TPA?	Yes.
8 Please provide what the State considers a First Party Claim.	Any incident that <u>only</u> involves a State employee, State property, or State vehicle, i.e., where no third party is involved.
9 If a TPA currently has a contract with the State for claims administration of a different line of business, would a whole new contract be necessary for the Tort program, or would it be agreeable to simply amend the current existing contract by adding the needed verbiage that applies to the Tort, CIC, SAFE, and EMIF programs?	The TPA will have to have a completely new contract for all the services described in this RFP, which would include services for the Tort program.
<p>10 Would the State revise Section A.3.f(3) of the <i>Pro Forma</i> Contract as follows?</p> <p>(3) <u>Grant of License Right</u>. The Contractor agrees the State shall have a nontransferable and nonexclusive right, revocable in accordance with the terms herein, to use the System solely in connection with the internal</p>	Yes. See Item 3 below for an amendment to Section A.3.f(3) of the <i>Pro Forma</i> Contract, RFP Attachment 6.6.

QUESTION / COMMENT	STATE RESPONSE
<p>operation of the State's business. The State acknowledges that the <b>license-right</b> to use the System granted herein transfers no title or right to the System other than the right to use the System for particular transactions or particular advisory or management situations occurring in the normal conduct of the State's business. The Contractor warrants it has complete ownership of the System except for portions of such System licensed from and copyrighted by other software suppliers, and that it has full rights to grant to the State the uses of and the privileges to the System granted herein. Based on the Contractor's warranty, the State acknowledges title to the System shall remain in the Contractor.</p>	
<p>11 Would the State revise Section A.3.f(5) of the <i>Pro Forma</i> Contract as follows? Note: Our company does not allow clients to add/delete users.</p> <p><del>(D) The Contractor shall allow State security staff to add, update, and terminate users, grant privileges, and report on activity.</del></p>	<p>See Item 4 below for an amendment to Section A.3.f(5)(D) of the <i>Pro Forma</i> Contract, RFP Attachment 6.6.</p>
<p>12 Would the State add the following to Section D of the <i>Pro Forma</i> Contract?</p> <p>If the State fails to properly perform its obligations under this Contract in a timely or proper manner, or if the State materially violates any terms of this Contract ("Breach Condition"), the Contractor 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 State shall not be relieved of liability to the Contractor for damages sustained by virtue of any Breach Condition and the Contractor may seek other remedies allowed at law or in equity for breach of this Contract.</p>	<p>See Item 5 below for an amendment to Section D.6 of the <i>Pro Forma</i> Contract, RFP Attachment 6.6.</p>
<p>13 Would the State revise Section D.19 of the <i>Pro Forma</i> Contract as follows?</p> <p><u>Hold Harmless.</u> 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 <b>negligent or willful acts, or omissions, or negligence</b> on the part of the Contractor, its employees, or any person acting for or on its or their behalf relating to this Contract. The Contractor further agrees it shall be liable for the reasonable cost of attorneys' fees, court costs, expert witness fees, and other litigation expenses for the State to enforce the terms of this Contract.</p>	<p>Yes. See Item 6 below for an amendment to Section D.19 of the <i>Pro Forma</i> Contract, RFP Attachment 6.6.</p>

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<p>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.</p>	
<p>14 Would the State revise Section D.24 of the <i>Pro Forma Contract</i> as follows?</p> <p><u>Force Majeure</u>. “Force Majeure Event” means fire, flood, earthquake, elements of nature or acts of God, wars, riots, civil disorders, rebellions or revolutions, acts of terrorism, epidemic or pandemic or any other similar cause beyond the reasonable control of the Party except to the extent that the non-performing Party is at fault in failing to prevent or causing the default or delay, and provided that the default or delay cannot reasonably be circumvented by the non-performing Party through the use of alternate sources, workaround plans or other means. A strike, lockout or labor dispute shall not excuse either Party from its obligations under this Contract. Except as set forth in this Section, any failure or delay by a Party in the performance of its obligations under this Contract arising from a Force Majeure Event is not a default under this Contract or grounds for termination. The non-performing Party will be excused from performing those obligations directly affected by the Force Majeure Event, and only for as long as the Force Majeure Event continues, provided that the Party continues to use diligent, good faith efforts to resume performance without delay. The occurrence of a Force Majeure Event affecting Contractor’s representatives, suppliers, subcontractors, customers or business apart from this Contract is not a Force Majeure Event under this Contract. Contractor will promptly notify the State of any delay caused by a Force Majeure Event (to be confirmed in a written notice to the State within one (1) day of the inception of the delay) that a Force Majeure Event has occurred, and will describe in reasonable detail the nature of the Force Majeure Event. If any Force Majeure Event results in a delay in Contractor’s performance longer than forty-eight (48) hours, the State may, upon notice to Contractor: (a) cease payment of the fees for the affected obligations until Contractor resumes performance of the affected obligations; or (b) immediately terminate this Contract or any purchase order, in whole or in part, without further payment except for fees then due and payable. Contractor will not increase its charges under this Contract or charge the State any fees other than those</p>	<p>Yes. See Item 7 below for an amendment to Section D.24 of the <i>Pro Forma Contract</i>, RFP Attachment 6.6.</p>

QUESTION / COMMENT	STATE RESPONSE
<p>provided in this Contract as the result of a Force Majeure Event.</p>	
<p>15 Would the State revise Section D.32 of the <i>Pro Forma</i> Contract as follows?</p> <p><u>Insurance.</u> Contractor shall maintain insurance coverage as specified in this Section. The State reserves the right to amend or require additional insurance coverage, coverage amounts, and endorsements required under this Contract. Contractor's failure to maintain or submit evidence of insurance coverage, as required, is a material breach of this Contract. If Contractor loses insurance coverage, fails to renew coverage, or for any reason becomes uninsured during the Term, Contractor shall immediately notify the State. All insurance companies providing coverage must be: (a) acceptable to the State; (b) authorized by the Tennessee Department of Commerce and Insurance ("TDCI"); and (c) rated A- / VII or better by A.M. Best. All <b>Commercial Liability and Automobile Liability</b> coverage must be on a primary basis and noncontributory with any other insurance or self-insurance carried by the State. Contractor agrees to <b>name include</b> the State as an additional insured on any insurance policy with the exception of workers' compensation (employer liability) and professional liability (errors and omissions) insurance. All policies must contain <b>an endorsement for</b> a waiver of subrogation in favor of the State. Any deductible or self insured retention ("SIR") over fifty thousand dollars (\$50,000) must be approved by the State. The deductible or SIR and any premiums are the Contractor's sole responsibility. The Contractor agrees that the insurance requirements specified in this Section do not reduce any liability the Contractor has assumed under this Contract including any indemnification or hold harmless requirements.</p> <p>To achieve the required coverage amounts, a combination of an otherwise deficient specific policy and an umbrella policy with an aggregate meeting or exceeding the required coverage amounts is acceptable. For example: If the required policy limit under this Contract is for two million dollars (\$2,000,000) in coverage, acceptable coverage would include a specific policy covering one million dollars (\$1,000,000) combined with an umbrella policy for an additional one million dollars (\$1,000,000). If the deficient underlying policy is for a coverage area without aggregate limits (generally Automobile Liability and Employers' Liability Accident), Contractor shall provide a copy of the umbrella insurance policy documents to ensure that no aggregate limit applies to the umbrella policy for that coverage area. In the event</p>	<p>See Item 8 below for an amendment to Section D.32 of the <i>Pro Forma</i> Contract, RFP Attachment 6.6.</p>

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

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<p><b>The insurance obligations under this Contract shall be: (1)—all the insurance coverage and policy limits carried by the Contractor; or (2)—the minimum insurance coverage requirements and policy limits shown in this Contract; whichever is greater. Any insurance proceeds in excess of or broader than the minimum required coverage and minimum required policy limits, which are applicable to a given loss, shall be available to the State. No representation is made that the minimum insurance requirements of the Contract are sufficient to cover the obligations of the Contractor arising under this Contract. The Contractor shall obtain and maintain, at a minimum, the following insurance coverages and policy limits.</b></p> <p>a. Commercial General Liability (“CGL”) Insurance</p> <p>1) The Contractor shall maintain CGL, which shall be written on an ISO Form CG 00 01 occurrence form (or a substitute form providing equivalent coverage) and shall cover liability arising from property damage, premises and operations products and completed operations, bodily injury, personal and advertising injury, and liability assumed under an insured contract (including the tort liability of another assumed in a business contract).</p> <p>The Contractor shall maintain single limits not less than one million dollars (\$1,000,000) per occurrence. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this policy or location of occurrence or the general aggregate limit shall be twice the required occurrence limit.</p> <p>b. Workers’ Compensation and Employer Liability Insurance</p> <p>1) For Contractors statutorily required to carry workers’ compensation and employer liability insurance, the Contractor shall maintain:</p> <p>i. Workers’ compensation in an amount not less than one million dollars (\$1,000,000) including employer liability of one million dollars (\$1,000,000) per accident for bodily injury by accident, one million dollars (\$1,000,000) policy limit by disease, and one million dollars (\$1,000,000) per employee for bodily injury by disease.</p> <p>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:</p>	

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<p>i. The Contractor employs fewer than five (5) employees;</p> <p>ii. The Contractor is a sole proprietor;</p> <p>iii. The Contractor is in the construction business or trades with no employees;</p> <p>iv. The Contractor is in the coal mining industry with no employees;</p> <p>v. The Contractor is a state or local government; or</p> <p>vi. The Contractor self-insures its workers' compensation and is in compliance with the TDCI rules and Tenn. Code Ann. § 50-6-405.</p> <p>c. Automobile Liability Insurance</p> <p>1) The Contractor shall maintain automobile liability insurance which shall cover liability arising out of any automobile (including owned, leased, hired, and non-owned automobiles).</p> <p>2) The Contractor shall maintain bodily injury/property damage with a limit not less than one million dollars (\$1,000,000) per occurrence or combined single limit.</p> <p>d. Technology Professional Liability (Errors &amp; Omissions)/Cyber Liability Insurance</p> <p>1) The Contractor shall maintain technology professional liability (errors &amp; omissions)/cyber liability insurance appropriate to the Contractor's profession in an amount not less than ten million dollars (\$10,000,000) per occurrence or claim and ten million dollars (\$10,000,000) annual aggregate, covering all acts, claims, errors, omissions, negligence, infringement of intellectual property (including copyright, patent and trade secret); network security and privacy risks, including but not limited to unauthorized access, failure of security, information theft, damage to destruction of or alteration of electronic information, breach of privacy perils, wrongful disclosure and release of private information, collection, or other negligence in the handling of confidential information, and including coverage for related regulatory fines, defenses, and penalties.</p> <p>2) Such coverage shall include data breach response expenses, in an amount not less than ten million dollars (\$10,000,000) and payable whether incurred by the State or Contractor, including but not limited to consumer notification, whether or not required by law, computer forensic investigations, public relations and</p>	

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<p>crisis management firm fees, credit file or identity monitoring or remediation services and expenses in the performance of services for the State or on behalf of the State hereunder.</p> <p>e. Crime Insurance</p> <p>1) The Contractor shall maintain crime insurance, which shall be written on a “loss sustained form” or “loss discovered form” providing coverage for third party fidelity, including cyber theft and extortion. The policy must allow for reporting of circumstances or incidents that may give rise to future claims, include an extended reporting period of no less than two (2) years with respect to events which occurred but were not reported during the term of the policy, and not contain a condition requiring an arrest or conviction.</p> <p>2) Any crime insurance policy shall have a limit not less than one million dollars (\$1,000,000) per claim and one million dollars (\$1,000,000) in the aggregate. Any crime insurance policy shall contain a Social Engineering Fraud Endorsement with a limit of not less than two hundred and fifty thousand dollars (\$250,000). This insurance may be written on a claims-made basis, but in the event that coverage is cancelled or non-renewed, the Contractor shall purchase an extended reporting or “tail coverage” of at least two (2) years after the Term.</p>	
<p>16 Would the State revise Section E.3 of the <i>Pro Forma</i> Contract as follows?</p> <p><u>Contractor Hosted Services Confidential Data, Audit, and Other Requirements.</u></p> <p>a. “Confidential State Data” is defined as data deemed confidential by State or Federal statute or regulation. The Contractor shall protect Confidential State Data as follows:</p> <p>(1) The Contractor shall ensure that all Confidential State Data is housed in the continental United States, inclusive of backup data.</p> <p>(2) The Contractor shall encrypt Confidential State Data at rest and in transit using the current version of Federal Information Processing Standard (“FIPS”) 140-2 validated encryption technologies.</p>	<p>See Item 9 below for an amendment to Section E.3 of the <i>Pro Forma</i> Contract, RFP Attachment 6.6.</p>

QUESTION / COMMENT	STATE RESPONSE
<p>(3) The Contractor and the Contractor's processing environment containing Confidential State Data shall either (1) be in accordance with at least one of the following security standards: (i) International Standards Organization ("ISO") 27001; (ii) Federal Risk and Authorization Management Program ("FedRAMP"); or (2) be subject to an annual engagement by a CPA firm in accordance with the standards of the American Institute of Certified Public Accountants ("AICPA") for a System and Organization Controls for service organizations ("SOC") Type II audit. The State shall approve the SOC audit control objectives. The Contractor shall provide proof of current ISO certification or FedRAMP authorization for the Contractor and Subcontractor(s), or provide the State with the Contractor's and Subcontractor's annual SOC Type II audit report within 30 days from when the CPA firm provides the audit report to the Contractor or Subcontractor. The Contractor shall submit corrective action plans to the State for any issues included in the audit report within 30 days after the CPA firm provides the audit report to the Contractor or Subcontractor.</p> <p>If the scope of the most recent SOC audit report does not include all of the current State fiscal year, upon request from the State, the Contractor must provide to the State a letter from the Contractor or Subcontractor stating whether the Contractor or Subcontractor made any material changes to their control environment since the prior audit and, if so, whether the changes, in the opinion of the Contractor or Subcontractor, would negatively affect the auditor's opinion in the most recent audit report.</p> <p>No additional funding shall be allocated for these certifications, authorizations, or audits as these</p>	

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

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<p>(1) The Contractor and all data centers used by the Contractor to host State data, including those of all Subcontractors, must comply with the State’s Enterprise Information Security Policies as amended periodically. The State’s Enterprise Information Security Policies document is found at the following URL:  <a href="https://www.tn.gov/finance/strategic-technology-solutions/strategic-technology-solutions/sts-security-policies.html">https://www.tn.gov/finance/strategic-technology-solutions/strategic-technology-solutions/sts-security-policies.html</a>.</p> <p>(2) The Contractor agrees to maintain the Application so that it will run on a current, manufacturer-supported Operating System. “Operating System” shall mean the software that supports a computer’s basic functions, such as scheduling tasks, executing applications, and controlling peripherals.</p> <p>(3) If the Application requires middleware or database software, Contractor shall maintain middleware and database software versions that are at all times fully compatible with current versions of the Operating System and Application to ensure that security vulnerabilities are not introduced.</p> <p>c. Comptroller Audit Requirements</p> <p>Upon reasonable notice and at any reasonable time, At mutually agreed times, dates, location and scope, the Contractor and Subcontractor(s) agrees to allow the State, the Comptroller of the Treasury, or their duly appointed representatives to perform information technology control audits of the Contractor and all Subcontractors used by the Contractor. Contractor will maintain and cause its Subcontractors to maintain a complete audit trail of all transactions and activities in connection with this Contract. Contractor will provide to the State, the Comptroller of the Treasury, or their duly appointed representatives access to Contractor and Subcontractor(s) personnel for the</p>	

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<p>purpose of performing the information technology control audit.</p> <p>The information technology control audit may include a review of general controls and application controls. General controls are the policies and procedures that apply to all or a large segment of the Contractor's or Subcontractor's information systems and applications and include controls over security management, access controls, configuration management, segregation of duties, and contingency planning. Application controls are directly related to the application and help ensure that transactions are complete, accurate, valid, confidential, and available. The audit shall include the Contractor's <del>and Subcontractor's</del> compliance with the State's Enterprise Information Security Policies and all applicable requirements, laws, regulations or policies.</p> <p>The audit may include interviews with technical and management personnel, physical inspection of controls, and review of paper or electronic documentation.</p> <p>For any audit issues identified, the Contractor and Subcontractor(s) shall provide a corrective action plan to the State within 30 days from the Contractor or Subcontractor receiving the audit report.</p> <p>Each party shall bear its own expenses incurred while conducting the information technology controls audit.</p> <p>d. Business Continuity Requirements. The Contractor shall maintain set(s) of documents, instructions, and procedures which enable the Contractor to respond to accidents, disasters, emergencies, or threats without any stoppage or hindrance in its key operations ("Business Continuity Requirements"). Business Continuity Requirements shall include:</p>	

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<p>(1) "Disaster Recovery Capabilities" refer to the actions the Contractor takes to meet the Recovery Point and Recovery Time Objectives defined below. Disaster Recovery Capabilities shall meet the following objectives:</p> <ul style="list-style-type: none"> <li>i. Recovery Point Objective ("RPO"). The RPO is defined as the maximum targeted period in which data might be lost from an IT service due to a major incident: One (1) hour</li> <li>ii. Recovery Time Objective ("RTO"). The RTO is defined as the targeted duration of time and a service level within which a business process must be restored after a disaster (or disruption) in order to avoid unacceptable consequences associated with a break in business continuity: Four (4) hours</li> </ul> <p>(2) The Contractor and the Subcontractor(s) shall perform at least one Disaster Recovery Test every three hundred sixty-five (365) days. A "Disaster Recovery Test" shall mean the process of verifying the success of the restoration procedures that are executed after a critical IT failure or disruption occurs. The Disaster Recovery Test shall use actual State Data Sets that mirror production data, and success shall be defined as the Contractor verifying that the Contractor can meet the State's RPO and RTO requirements. A "Data Set" is defined as a collection of related sets of information that is composed of separate elements but can be manipulated as a unit by a computer. Upon an annual written request from the State, the Contractor shall provide written confirmation to the State after each Disaster Recovery Test that its Disaster Recovery Capabilities meet the RPO and RTO requirements.</p>	

3. Delete Section A.3.f(3) of the *Pro Forma Contract, RFP Attachment 6.6* in its entirety and insert the following in its place (any sentence or paragraph containing revised or new text is highlighted):

(3) Grant of License Right. The Contractor agrees the State shall have a nontransferable and nonexclusive right, revocable in accordance with the terms herein, to use the System solely in connection with the internal operation of the State's business. The State acknowledges that the license-right to use the System granted herein transfers no title or right to the System other than the right to use the System for particular transactions or particular advisory or management situations occurring in the normal conduct of the State's business. The Contractor warrants it has complete ownership of the System except for portions of such System licensed from and copyrighted by other software suppliers, and that it has full rights to grant to the State the uses of and the privileges to the System granted herein. Based on the Contractor's warranty, the State acknowledges title to the System shall remain in the Contractor.

4. Delete Section A.3.f(5)(D) of the *Pro Forma Contract, RFP Attachment 6.6* in its entirety and insert the following in its place (any sentence or paragraph containing revised or new text is highlighted):

~~(D) The Contractor shall allow State security staff~~ All security requests to add, update, and terminate users, grant privileges, and report on activity must be performed by State security staff directly or performed by the Contractor at the request of State security staff.

5. Delete Section D.6 of the *Pro Forma Contract, RFP Attachment 6.6* in its entirety and insert the following in its place (any sentence or paragraph containing revised or new text is highlighted):

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.~~ If a Party ("Breaching Party") fails to properly perform its obligations under this Contract, or if a Party materially violates any terms of this Contract ("Breach Condition"), the other Party ("Non-breaching Party") may provide written notice to the Breaching Party specifying the Breach Condition. If within thirty (30) days of notice, the Breaching Party has not cured the Breach Condition, the Non-breaching Party may terminate the Contract. In the event the Non-breaching Party is the State, the State may withhold payments in excess of compensation for completed services or provided goods. The Breaching Party shall not be relieved of liability to the Non-breaching Party for damages sustained by virtue of any breach of this Contract, and the Non-breaching Party may seek other remedies allowed at law or in equity for breach of this Contract.

6. Delete Section D.19 of the *Pro Forma Contract, RFP Attachment 6.6* in its entirety and insert the following in its place (any sentence or paragraph containing revised or new text is highlighted):

D.19. Hold Harmless. The Contractor agrees to indemnify and hold harmless the State of Tennessee as well as its officers, agents, and employees from and against any and all claims, liabilities, losses, and causes of action which may arise, accrue, or result to any person, firm, corporation, or other entity which may be injured or damaged as a result of negligent or willful acts, or omissions, or negligence on the part of the Contractor, its employees, or any person acting for or on its or their behalf relating to this Contract. The Contractor further agrees it shall be liable for the reasonable cost of attorneys' fees, court costs, expert witness fees, and other litigation expenses for the State to enforce the terms of this Contract.

In the event of any suit or claim, the Parties shall give each other immediate notice and provide all necessary assistance to respond. The failure of the State to give notice shall only

relieve the Contractor of its obligations under this Section to the extent that the Contractor can demonstrate actual prejudice arising from the failure to give notice. This Section shall not grant the Contractor, through its attorneys, the right to represent the State in any legal matter, as the right to represent the State is governed by Tenn. Code Ann. § 8-6-106.

**7. Delete Section D.24 of the *Pro Forma Contract*, RFP Attachment 6.6 in its entirety and insert the following in its place (any sentence or paragraph containing revised or new text is highlighted):**

D.24. Force Majeure. “Force Majeure Event” means fire, flood, earthquake, elements of nature or acts of God, wars, riots, civil disorders, rebellions or revolutions, acts of terrorism, **epidemic or pandemic** or any other similar cause beyond the reasonable control of the Party except to the extent that the non-performing Party is at fault in failing to prevent or causing the default or delay, and provided that the default or delay cannot reasonably be circumvented by the non-performing Party through the use of alternate sources, workaround plans or other means. A strike, lockout or labor dispute shall not excuse either Party from its obligations under this Contract. Except as set forth in this Section, any failure or delay by a Party in the performance of its obligations under this Contract arising from a Force Majeure Event is not a default under this Contract or grounds for termination. The non-performing Party will be excused from performing those obligations directly affected by the Force Majeure Event, and only for as long as the Force Majeure Event continues, provided that the Party continues to use diligent, good faith efforts to resume performance without delay. The occurrence of a Force Majeure Event affecting Contractor’s representatives, suppliers, subcontractors, customers or business apart from this Contract is not a Force Majeure Event under this Contract. Contractor will promptly notify the State of any delay caused by a Force Majeure Event (to be confirmed in a written notice to the State within one (1) day of the inception of the delay) that a Force Majeure Event has occurred, and will describe in reasonable detail the nature of the Force Majeure Event. If any Force Majeure Event results in a delay in Contractor’s performance longer than forty-eight (48) hours, the State may, upon notice to Contractor: (a) cease payment of the fees for the affected obligations until Contractor resumes performance of the affected obligations; or (b) immediately terminate this Contract or any purchase order, in whole or in part, without further payment except for fees then due and payable. Contractor will not increase its charges under this Contract or charge the State any fees other than those provided for in this Contract as the result of a Force Majeure Event.

**8. Delete Section D.32 of the *Pro Forma Contract*, RFP Attachment 6.6 in its entirety and insert the following in its place (any sentence or paragraph containing revised or new text is highlighted):**

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

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

Contractor shall provide the State a certificate of insurance ("COI") evidencing the coverages and amounts specified in this Section. The COI must be on a form approved by the TDCI (standard ACORD form preferred). The COI must list each insurer's National Association of Insurance Commissioners (NAIC) number and be signed by an authorized representative of the insurer. The COI must list the State of Tennessee – CPO Risk Manager, 312 Rosa L. Parks Ave., 3<sup>rd</sup> floor Central Procurement Office, Nashville, TN 37243 as the certificate holder. Contractor shall provide the COI ten (10) business days prior to the Effective Date and shall endeavor to provide it again ~~thirty (30) calendar days on before the date of~~ ~~renewal or replacement of coverage, but no later than seven (7) business days after the renewal or replacement of coverage.~~ Contractor shall provide the State evidence that all subcontractors maintain the required insurance or that subcontractors are included under the Contractor's policy. At any time, the State may require Contractor to provide a valid COI. The Parties agree that failure to provide evidence of insurance coverage as required is a material breach of this Contract. If Contractor self-insures, then a COI will not be required to prove coverage. Instead Contractor shall provide a certificate of self-insurance or a letter, on Contractor's letterhead, detailing its coverage, policy amounts, and proof of funds to reasonably cover such expenses. ~~The State reserves the right to require~~ ~~The Contractor shall permit the State to review~~ complete, certified copies of all required insurance policies, including endorsements required by these specifications, at any time.

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

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

a. Commercial General Liability ("CGL") Insurance

- 1) The Contractor shall maintain CGL, which shall be written on an ISO Form CG 00 01 occurrence form (or a substitute form providing equivalent coverage) and shall cover liability arising from property damage, premises and operations

products and completed operations, bodily injury, personal and advertising injury, and liability assumed under an insured contract (including the tort liability of another assumed in a business contract).

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

b. Workers' Compensation and Employer Liability Insurance

- 1) For Contractors statutorily required to carry workers' compensation and employer liability insurance, the Contractor shall maintain:
  - i. Workers' compensation in an amount not less than one million dollars (\$1,000,000) including employer liability of one million dollars (\$1,000,000) per accident for bodily injury by accident, one million dollars (\$1,000,000) policy limit by disease, and one million dollars (\$1,000,000) per employee for bodily injury by disease.
- 2) If the Contractor certifies that it is exempt from the requirements of Tenn. Code Ann. §§ 50-6-101 – 103, then the Contractor shall furnish written proof of such exemption for one or more of the following reasons:
  - i. The Contractor employs fewer than five (5) employees;
  - ii. The Contractor is a sole proprietor;
  - iii. The Contractor is in the construction business or trades with no employees;
  - iv. The Contractor is in the coal mining industry with no employees;
  - v. The Contractor is a state or local government; or
  - vi. The Contractor self-insures its workers' compensation and is in compliance with the TDCI rules and Tenn. Code Ann. § 50-6-405.

c. Automobile Liability Insurance

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

d. Technology Professional Liability (Errors & Omissions)/Cyber Liability Insurance

- 1) The Contractor shall maintain technology professional liability (errors & omissions)/cyber liability insurance appropriate to the Contractor's profession in an amount not less than ten million dollars (\$10,000,000) per occurrence or claim and ten million dollars (\$10,000,000) annual aggregate, covering all acts, claims, errors, omissions, negligence, infringement of intellectual property (including copyright, patent and trade secret); network security and privacy risks, including but not limited to unauthorized access, failure of security, information theft, damage to destruction of or alteration of electronic information, breach of privacy

perils, wrongful disclosure and release of private information, collection, or other negligence in the handling of confidential information, and including coverage for related regulatory fines, defenses, and penalties.

- 2) Such coverage shall include data breach response expenses, in an amount not less than ten million dollars (\$10,000,000) ~~and payable whether incurred by the State or Contractor~~, including but not limited to consumer notification, whether or not required by law, computer forensic investigations, public relations and crisis management firm fees, credit file or identity monitoring or remediation services and expenses in the performance of services for the State or on behalf of the State hereunder.

e. Crime Insurance

- 1) The Contractor shall maintain crime insurance, which shall be written on a “loss sustained form” or “loss discovered form” providing coverage for third party fidelity, including cyber theft and extortion. The policy must allow ~~for reporting of circumstances or incidents that may give rise to future claims, include an extended reporting period of no less than two (2) years with respect to events which occurred but were not reported during the term of the policy, and~~ not contain a condition requiring an arrest or conviction.
- 2) Any crime insurance policy shall have a limit not less than one million dollars (\$1,000,000) per claim and one million dollars (\$1,000,000) in the aggregate. Any crime insurance policy shall contain a Social Engineering Fraud Endorsement with a limit of not less than two hundred and fifty thousand dollars (\$250,000). This insurance may be written on a claims-made basis, but in the event that coverage is cancelled or non-renewed, the Contractor shall purchase an extended reporting or “tail coverage” of at least two (2) years after the Term.

**9. Delete Section E.3 of the *Pro Forma Contract*, RFP Attachment 6.6 in its entirety and insert the following in its place (any sentence or paragraph containing revised or new text is highlighted):**

**E.3. Contractor Hosted Services Confidential Data, Audit, and Other Requirements.**

- a. “Confidential State Data” is defined as data deemed confidential by State or Federal statute or regulation. The Contractor shall protect Confidential State Data as follows:
  - (1) The Contractor shall ensure that all Confidential State Data is housed in the continental United States, inclusive of backup data.
  - (2) The Contractor shall encrypt Confidential State Data at rest and in transit using the current version of Federal Information Processing Standard (“FIPS”) 140-2 validated encryption technologies.
  - (3) The Contractor and the Contractor’s processing environment containing Confidential State Data shall either (1) be in accordance with at least one of the following security standards: (i) International Standards Organization (“ISO”) 27001; (ii) Federal Risk and Authorization Management Program (“FedRAMP”); or (2) be subject to an annual engagement by a CPA firm in accordance with the standards of the American Institute of Certified Public Accountants (“AICPA”) for a System and Organization Controls for service organizations (“SOC”) Type II audit. The State shall approve the SOC audit control objectives. The Contractor shall provide proof of current ISO certification or FedRAMP authorization for the Contractor and Subcontractor(s), or provide the State with the Contractor’s and Subcontractor’s annual SOC Type II audit report

within 30 days from when the CPA firm provides the audit report to the Contractor or Subcontractor. The Contractor shall submit corrective action plans to the State for any issues included in the audit report within 30 days after the CPA firm provides the audit report to the Contractor or Subcontractor.

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

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

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

b. Minimum Requirements

- (1) The Contractor and all data centers used by the Contractor to host State data, including those of all Subcontractors, must comply with the State's Enterprise Information Security Policies as amended periodically. The State's Enterprise Information Security Policies document is found at the following URL: <https://www.tn.gov/finance/strategic-technology-solutions/strategic-technology-solutions/sts-security-policies.html>.
- (2) The Contractor agrees to maintain the Application so that it will run on a current, manufacturer-supported Operating System. "Operating System" shall mean the software that supports a computer's basic functions, such as scheduling tasks, executing applications, and controlling peripherals.

- (3) If the Application requires middleware or database software, Contractor shall maintain middleware and database software versions that are at all times fully compatible with current versions of the Operating System and Application to ensure that security vulnerabilities are not introduced.

c. Comptroller Audit Requirements

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

The information technology control audit may include a review of general controls and application controls. General controls are the policies and procedures that apply to all or a large segment of the Contractor's or Subcontractor's information systems and applications and include controls over security management, access controls, configuration management, segregation of duties, and contingency planning. Application controls are directly related to the application and help ensure that transactions are complete, accurate, valid, confidential, and available. The audit shall include the Contractor's and Subcontractor's compliance with the State's Enterprise Information Security Policies and all applicable requirements, laws, regulations or policies. In lieu of the State, the Comptroller of the Treasury or their duly appointed representatives performing the audits described herein of the Subcontractors, the State may, at its sole discretion, accept the results of audits conducted by the Contractor, provided the audits cover the topics described in this Section E.9 and are based on the ISO 27001 framework.

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

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

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

d. Business Continuity Requirements. The Contractor shall maintain set(s) of documents, instructions, and procedures which enable the Contractor to respond to accidents, disasters, emergencies, or threats without any stoppage or hindrance in its key operations ("Business Continuity Requirements"). Business Continuity Requirements shall include:

- (1) "Disaster Recovery Capabilities" refer to the actions the Contractor takes to meet the Recovery Point and Recovery Time Objectives defined below. Disaster Recovery Capabilities shall meet the following objectives:
  - (i) Recovery Point Objective ("RPO"). The RPO is defined as the maximum targeted period in which data might be lost from an IT service due to a major incident: One (1) hour

(ii) Recovery Time Objective (“RTO”). The RTO is defined as the targeted duration of time and a service level within which a business process must be restored after a disaster (or disruption) in order to avoid unacceptable consequences associated with a break in business continuity: Four (4) hours

(2) The Contractor and the Subcontractor(s) shall perform at least one Disaster Recovery Test every three hundred sixty-five (365) days. A “Disaster Recovery Test” shall mean the process of verifying the success of the restoration procedures that are executed after a critical IT failure or disruption occurs. The Disaster Recovery Test shall use actual State Data Sets that mirror production data, and success shall be defined as the Contractor verifying that the Contractor can meet the State’s RPO and RTO requirements. A “Data Set” is defined as a collection of related sets of information that is composed of separate elements but can be manipulated as a unit by a computer. Upon the State’s written request, the Contractor shall provide written confirmation to the State after each Disaster Recovery Test that its Disaster Recovery Capabilities meet the RPO and RTO requirements.

**10. RFP Amendment Effective Date.** The revisions set forth herein shall be effective upon release. All other terms and conditions of this RFP not expressly amended herein shall remain in full force and effect.