

IN THE CHANCERY COURT FOR DAVIDSON COUNTY, TENNESSEE
AT NASHVILLE

STEPHEN ELLIOTT and FW)
PUBLISHING, INC.,)

Petitioners,)

v.)

No. 22-0011-I

WILLIAM LEE, in his official capacity as)
Governor of Tennessee, and JUAN)
WILLIAMS, in his official capacity as)
Commissioner of the Tennessee Department)
of Human Resources,)

Respondents.)

DECLARATION OF TODD B. SKELTON

**EXHIBIT ONE TO
RESPONSE TO PETITION FOR ACCESS TO PUBLIC RECORDS**

IN THE CHANCERY COURT FOR DAVIDSON COUNTY, TENNESSEE
AT NASHVILLE

STEPHEN ELLIOTT and FW)
PUBLISHING, INC.,)
)
Petitioners,)
)
v.) No. 22-0011-I
)
WILLIAM LEE, in his official capacity as)
Governor of Tennessee, and JUAN)
WILLIAMS, in his official capacity as)
Commissioner of the Tennessee Department)
of Human Resources,)
)
Respondents.)

DECLARATION OF TODD B. SKELTON

I, Todd B. Skelton, have personal knowledge of the following matters, would so testify in open court if called to do so, and am competent to render the following:

1. My name is Todd B. Skelton. I am over 21 years of age and I am a resident of Knox County, Tennessee.
2. I am an attorney licensed to practice law in Tennessee and have been licensed since 2014. I am currently General Counsel with HF Capital, LLC, a family office in Knoxville, Tennessee, and have held this position since January 2021.
3. From January 2019 to January 2021, I served as General Counsel to Strategic Acquisitions Group, LLC, (“SAG”) a private investment company focused on real estate and

business investments, also located in Knoxville, Tennessee. I continue to serve in a limited role as General Counsel.

4. In April 2020, I was hired by Lang Wiseman, Governor Lee's Counsel, to serve as legal counsel assigned to the Governor's newly established COVID-19 Unified Command Group ("UCG"). For approximately seven months, I was employed full-time as legal counsel for UCG and took a leave of absence from my position with SAG. In the late fall of 2020, I was employed part-time as legal counsel for UCG and continued in that position until the end of December 2021. From time to time during approximately the first year of my employment, I also provided legal advice and other support to Governor Lee's Economic Recovery Group.

5. From May 2016 until January 2019, I served as Deputy Counsel to Governor Bill Haslam, and as Assistant Deputy Counsel from February 2015 until May 2016 in Nashville, Tennessee.

6. Prior to my service as counsel to Governor Haslam, I was an Associate Attorney with the law firm of Baker, Donelson, Bearman, Caldwell & Berkowitz, PC in Memphis, Tennessee.

7. Governor Lee had announced on March 23, 2020, that he was establishing the UCG as a joint effort to streamline coordination across the Tennessee Emergency Management Agency (TEMA), Tennessee Department of Health and Tennessee Department of Military in implementing the State's emergency management of the COVID-19 pandemic. Then-Commissioner of the Tennessee Department of Finance and Administration Stuart McWhorter was appointed by the Governor to head the UCG. Commissioner McWhorter subsequently appointed retired Brig. Gen. Scott Brower to serve as chief of staff. The other core members of the UCG included Patrick Sheehan, TEMA Director, Dr. Lisa Piercey, Commissioner of the Tennessee Department of

Health, and Maj. Gen. Jeff Holmes, Adj. General, Tennessee Department of Military. And, as noted, I was hired by the Governor's Counsel, Lang Wiseman, to provide legal advice to the Governor and the UCG primarily with respect to matters regarding the State's COVID-19 response.

8. For the next 12-14 months, virtually all operational aspects of the State's response to the COVID-19 pandemic and strategic planning were conducted through UCG. During the first several months, we (UCG) were frequently meeting with the Governor and his senior staff, and these communications continued on a regular basis even after the circumstances stemming from COVID-19 were relatively stabilized. During those meetings, we provided detailed updates, made recommendations, and discussed plans and strategies for responding to the pandemic, such as testing strategies, coordination among the county and metropolitan health departments, procurement strategies, outreach and public messaging planning, contact tracing strategies, mitigation measures, and hospital and nursing home support. In the later months, we collaborated on efforts with the Governor's Economic Recovery Group ("ERG") that were focused on plans and strategies for re-opening the state's economy. And, when it became apparent that one or more effective vaccines would become available, much of our efforts were focused on vaccine planning and administration.

9. In formulating and implementing the State's emergency management response, it became apparent that we needed expert assistance. In particular, we needed an expert consultant who was able to provide us with the best information possible on a real time basis and who was able to identify global best practices for—and the gaps or issues in—the strategies and plans that we were considering, formulating and recommending to the Governor. McKinsey's expertise and capabilities were critical to building the UCG's knowledge base regarding this novel disease and

ensuring that our advice to the Governor reflected the best information available at the time. At that time, McKinsey Consulting was—and still is—one of the most respected strategic management consulting firms in the world and it had the resources and capability to meet our needs. Accordingly, on April 13, 2020, the State entered into a contract with McKinsey Consulting, Inc. A copy of this Contract is attached hereto as Exhibit 1.

10. Under the terms of that Contract, the State identified three Statements of Work (“SOW”) to be performed by McKinsey. Relevant to the work of the UCG are Statements of Work # 1 and # 3. Statement of Work # 1 was focused on re-opening the state’s economy is described in the Contract as follows:

1.0 Approach & Deliverables

The goal of this effort is to provide data and best practices to inform the choices that the State will need to make as it re-opens Tennessee’s economy, while still working to minimize further spread of COVID-19. These issues are complex and require a data-driven approach informed by best practices from the public and private sectors around the world. Therefore, the activities will begin with a rigorous assessment of Tennessee’s current situation and will proceed with *developing a strategy and implementation approach to support State decision-making*, deeply informed by case studies and integrated healthcare, economic, and government service data from Tennessee and elsewhere. (emphasis added.)

See Attachment B to Contract. The Contract provides that this “initial phase of work to support the State with implementation advice around re-opening could be completed in roughly eight weeks,” and identifies the key deliverables as follows:

- Baseline of COVID-19 and economy in Tennessee, with a range of possible scenarios;
- Initial strategy options for State decision-making on the approach to economic re-opening, including interdependencies and enablers; and
- Ongoing data and reports on the re-opening situation across Tennessee.

Id.

11. Statement of Work # 3 is described in the Contract as “secur[ing] support for the developing role and operations of the UCG,” which would be done “via *presenting fact-based options*, sharing case studies and best practices, *proposing management and data approaches*, and facilitating access to McKinsey’s ongoing modeling and best practice libraries.” See Attachment D to Contract (emphasis added). The key deliverables under SOW# 3 are described as follows:

- Fact-based options to facilitate UCG decision making in selected topics.
- Targeted analyses in selected deep dive topics.
- Access to the outputs from McKinsey modeling, tools and assets.

12. McKinsey’s work with UCG and ERG lasted through the end of June 2020. During their engagement, we had almost daily meetings with McKinsey, and some days we would meet two or three times. In those meetings, McKinsey would provide us with information that they had gathered, usually in response to questions that we had raised or for issues that we were considering. Oftentimes in response, we would request McKinsey to do a “deeper dive” on a particular question or issue and report back their findings.

13. During these meetings, we would also engage in discussions with McKinsey about various strategies or plans that we were formulating to address a particular aspect of the COVID-19 pandemic. McKinsey would assist in proposing and refining the metrics that we should consider utilizing and identifying any gaps or other factors that we should consider in formulating these plans and strategies.

14. Additionally, we engaged in a lot of “scenario planning” with McKinsey, i.e., we would discuss what if a particular event or set of events occurred, how would we respond, what steps should we take, what factors should we consider, etc., in order to respond to that event.

15. In working with McKinsey, we (UCG) were deep into our decision-making process and the assistance and information provided by McKinsey was relevant—and in some instances critical—to decisions that were being made. Indeed, the assistance and information that McKinsey provided to UCG helped us to become better educated regarding the ever-changing COVID-19 environment and to reach a higher level of strategic planning, which in turn allowed us to better assist the Governor in making the best decisions in responding to the COVID-19 pandemic. Similarly, McKinsey provided critical research and recommendations to the state agency representatives of the ERG to develop and implement the State’s reopening strategies and safeguarding recommendations.

16. On May 15, 2020, I received an email from Stephen Elliott asking whether “the Unified Command [has] any deliverables associated with contract # 66331 with vendor McKinsey and Company beginning 4/13/2020?” Although this email was not actually asking for copies of any public records, I decided to treat it as a public records request and initially denied it on the basis that the requested records were protected from disclosure under the deliberative process privilege. *Id.*

17. Approximately two months later, I received a letter from an attorney on behalf of Mr. Elliott requesting that I reconsider my denial of Mr. Elliott’s public records request, arguing that the deliberative process privilege was not an exception to the Public Records Act. In the alternative, counsel argued that we should redact the portions of the documents that were covered under the deliberative process privilege and otherwise produce the documents.

18. While I respectfully disagreed with counsel’s assertion that the deliberative process privilege was not an exception to the Public Records Act, I did want to be transparent as possible

under the circumstances and so I agreed to re-examine the documents to determine if there were documents not protected by the privilege or that the privileged information could be redacted.

19. Because of the volume of documents that had to be reviewed, I determined that I would have to produce documents in installments. On September 21, 2020, I produced the first installment of records—approximately 83 pages of documents. None of these documents contained any redactions. I produced a second installment of records on October 6. This installment had approximately 219 pages of documents, of which 26 pages contained redactions of information protected by the deliberative process privilege.

20. On October 15, 2020, I produced the third and final installment which contained redactions of information protected by the deliberative process privilege and information protected under HIPAA. Additionally, I withheld six documents on the basis of the deliberative process privilege. After counsel for Mr. Elliott objected to any redactions based on HIPAA or privacy reasons, on October 27, 2020, I ultimately determined the information was not protected health information and was therefore acceptable to disclose and provided a revised copy of the documents with only redactions of information protected under the deliberative process privilege. *Id.*

21. After each of production of documents, neither Mr. Elliott nor his attorney objected to the redaction of information or the withholding of the six documents on the basis of the deliberative process privilege. In fact, I had no further communications from Mr. Elliott or his attorney concerning this request other than a simple acknowledgement of receipt until January 8, 2021, when Mr. Elliott made a second request for copies of “any deliverables associated with contract # 66331 with vendor McKinsey and Company beginning 6/13/2020 (date of last produced document).” *See* Attachment 4 to Elliott Declaration.

22. I responded to that request on January 30, 2021, by producing 100 pages of documents to Mr. Elliott's attorney, of which five pages included redactions of information protected under the deliberative process privilege. Again, neither Mr. Elliott nor his attorney objected to these redactions and I had no further communications with them concerning these documents. Additionally, at no time did Mr. Elliott or his attorney request that we provide more detailed information, such as a privilege log, with respect to the redactions and withheld documents.

23. In responding to Mr. Elliott's first public records request, I withheld the following six documents on the basis of the deliberative process privilege:

- A 2-page document identifying key strategic issues to be addressed.
- An 11-page document titled "Scenario Planning May 29, 2020" (labeled "Preliminary working document: subject to change. Proprietary and Confidential") which contains strategies and "wargaming" for a variety of possible hypotheticals or scenarios.
- An 11-page document titled "Scenario Planning June 5, 2020" (labeled "Preliminary working document: subject to change. Proprietary and Confidential") which contains strategies and "wargaming" for a variety of possible hypotheticals or scenarios.
- A 15-page document titled "Economic Scenario Planning June 5, 2020) (labeled "Preliminary working document: subject to change. Proprietary and Confidential") which contains strategies and "wargaming for a variety of possibly hypotheticals or scenarios specifically dealing with the Tennessee economy.
- A 47-page document titled "DRAFT THEC Tabletop Exercise Scenarios" (labeled "Preliminary working document: subject to change. Proprietary and Confidential") which discusses the issues and strategies for addressing issues that might arise with respect to the educational institutions under the Tennessee Higher Education Commission (THEC); and
- A 1-page document titled "Potential bold moves to combat COVID-19" and labeled "Confidential – Working Draft".

24. Additionally, in responding to both of Mr. Elliott's public records requests, I produced copies of the following documents with information protected by the deliberative process privileged redacted:

- 10-page document title Check-In: Impact of COVID-19 on Tennessee dated April 2, 2020 – 2 pages - Evaluation Criteria for prioritization of alternate care sites (document is labeled “Confidential, Proprietary, Pre-Decisional”)
- 16-page document titled Economic relief for individual residents of States dated April 11, 2020 (labeled “Confidential, Proprietary, Pre-Decision”) –
 - Page titled “For programs requiring significant state-led implementation, States can consider several immediate measures”
 - Page titled “D.2. Actions States could consider to raise awareness for the Recover Rebate”
 - Page titled “States and businesses can work together to provide immediate relief to residents” and identifying “What States can do”
 - Page titled “Longer-term interventions can help States’ economies come back even stronger” and identifying “What States can do” and “How businesses can help”
- 9-page document titled “UCG and ERG Check-in” dated April 16, 2020 (labeled “Preliminary working document: subject to change, Proprietary and Confidential”)
 - Page titled “Swim lane example: Tennessee could define responsibilities across all domains of COVID-19 response”
 - Page titled “Illustrative decision rights: Responding to new, localized outbreaks”
 - Page titled “Illustrative battle rhythm: What routines and cadences might work best for Tennessee’s COVID response” – specifically outlines internal decision-making processes & responsibilities
 - Page titled “Additional topics for consideration”
- 17-page document titled “Facts on Tennessee’s COVID-19 Outbreak” dated April 24, 2020 (labeled “Preliminary working document: subject to change, Proprietary and Confidential”)
 - Page titled “Potential Metrics to Monitor” and identifying “Foundational” and “Potential” metrics
 - Page discussing “which thresholds” state should consider that would trigger state action

- 17-page document titled “Facts on Tennessee’s COVID-19 Outbreak” dated April 24, 2020 (labeled “Preliminary working document: subject to change, Proprietary and Confidential”)
 - Page titled “Potential Metrics to Monitor” and identifying “Foundational” and “Potential” metrics
 - Page discussing “which thresholds” state should consider that would trigger state action

- 10-page document titled “Decision meeting to align on UCG data” dated April 26, 2020 (labeled “Preliminary working document: subject to change, Proprietary and Confidential”)
 - Page titled “Potential Metrics to Monitor” and identifying “Foundational” and “Potential” metrics
 - Page titled “Potential metrics and thresholds to inform state action” – specifically range of external thresholds

- 6-page document titled “Considerations for Testing via Housing Authorities” dated April 29, 2020 (labeled “Preliminary working document: subject to change, Proprietary and Confidential”)
 - Page titled “Considerations for maximizing participation in housing authority testing initiatives

- 12-page document titled “UCG Check in” dated May 13, 2020 (labeled “Preliminary working document: subject to change, Proprietary and Confidential”)
 - Page titled “Next steps on after action review work”

- 9-page document titled “COVID-19 response support: Progress to date and next steps” dated May 17, 2020 (labeled “Preliminary working document: subject to change, Proprietary and Confidential”)
 - Page titled “Priorities moving forward—COVID-19 response support”
 - Page titled “Summary of progress to date across 3 SOWs”

- 1-page document titled “Review of higher education proposal—questions for consideration” and specifically discussing “specific questions about best practices” (labeled “Preliminary working document: subject to change, Proprietary and Confidential”)
 - Page titled “Review of higher education proposal—questions for consideration”

- 1-page document titled “For discussion: potential checklist for pressure-testing safeguarding proposals”
 - Page titled “For discussion: potential checklist for pressure-testing safeguarding proposals”

- 9-page document titled UCG follow up on approach to testing for COVID-19 dated May 2020 (labeled “Preliminary working document: subject to change, Proprietary and Confidential”)
 - Page titled “Executive Summary”

- Page titled “Detailed testing assumptions and calculations – highly preliminary and subject to update/additional refinement
- 11-page document titled “UCG follow up on approach to testing for COVID-19” dated May 2020 (labeled “Preliminary working document: subject to change, Proprietary and Confidential”)
 - Page titled “Executive Summary”
 - Page titled “Detailed testing assumptions and calculations – highly preliminary and subject to update/additional refinement
- 15-page document titled “UCG follow up on approach to testing for COVID-19” June 2020 (labeled “Preliminary working document: subject to change, Proprietary and Confidential”)
 - Page discussing COVID-19 total TN healthcare system testing costs
 - 3 Pages discussing costs of comprehensive testing of relevant populations, cost and population assumptions and testing capacity
- Multi-page document titled “Governor’s Dashboard TN” for following dates: May 8-9, 11-14, 16, 18-23, 26-28, 30-June 6 and June 8-13

25. These documents are pre-decisional and contain policymaking options for UCG, ERG, and the Governor to consider and debate, including tentative assumptions that were later refined and/or rejected, charts and other analyses of raw data that were non-final and incorporated by UCG and the Governor as part of their deliberative process. Other documents, such as the daily “Governor’s Dashboard” documents are reflective of the issues that we (UCG and the Governor) were considering and seeking guidance from McKinsey, or they are reflective of issues McKinsey was raising for us to consider in the development of their strategy to respond to the COVID-19 pandemic.

26. These documents were an integral part of the deliberative process by which we were making emergency management decisions and disclosure of these documents would only serve to chill that deliberative process. The withheld and redacted documents represent some of the analytical tools we used in responding to the COVID-19 pandemic. If we had known, however

that these analytical tools would be disclosed to the public, we would have been much less likely to seek expert assistance from organizations like McKinsey and certainly not on the record.

27. In my opinion, disclosure of the withheld and redacted documents would also expose the Governor's and UCG decision-making process in such a way as to discourage open communications among governmental officials and, further, memorializing such information in writing, thereby undermining the development and implementation of strategies and plans in responding to future emergencies.

Pursuant to Rule 7, Tenn. R. Civ. P., I declare under penalty of perjury that the foregoing is true and correct.



TODD B. SKELTON

Dated: January 24, 2022

IN THE CHANCERY COURT FOR DAVIDSON COUNTY, TENNESSEE
AT NASHVILLE

STEPHEN ELLIOTT and FW)
PUBLISHING, INC.,)

Petitioners,)

v.)

No. 22-0011-I

WILLIAM LEE, in his official capacity as)
Governor of Tennessee, and JUAN)

WILLIAMS, in his official capacity as)
Commissioner of the Tennessee Department)

of Human Resources,)

Respondents.)

Exhibit One
to
DECLARATION OF TODD B. SKELTON

**CONTRACT
BETWEEN THE STATE OF TENNESSEE,
DEPARTMENT OF GENERAL SERVICES
AND
MCKINSEY & COMPANY, INC. Washington D.C.**

This Contract, by and between the State of Tennessee, Department of General Services ("State") and McKinsey and Company, Inc. Washington D.C. ("Contractor"), is for the provision of Government Efficiency Consulting Services, as further defined in the "SCOPE" ("Services"). State and Contractor may be referred to individually as a "Party" or collectively as the "Parties" to this Contract.

The Contractor is a For-Profit Corporation
Contractor Place of Incorporation or Organization: Washington, DC
Contractor Edison Registration ID # 0000164023

A. SCOPE:

- A.1. The Contractor shall provide all goods or services and deliverables as required, described, and detailed below and shall meet all service and delivery timelines as specified by this Contract.
- a. The Contractor shall provide government efficiency assessment and review to identify potential performance improvements and assist the State's response to the COVID-19 pandemic including but not limited to cost efficiency, citizen and State employee experience, overall government effectiveness, State government department review, and fiscal benchmarking and forecasting.
 - b. These Services are being provided as covered countermeasures to the COVID-19 epidemic pursuant to the U.S. Department of Health and Human Services' February 4, 2020 Declaration pursuant to the Public Readiness and Emergency Preparedness Act and are to be used as authorized by the public agency to which they ultimately are provided.
 - c. The State acknowledges and agrees that the situation around COVID-19 is highly dynamic, evolving rapidly, subject to significant uncertainty, a lack of reliable information and other events completely beyond the parties' control. Contractor cannot and will not give medical, regulatory, public health or legal advice. The State must consider this context and secure appropriate legal, medical and other relevant advice prior to making any decisions in connection with the Services. Contractor's Services are being provided on an expedited basis and may not have the benefit of certain detailed analyses in performing the Services. The State will review and approve or concur in Contractor's work, including its methodologies and approaches and the Deliverables, in carrying out the Services.
- A.2. Upon the request of the State, the Contractor shall provide the following additional services at the weekly rates outlined in Section C, as directed and approved by the State, at its sole discretion, in writing:
- a. Deliver ongoing project execution support to State staff, as directed by the State. This shall include, but not be limited to, the following:
 - Provide applicable project management services in order to meet the State's objectives and implement and facilitate project completion. This may include, but not be limited to, developing or reviewing schedules, implementation steps, or project plans; and
 - Perform industry benchmarking or market research to compare other approaches at similar entities or organizations, which may include public and private organizations.
 - b. Identify and report key metrics to evaluate program performance, ensure compliance with state and federal laws, and improve overall effectiveness.

- c. Analyze State operations and processes to measure performance, identify opportunities to improve service, and increase efficiency. This may include, but not be limited to, documenting current policies and processes and conducting workflow analyses.
- d. Perform fiscal baselining, benchmarking and forecasting encompassing revenues and expenditures. Identify opportunities to provide cost savings and improved efficiencies.
- e. Assist with the development and delivery of training and change management materials and timelines tailored to address programmatic needs.
- f. Any of the services or deliverables outlined in Contract Attachments B-D that are not otherwise covered under Sections A.2.-A.2.5.

A.3. Service Requirements.

For all services or deliverables provided under this Contract, the Contractor shall meet the following requirements:

- a. The Contractor shall report any identified operational risks and the potential level of severity of such risks associated with any deliverables, changes, or services. The Contractor shall recommend mitigation or resolution strategies to manage or eliminate the identified risks.
- b. The Contractor shall provide comparative data to support all recommendations to the State, when applicable.
- c. The Contractor shall deliver a written project plan and timeline addressing both the Contractor and State resources and the schedule required for the successful completion of all services and deliverables provided under this Contract. The written project plan and timeline shall not be effective until the State has approved both the project plan and timeline in writing.

A.4. The Contractor shall provide sufficient staff at a State office site in Nashville, Tennessee, subject to the State's approval, for the duration of any project. Additional staff may provide support from home office locations.

- a. The State shall provide office space, meeting room space, and phone service to the Contractor, as deemed necessary by the State. The State shall also provide connectivity to the State's network and access to printers upon each member signing the State's Acceptable Use Policy, The State's Network Access Rights and Obligations is also publicly available at https://www.tn.gov/content/dam/tn/finance/documents/fa_policies/Acceptable%20Use%20Policy.pdf, which is incorporated in this Contract as though set forth verbatim.
- b. All work performed on the State's premises shall be completed during the State's standard business hours (8:00 a.m. to 4:30 p.m. Central Time.) However, at the State's discretion and with pre-approval, some projects or work may require tasks to be performed on weekends, State of Tennessee holidays, or during off-hours Monday through Friday. The State and Contractor shall mutually agree to any non-standard work schedule tasks, where possible.
- c. The State may also request that Contractor personnel travel away from the official station of Nashville, Tennessee to perform project-related tasks.

A.5. SOW Project Quote Process for Deliverables-based Projects.

- a. In order to perform certain projects or tasks under this Contract, the State or Contractor may require use of a Statement of Work (SOW) to fully describe the services the State is seeking. At a procuring End User's (defined to include the State acting by and through its agencies and instrumentalities) request, the Contractor shall provide the services to accomplish the requirements detailed in an SOW. A SOW Project shall mean a project

defined by an external document that defines project-specific requirements, activities, deliverables and timelines, as requested by the End User.

- b. In the SOW, the procuring End User will describe the project's requirements and the desired deliverables required to complete the projects. The Contractor shall provide a detailed project quote for the SOW that describes how the Contractor shall accomplish the project within the anticipated time frame and total cost limitations.
- c. The Contractor shall make sure the project is completed within the anticipated time frame and total cost limitations. The Contractor agrees to provide additional resources as necessary to accomplish the project within the timeframes stated in the SOW, at no additional cost to the procuring End User.
- d. Project Quote. The Contractor's response to a State-issued SOW shall include the following items:
 - i. A high-level overview of how the Contractor meets the SOW requirements and is able to provide the services requested in the SOW.
 - ii. Any Contractor assumptions on which the project quote is based cannot conflict with or seek to delete the terms and provisions of the Contract. In the event of a conflict, the Contract shall prevail. The Contractor shall **not** include its own terms and conditions as a part of the SOW response or quote.
 - iii. A firm fixed total price that covers **all** costs to accomplish the project. This total price shall be the maximum amount of compensation that can be paid to the Contractor under this SOW; regardless of the resources required, the Contractor may charge the State no more than this total price to complete the project, unless a SOW is amended to increase the total price.
 - iv. Other information as required by the SOW.

e. SOW Project Amendment.

The SOW Project price can only be increased by a SOW Project amendment. At the State's option, the end date of the project may be extended by SOW Project amendment.

f. SOW Project Termination.

The State may immediately terminate for convenience any or all of the SOW Projects entered into by the State and the Contractor pursuant to this Contract by giving the Contractor written notice. The Contractor shall be entitled to receive equitable compensation for satisfactory authorized services completed as of the termination date.

If the Contractor fails to properly perform their obligations under any SOW Project entered into by the State and the Contractor pursuant to this Contract, or violate any of the terms of this Contract, the State shall have the right to terminate for cause any or all of the Contractor's SOW Projects, and to withhold payments in excess of equitable compensation for completed services. The State will provide notification of termination for cause in writing. This notice shall: (1) specify in reasonable detail the nature of the breach; (2) provide the Contractor with an opportunity to cure, which must be requested in writing no less than 10 business days from the date of the termination notice; and (3) specify the effective date of termination in the event the Contractor fails to correct the breach. The Contractor must present the State with a written request detailing the efforts it shall take to

resolve the breach and the time period for such resolution. The Contractor shall not be relieved of liability to the State for damages sustained by virtue of any breach of this Contract by the Contractor.

This section shall not limit the State's right to terminate the Contract for convenience or cause in accordance with Contract Sections D.5 and D.6.

A.6. COVID-19 Response Execution Support. The State has identified three SOWs to be initiated and completed under this Contract. These three SOWs contain activities and deliverables designed to assist the State addressing the effects of COVID-19 and the State's response. See Attachments B-D for the SOWs that contain more information about these projects.

A.7. Warranty. Contractor represents and warrants that the term of the warranty ("Warranty Period") shall be the greater of the Term of this Contract or any other warranty generally offered by Contractor, its suppliers, or manufacturers to customers of its goods or services. The goods or services provided under this Contract shall conform to the terms and conditions of this Contract throughout the Warranty Period. Any nonconformance of the goods or services to the terms and conditions of this Contract shall constitute a "Defect" and shall be considered "Defective." If Contractor receives notice of a Defect during the Warranty Period, then Contractor shall correct the Defect, at no additional charge.

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

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

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

The information included in the Deliverables is intended to inform the State's management and business judgement only and will not contain, nor are the Deliverables provided for the purpose of constituting or informing, policy judgments or advice. Contractor emphasizes that statements of expectation, forecasts and projections relate to future events and are based on assumptions that may not remain valid for the whole of the relevant period. Consequently, they cannot be relied upon, and Contractor expresses no opinion as to how closely the actual results achieved will correspond to any statements of expectation, forecasts or projections. Contractor makes no representation or warranty of any kind, express or implied, regarding the accuracy, adequacy, validity, reliability, availability or completeness of any information in the Deliverables.

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

B. **TERM OF CONTRACT:**

This Contract shall be effective for the period beginning on April 13, 2020 ("Effective Date") and extend for a period of twelve (12) 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. Estimated Liability. The total purchases of any goods or services under the Contract are not known. The State estimates the purchases during the Term shall be three million dollars (\$3,000,000) ("Estimated 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 in accordance with an applicable approved SOW under this Contract 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 rates for goods or services set forth below authorized by the State not to exceed the aggregate total amount as set forth in the SOWs executed under this Contract.

a. The Contractor's compensation shall be contingent upon the satisfactory provision of goods or services as set forth in Section A.

b. The Contractor shall be compensated based upon the following payment methodology:

McKinsey Team	Regular Weekly Rate Card	COVID-19 Weekly Rate Card (only valid until December 31, 2020)	Full-time Dedicated Consultant Team	Part-time Leadership Team and Additional Resources
Team A	\$141,760.37	\$125,000.00	Engagement Manager (Working Team Lead) and 1 Associate or Business Analyst	<ul style="list-style-type: none"> • Committed leadership by 2-3 McKinsey Partners/Senior Partners who are accountable for delivery, actively manage the engagement, and lead problem solving with the team • COVID-19 Central Team Support provides analytical modeling and support on best practices • Content Experts who bring expertise and experience on industry and functional topics • Proprietary knowledge and tools that help our clients solve problems more efficiently and effectively • Support for new solutions and advanced analytic techniques • Research team that is available around-the-clock to answer clients' questions about issues such as best practices or important trends • Graphic Design Team
Team B	\$175,124.54	\$142,000.00	Engagement Manager (Working Team Lead) and 2 Associates or Business Analysts	
Team C	\$210,633.21	\$165,000.00	Engagement Manager (Working Team Lead) and 3 Associates or Business Analysts	
Team D	\$226,866.82	\$178,000.00	Engagement Manager	

			(Working Team Lead) and 4 Associates or Business Analysts	
Team E	\$59,900.99	\$43,000.00	1 Associate or Business Analyst	<ul style="list-style-type: none"> • Committed leadership by one McKinsey Partner • Content Experts • Proprietary knowledge and tools • Support for new solutions and advanced analytic techniques • Around-the-clock Research team • Graphic Design Team
Leadership Counseling	\$34,288.98	\$27,000.00	<p>Leadership counseling integrates five distinctive capabilities into a seamless offering:</p> <ul style="list-style-type: none"> • Committed leadership by at least one McKinsey Partner (part-time), who is accountable for delivery and actively manages the engagement • Subject matter experts (SMEs) and extended leadership (part-time), who bring world-class expertise and experience on relevant industry and functional topics • Proprietary knowledge and tools that help our clients solve problems more efficiently and effectively • Support for new solutions and advanced analytic techniques • A research team that is available around-the-clock to answer clients' questions about issues such as best practices or important trends 	
Management Workshop	\$45,838.00	\$33,500.00	<p>Management workshop includes:</p> <ul style="list-style-type: none"> • A Management Workshop is a one-day event led by two consultants, who meet with a group of clients to help them address a top management issue, understand industry trends, or build their skills. The consultants prepare materials, such as data analysis, interview summaries, market intelligence, best practices, and management options, to help ensure that the workshop is content-rich and fact-based. A Management Workshop includes a minimum of 4 and a maximum of 40 clients 	

Goods or Services Description	Not-To-Exceed Amount
COVID-19 Response Reopening TN—Project Midpoint (Attachment B)	Reference Contract Attachment B, Section 3
COVID-19 Response Reopening TN —Project Completion (Attachment B)	Reference Contract Attachment B, Section 3

COVID-19 Response Government Operations—Project Midpoint (Attachment C)	Reference Contract Attachment C, Section 3
COVID-19 Response Government Operations—Project Completion (Attachment C)	Reference Contract Attachment C, Section 3
COVID-19 Response UCG Support—Project Midpoint (Attachment D)	Reference Contract Attachment D, Section 3
COVID-19 Response UCG Support—Project Completion (Attachment D)	Reference Contract Attachment D, Section 3

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 every four weeks (unless otherwise specified by a SOW under this Contract), and no later than thirty (30) days after goods or services have been provided to the following address:

Department of Finance & Administration
21st Floor WRS TN Tower
312 Rosa L. Parks Ave
Nashville, TN 37243

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

- (1) Invoice number (assigned by the Contractor);
- (2) Invoice date;
- (3) Contract number (assigned by the State);
- (4) Customer account name: State Agency & Division Name;
- (5) Customer account number (assigned by the Contractor to the above-referenced Customer);
- (6) Contractor name;
- (7) Contractor Tennessee Edison registration ID number;
- (8) Contractor contact for invoice questions (name, phone, or email);
- (9) Contractor remittance address;
- (10) Description of delivered goods or services provided and invoiced, including identifying information as applicable;
- (11) Number of delivered or completed units, increments, hours, or days as applicable, of each good or service invoiced;
- (12) Applicable payment methodology (as stipulated in Section C.3.) of each good or service invoiced;
- (13) Amount due for each compensable unit of good or service; and
- (14) Total amount due for the invoice period.

b. Contractor's invoices shall:

- (1) Only include charges for goods delivered or services provided as described in Section A and in accordance with payment terms and conditions set forth in Section C;
- (2) Only be submitted for goods delivered or services completed and shall not include any charge for future goods to be delivered or services to be performed;
- (3) Not include Contractor's taxes, which includes without limitation Contractor's sales and use tax, excise taxes, franchise taxes, real or personal property taxes, or income taxes; and

- (4) Include shipping or delivery charges only as authorized in this Contract.
 - c. The timeframe for payment (or any discounts) begins only when the State is in receipt of an invoice that meets the minimum requirements of this Section C.5.
 - d. Staffing should be focused on the goal of keeping the same people assigned to the same matters as they progress from start to finish. This not only has a strategic advantage, but also helps avoid unnecessary delays, downtime, and learning curves. Staffing should include the selection of a firm person of contact who will liaise between the firm and the State to resolve any questions. Any extraordinary projects shall be pre-approved with respect to scope, work product, staffing, and costs. Attendance at meetings should be restricted to those reasonably expected to participate and the duration should be limited to time needed to convey necessary information and related instructions. Ordinary administrative office duties and tasks are overhead costs and shall not be invoiced to the State. The everyday operating expenses of the Contractor (e.g., subscription fees, transportation, Postage, etc.) are non-billable firm expenses and shall not be billed to the State. The Contractor shall bill the State no more frequently than every 4 weeks (in accordance with Contract Section C.3), and any billable work done under the three SOWs attached to this Contract shall be included on the invoice in accordance with this Contract section and Attachments B-D.
- 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:

Trey Norris, DGS Procurement Program Director
Central Procurement Office
Tennessee Tower, 3rd Floor
312 Rosa L. Parks Ave., Nashville, TN 37243
trey.norris@tn.gov
Telephone # 615-741-7148

The Contractor:

Sara Roswurm
McKinsey & Company, Inc. Washington D.C.
1200 19th St NW Ste 1000
Washington, DC 20036
sara_roswurm@mckinsey.com, with copy to mckinsey_contracts@mckinsey.com
202-425-1023

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

- D.3. Modification and Amendment. This Contract may be modified only by a written amendment signed by all Parties and approved by all applicable State officials.
- D.4. Subject to Funds Availability. The Contract is subject to the appropriation and availability of State or federal funds. In the event that the funds are not appropriated or are otherwise unavailable, the State reserves the right to terminate this Contract upon written notice to the Contractor. The State's exercise of its right to terminate this Contract shall not constitute a breach of Contract by the State. Upon receipt of the written notice, the Contractor shall cease all work associated with the Contract. If the State terminates this Contract due to lack of funds availability, the Contractor shall be entitled to compensation for all conforming goods requested and accepted by the State and for all satisfactory and authorized services completed as of the termination date. Should the State exercise its right to terminate this Contract due to unavailability of funds, the Contractor shall have no right to recover from the State any actual, general, special, incidental, consequential, or any other damages of any description or amount.
- D.5. Termination for Convenience. The State may terminate this Contract for convenience without cause and for any reason. The State shall give the Contractor at least thirty (30) days written notice before the termination date. The Contractor shall be entitled to compensation for all conforming goods delivered and accepted by the State or for satisfactory, authorized services completed as of the termination date. In no event shall the State be liable to the Contractor for compensation for any goods neither requested nor accepted by the State or for any services neither requested by the State nor satisfactorily performed by the Contractor. In no event shall the State's exercise of its right to terminate this Contract for convenience relieve the Contractor of any liability to the State for any damages or claims arising under this Contract.
- D.6. Termination for Cause. If the Contractor fails to properly perform its obligations under this Contract in a timely or proper manner, or if the Contractor materially violates any terms of this Contract ("Breach Condition"), the State shall have the right to immediately terminate the Contract and withhold

payments in excess of compensation for completed services or provided goods. Notwithstanding the above, the Contractor shall not be relieved of liability to the State for damages sustained by virtue of any Breach Condition and the State may seek other remedies allowed at law or in equity for breach of this Contract.

D.7. Assignment and Subcontracting. The Contractor shall not assign this Contract or enter into a subcontract for any of the goods or services provided under this Contract without the prior written approval of the State. Notwithstanding any use of the approved subcontractors, the Contractor shall be the prime contractor and responsible for compliance with all terms and conditions of this Contract. The State reserves the right to request additional information or impose additional terms and conditions before approving an assignment of this Contract in whole or in part or the use of subcontractors in fulfilling the Contractor's obligations under this Contract.

D.8. Conflicts of Interest. The Contractor warrants that no part of the Contractor's compensation shall be paid directly or indirectly to an employee or official of the State of Tennessee as wages, compensation, or gifts in exchange for acting as an officer, agent, employee, subcontractor, or consultant to the Contractor in connection with any work contemplated or performed under this Contract.

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

D.9. Nondiscrimination. The Contractor hereby agrees, warrants, and assures that no person shall be excluded from participation in, be denied benefits of, or be otherwise subjected to discrimination in the performance of this Contract or in the employment practices of the Contractor on the grounds of handicap or disability, age, race, creed, color, religion, sex, national origin, or any other classification protected by federal or state law. The Contractor shall, upon request, show proof of nondiscrimination and shall post in conspicuous places, available to all employees and applicants, notices of nondiscrimination.

D.10. Prohibition of Illegal Immigrants. The requirements of Tenn. Code Ann. § 12-3-309 addressing the use of illegal immigrants in the performance of any contract to supply goods or services to the state of Tennessee, shall be a material provision of this Contract, a breach of which shall be grounds for monetary and other penalties, up to and including termination of this Contract.

a. The Contractor agrees that the Contractor shall not knowingly utilize the services of an illegal immigrant in the performance of this Contract and shall not knowingly utilize the services of any subcontractor who will utilize the services of an illegal immigrant in the performance of this Contract. The Contractor shall reaffirm this attestation, in writing, by submitting to the State a completed and signed copy of the document at Attachment A, semi-annually during the Term. If the Contractor is a party to more than one contract with the State, the Contractor may submit one attestation that applies to all contracts with the State. All Contractor attestations shall be maintained by the Contractor and made available to State officials upon request.

b. Prior to the use of any subcontractor in the performance of this Contract, and semi-annually thereafter, during the Term, the Contractor shall obtain and retain a current, written attestation that the subcontractor shall not knowingly utilize the services of an illegal immigrant to perform work under this Contract and shall not knowingly utilize the services of any subcontractor who will utilize the services of an illegal immigrant to perform work under this Contract. Attestations obtained from subcontractors shall be maintained by the Contractor and made available to State officials upon request.

c. The Contractor shall maintain records for all personnel used in the performance of this Contract. Contractor's records shall be subject to review and random inspection at any reasonable time upon reasonable notice by the State.

- d. The Contractor understands and agrees that failure to comply with this section will be subject to the sanctions of Tenn. Code Ann. § 12-3-309 for acts or omissions occurring after its effective date.
- e. For purposes of this Contract, "illegal immigrant" shall be defined as any person who is not: (i) a United States citizen; (ii) a Lawful Permanent Resident; (iii) a person whose physical presence in the United States is authorized; (iv) allowed by the federal Department of Homeland Security and who, under federal immigration laws or regulations, is authorized to be employed in the U.S.; or (v) is otherwise authorized to provide services under the Contract.
- D.11. Records. The Contractor shall maintain documentation for all charges under this Contract. The books, records, and documents of the Contractor, for work performed or money received under this Contract, shall be maintained for a period of five (5) full years from the date of the final payment and shall be subject to audit at any reasonable time and upon reasonable notice by the State, the Comptroller of the Treasury, or their duly appointed representatives. The financial statements shall be prepared in accordance with generally accepted accounting principles.
- D.12. Monitoring. The Contractor's activities conducted and records maintained pursuant to this Contract shall be subject to monitoring and evaluation by the State, the Comptroller of the Treasury, or their duly appointed representatives.
- D.13. Progress Reports. The Contractor shall submit brief, periodic, progress reports to the State as requested.
- D.14. Strict Performance. Failure by any Party to this Contract to require, in any one or more cases, the strict performance of any of the terms, covenants, conditions, or provisions of this Contract shall not be construed as a waiver or relinquishment of any term, covenant, condition, or provision. No term or condition of this Contract shall be held to be waived, modified, or deleted except by a written amendment signed by the Parties.
- D.15. Independent Contractor. The Parties shall not act as employees, partners, joint venturers, or associates of one another. The Parties are independent contracting entities. Nothing in this Contract shall be construed to create an employer/employee relationship or to allow either Party to exercise control or direction over the manner or method by which the other transacts its business affairs or provides its usual services. The employees or agents of one Party are not employees or agents of the other Party.
- D.16. Patient Protection and Affordable Care Act. The Contractor agrees that it will be responsible for compliance with the Patient Protection and Affordable Care Act ("PPACA") with respect to itself and its employees, including any obligation to report health insurance coverage, provide health insurance coverage, or pay any financial assessment, tax, or penalty for not providing health insurance. The Contractor shall indemnify the State and hold it harmless from any costs to the State arising from Contractor's failure to fulfill its PPACA responsibilities for itself or its employees.
- D.17. Limitation of State's Liability. The State shall have no liability except as specifically provided in this Contract. In no event will the State be liable to the Contractor or any other party for any lost revenues, lost profits, loss of business, decrease in the value of any securities or cash position, time, goodwill, or any indirect, special, incidental, punitive, exemplary or consequential damages of any nature, whether based on warranty, contract, statute, regulation, tort (including but not limited to negligence), or any other legal theory that may arise under this Contract or otherwise. Notwithstanding anything else herein, the State's total liability under this Contract (including without limitation any exhibits, schedules, amendments or other attachments to the Contract) or otherwise shall under no circumstances exceed the Estimated Liability. This limitation of liability is cumulative and not per incident.
- D.18. Limitation of Contractor's Liability. The Services are not (and will not be interpreted as) medical, investment, legal, tax, accounting or other regulated advice, and do not constitute policy advice. Contractor's Services do not supplant the State's management, policy-making, or decision-making

functions and do not guarantee results. The State remains solely responsible for its decisions (including policy decisions), actions, use of the Deliverables and any other materials received pursuant to this agreement, and compliance with applicable laws, rules and regulations. 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 the Estimated 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. Contractor will not be liable for any lost profits or other indirect, consequential, incidental, punitive or special damages.

- 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 third-party 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 directly as a result of intentional acts, 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, as finally determined by a court of competent jurisdiction. The Contractor further agrees it shall be liable for the reasonable cost of attorneys' fees, court costs, expert witness fees, and other litigation expenses for the State to enforce the terms of this Contract.

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

- D.20. HIPAA Compliance. The State and Contractor shall comply with obligations under the Health Insurance Portability and Accountability Act of 1996 ("HIPAA"), Health Information Technology for Economic and Clinical Health ("HITECH") Act and any other relevant laws and regulations regarding privacy (collectively the "Privacy Rules"). The obligations set forth in this Section shall survive the termination of this Contract.

- a. Contractor warrants to the State that it is familiar with the requirements of the Privacy Rules, and will comply with all applicable requirements in the course of this Contract.
- b. Contractor warrants that it will cooperate with the State, including cooperation and coordination with State privacy officials and other compliance officers required by the Privacy Rules, in the course of performance of the Contract so that both parties will be in compliance with the Privacy Rules.
- c. The State and the Contractor will sign documents, including but not limited to business associate agreements, as required by the Privacy Rules and that are reasonably necessary to keep the State and Contractor in compliance with the Privacy Rules. This provision shall not apply if information received or delivered by the parties under this Contract is NOT "protected health information" as defined by the Privacy Rules, or if the Privacy Rules permit the parties to receive or deliver the information without entering into a business associate agreement or signing another document.
- d. The Contractor will indemnify the State and hold it harmless for any violation by the Contractor or its subcontractors of the Privacy Rules. This includes the costs of responding to a breach of protected health information, the costs of responding to a government enforcement action related to the breach, and any fines, penalties, or damages paid by the State because of the violation.

- D.21. Tennessee Consolidated Retirement System. Subject to statutory exceptions contained in Tenn. Code Ann. §§ 8-36-801, *et seq.*, the law governing the Tennessee Consolidated Retirement System ("TCRS"), provides that if a retired member of TCRS, or of any superseded system administered by

TCRS, or of any local retirement fund established under Tenn. Code Ann. §§ 8-35-101, *et seq.*, accepts State employment, the member's retirement allowance is suspended during the period of the employment. Accordingly and notwithstanding any provision of this Contract to the contrary, the Contractor agrees that if it is later determined that the true nature of the working relationship between the Contractor and the State under this Contract is that of "employee/employer" and not that of an independent contractor, the Contractor, if a retired member of TCRS, may be required to repay to TCRS the amount of retirement benefits the Contractor received from TCRS during the Term.

- D.22. Tennessee Department of Revenue Registration. The Contractor shall comply with all applicable registration requirements contained in Tenn. Code Ann. §§ 67-6-601 – 608. Compliance with applicable registration requirements is a material requirement of this Contract.
- D.23. Debarment and Suspension. The Contractor certifies, to the best of its knowledge and belief, that it, its current and future principals, its current and future subcontractors and their principals:
- a. are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any federal or state department or agency;
 - b. have not within a three (3) year period preceding this Contract been convicted of, or had a civil judgment rendered against them from commission of fraud, or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, state, or local) transaction or grant under a public transaction; violation of federal or state antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification, or destruction of records, making false statements, or receiving stolen property;
 - c. are not presently indicted or otherwise criminally or civilly charged by a government entity (federal, state, or local) with commission of any of the offenses detailed in section b. of this certification; and
 - d. have not within a three (3) year period preceding this Contract had one or more public transactions (federal, state, or local) terminated for cause or default.

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

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

Contractor will not increase its charges under this Contract or charge the State any fees other than those provided for in this Contract as the result of a Force Majeure Event.

- D.25. State and Federal Compliance. The Contractor shall comply with all State and federal laws and regulations applicable to Contractor in the Contractor's performance of this Contract.
- D.26. Governing Law. This Contract shall be governed by and construed in accordance with the laws of the State of Tennessee, without regard to its conflict or choice of law rules. The Tennessee Claims Commission or the state or federal courts in Tennessee shall be the venue for all claims, disputes, or disagreements arising under this Contract. The Contractor acknowledges and agrees that any rights, claims, or remedies against the State of Tennessee or its employees arising under this Contract shall be subject to and limited to those rights and remedies available under Tenn. Code Ann. §§ 9-8-101 - 408.
- D.27. Entire Agreement. This Contract is complete and contains the entire understanding between the Parties relating to its subject matter, including all the terms and conditions of the Parties' agreement. This Contract supersedes any and all prior understandings, representations, negotiations, and agreements between the Parties, whether written or oral.
- D.28. Severability. If any terms and conditions of this Contract are held to be invalid or unenforceable as a matter of law, the other terms and conditions of this Contract shall not be affected and shall remain in full force and effect. The terms and conditions of this Contract are severable.
- D.29. Headings. Section headings of this Contract are for reference purposes only and shall not be construed as part of this Contract.
- D.30. Incorporation of Additional Documents. Each of the following documents is included as a part of this Contract by reference. In the event of a discrepancy or ambiguity regarding the Contractor's duties, responsibilities, and performance under this Contract, these items shall govern in order of precedence below:
- a. any amendment to this Contract, with the latter in time controlling over any earlier amendments;
 - b. this Contract with any attachments or exhibits (excluding the items listed at subsections c. through f., below), which includes Attachment A-D;
 - c. any clarifications of or addenda to the Contractor's proposal seeking this Contract;
 - d. the State solicitation, as may be amended, requesting responses in competition for this Contract;
 - e. any technical specifications provided to proposers during the procurement process to award this Contract; and
 - f. the Contractor's response seeking this Contract.
- D.31. Iran Divestment Act. The requirements of Tenn. Code Ann. § 12-12-101, *et seq.*, addressing contracting with persons as defined at Tenn. Code Ann. §12-12-103(5) that engage in investment activities in Iran, shall be a material provision of this Contract. The Contractor certifies, under penalty of perjury, that to the best of its knowledge and belief that it is not on the list created pursuant to Tenn. Code Ann. § 12-12-106.
- D.32. Insurance. Contractor shall maintain insurance coverage as specified in this Section. The State reserves the right to amend or require additional insurance coverage, coverage amounts, and endorsements required under this Contract. Contractor's failure to maintain or submit evidence of insurance coverage, as required, is a material breach of this Contract. If Contractor loses insurance coverage, fails to renew coverage, or for any reason becomes uninsured during the Term, Contractor shall immediately notify the State. All insurance companies providing coverage must be: (a) acceptable to the State; (b) authorized by the Tennessee Department of Commerce and Insurance ("TDCI"); and (c) rated A- / VII or better by A.M. Best. All coverage must be on a primary basis and noncontributory with any other insurance or self-insurance carried by the State. Contractor agrees to include the State as an additional insured on the policies mentioned within this Insurance Clause with the exception of workers' compensation (employer liability) and professional liability (errors and

omissions) insurance. All policies must contain an endorsement for a waiver of subrogation in favor of the State. The deductible or self-insured retention ("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). 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 included as an additional insured.

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

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 and two million dollars (\$2,000,000) in the aggregate.

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 with limits statutorily required by any applicable federal or State Law, 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 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. Professional Liability Insurance

- 1) Professional liability insurance shall be written on an occurrence basis or on a claims-made basis. If this coverage is written on a claims-made basis, then:
 - i. The retroactive date must be shown, and must be on or before the earlier of the Effective Date of the Contract or the beginning of Contract work or provision of goods and services;
 - ii. Insurance must be maintained and evidence of insurance must be provided upon the State's request for at least five (5) full years from the date of the final Contract payment; and
 - iii. If coverage is canceled or non-renewed, and not replaced with another claims-made policy form with a retroactive date on or prior to the Contract Effective Date, the Contractor must purchase "extended reporting" or "tail coverage" for a minimum of five (5) full years from the date of the final Contract payment.

- 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.

- D.33. Major Procurement Contract Sales and Use Tax. Pursuant to Tenn. Code Ann. § 4-39-102 and to the extent applicable, the Contractor and the Contractor's subcontractors shall remit sales and use taxes on the sales of goods or services that are made by the Contractor or the Contractor's subcontractors and that are subject to tax.
- D.34. Confidentiality of Records. Strict standards of confidentiality of records and information shall be maintained in accordance with applicable state and federal law. All material and information, regardless of form, medium or method of communication, provided to the Contractor by the State or acquired by the Contractor on behalf of the State that is regarded as confidential under state or federal law shall be regarded as "Confidential Information." Nothing in this Section shall permit Contractor to disclose any Confidential Information, regardless of whether it has been disclosed or made available to the Contractor due to intentional or negligent actions or inactions of agents of the State or third parties. Confidential Information shall not be disclosed except as required or permitted under state or federal law. Contractor shall take all necessary steps to safeguard the confidentiality of such material or information in conformance with applicable state and federal law.

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

- D.35. Equal Opportunity. The Contractor agrees as follows:
- a. The Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. The Contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to the following:
 - (1) Employment, upgrading, demotion, or transfer, recruitment or recruitment advertising;
 - (2) Layoff or termination;
 - (3) Rates of pay or other forms of compensation; and
 - (4) Selection for training, including apprenticeship.

The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting officer setting forth the provisions of this nondiscrimination clause.
 - b. The Contractor will, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive considerations for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.
 - c. If the State approves any subcontract, the subcontract shall include paragraphs (a) and (b) above.
 - d. In addition, to the extent applicable the Contractor agrees to comply with 41 C.F. R. § 60-1.4, as that section is amended from time to time during the term.

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. Printing Authorization. The Contractor agrees that no publication coming within the jurisdiction of Tenn. Code Ann. §§ 12-7-101, *et. seq.*, shall be printed pursuant to this Contract unless a printing authorization number has been obtained and affixed as required by Tenn. Code Ann. § 12-7-103

- (d).
- E.3. State Ownership of Goods. The State shall have ownership, right, title, and interest in all goods provided by Contractor under this Contract including full rights to use the goods and transfer title in the goods to any third parties.
- E.4. Additional lines, items, or options. At its sole discretion, the State may make written requests to the Contractor to add lines, items, or options that are needed and within the Scope but were not included in the original Contract. Such lines, items, or options will be added to the Contract through a Memorandum of Understanding ("MOU"), not an amendment.
- a. After the Contractor receives a written request to add lines, items, or options, the Contractor shall have ten (10) business days to respond with a written proposal. The Contractor's written proposal shall include:
- (1) The effect, if any, of adding the lines, items, or options on the other goods or services required under the Contract;
 - (2) Any pricing related to the new lines, items, or options;
 - (3) The expected effective date for the availability of the new lines, items, or options; and
 - (4) Any additional information requested by the State.
- b. The State may negotiate the terms of the Contractor's proposal by requesting revisions to the proposal.
- c. To indicate acceptance of a proposal, the State will sign it. The signed proposal shall constitute a MOU between the Parties, and the lines, items, or options shall be incorporated into the Contract as if set forth verbatim.
- d. Only after a MOU has been executed shall the Contractor perform or deliver the new lines, items, or options.
- E.5. Intellectual Property Indemnity. The Contractor agrees to indemnify and hold harmless the State of Tennessee as well as its officers, agents, and employees from and against any and all claims or suits which may be brought against the State concerning or arising out of any claim of an alleged patent, copyright, trade secret or other intellectual property infringement. In any such claim or action brought against the State, the Contractor shall satisfy and indemnify the State for the amount of any settlement or final judgment, and the Contractor shall be responsible for all legal or other fees or expenses incurred by the State arising from any such claim. The State shall give the Contractor notice of any such claim or suit, however, the failure of the State to give such notice shall only relieve Contractor of its obligations under this Section to the extent Contractor can demonstrate actual prejudice arising from the State's failure to give notice. This Section shall not grant the Contractor, through its attorneys, the right to represent the State of Tennessee in any legal matter, as provided in Tenn. Code Ann. § 8-6-106.
- E.6. State Furnished Property. The Contractor shall be responsible for the correct use, maintenance, and protection of all articles of nonexpendable, tangible personal property furnished by the State for the Contractor's use under this Contract. Upon termination of this Contract, all property furnished by the State shall be returned to the State in the same condition as when received, less reasonable wear and tear. Should the property be destroyed, lost, or stolen, the Contractor shall be responsible to the State for the fair market value of the property at the time of loss.
- E.7. Work Papers Subject to Review. The Contractor shall make all audit, accounting, or financial analysis work papers, notes, and other documentation available for review by the Comptroller of the Treasury or his representatives, upon request, during normal working hours either while the analysis is in progress or subsequent to the completion of this Contract.
- E.8. Prohibited Advertising or Marketing. The Contractor shall not suggest or imply in advertising or marketing materials that Contractor's goods or services are endorsed by the State. The restrictions on Contractor advertising or marketing materials under this Section shall survive the termination of this Contract.

- E.9. Public Accountability. If the Contractor is subject to Tenn. Code Ann. §§ 8-4-401, *et seq.*, or if this Contract involves the provision of services to citizens by the Contractor on behalf of the State, the Contractor agrees to establish a system through which recipients of services may present grievances about Contractor's operation of the service program. The Contractor shall also display in a prominent place, located near the passageway through which the public enters in order to receive contract-supported services, a sign at least eleven inches (11") in height and seventeen inches (17") in width stating the following:

NOTICE: THIS AGENCY IS A RECIPIENT OF TAXPAYER FUNDING. IF YOU OBSERVE AN AGENCY DIRECTOR OR EMPLOYEE ENGAGING IN ANY ACTIVITY THAT YOU CONSIDER TO BE ILLEGAL, IMPROPER, OR WASTEFUL, PLEASE CALL THE STATE COMPTROLLER'S TOLL-FREE HOTLINE: 1-800-232-5454

The sign shall be of the form prescribed by the Comptroller of the Treasury. The contracting state agency shall request copies of the sign from the Comptroller of the Treasury and provide signs to contractors.

- E.10. Environmental Tobacco Smoke. Pursuant to the provisions of the federal "Pro-Children Act of 1994" and the Tennessee "Children's Act for Clean Indoor Air of 1995," the Contractor shall prohibit smoking of tobacco products within any indoor premises in which services are provided pursuant to this Contract to individuals under the age of eighteen (18) years. The Contractor shall post "no smoking" signs in appropriate, permanent sites within such premises. This prohibition shall be applicable during all hours, not just the hours in which children are present. Violators of the prohibition may be subject to civil penalties and fines. This prohibition shall apply to and be made part of any subcontract related to this Contract.

- E.11. Lobbying. The Contractor certifies, to the best of its knowledge and belief, that:

- a. No federally appropriated funds have been paid or will be paid, by or on behalf of the Contractor, to any person for influencing or attempting to influence an officer or employee of an agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.
- b. If any funds other than federally appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with any contract, grant, loan, or cooperative agreement, the Contractor shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
- c. The Contractor shall require that the language of this certification be included in the award documents for all sub-awards at all tiers (including subcontracts, sub-grants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into and is a prerequisite for making or entering into this transaction imposed by 31 U.S.C. § 1352.

- E.12. 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.13. Unencumbered Personnel. The Contractor shall not restrict its employees, agents, subcontractors or principals who perform services for the State under this Contract from performing the same or similar services for the State after the termination of this Contract, either as a State employee, an independent contractor, or an employee, agent, subcontractor or principal of another contractor with the State.
- E.14. 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 or ensure 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. The obligations set forth in this Section shall survive the termination of this Contract.

- E.15. Disclosure of Contractor Materials; Publicity. Contractor's work for the State is confidential and for the State's internal use only. The State will not disclose any materials or information that Contractor furnishes to the State, including the Deliverables, to any third parties without Contractor's prior written permission, except as required by law. The State further agrees not to

use Contractor's name or trademarks in any communication with any third party without Contractor's prior written permission. Contractor may disclose that we have been retained by the State and a general description of the Services.

E.16. Statewide Contract. This Contract establishes a source or sources of supply for all Tennessee State Agencies. "Tennessee State Agency" refers to the various departments, institutions, boards, commissions, and agencies of the executive branch of government of the State of Tennessee with exceptions as addressed in Tenn. Comp. R. & Regs. 0690-03-01-.01. The Contractor shall provide all goods or services and deliverables as required by this Contract to all Tennessee State Agencies. The Contractor shall make this Contract available to the following entities, who are authorized to and who may purchase off of this Statewide Contract ("Authorized Users"):

- a. all Tennessee State governmental entities (this includes the legislative branch; judicial branch; and, commissions and boards of the State outside of the executive branch of government)

These Authorized Users may utilize this Contract by purchasing directly from the Contractor according to their own procurement policies and procedures. The State is not responsible or liable for the transactions between the Contractor and Authorized Users.

IN WITNESS WHEREOF,

MCKINSEY & COMPANY, INC. Washington D.C.:



04/24/2020

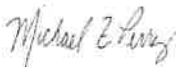
CONTRACTOR SIGNATURE

DATE

Kirk Rieckhoff, Senior Partner

PRINTED NAME AND TITLE OF CONTRACTOR SIGNATORY (above)

DEPARTMENT OF GENERAL SERVICES:



Digitally signed by Michael F. Perry
DN: cn=Michael F. Perry, o=State of Tennessee, ou=Central Procurement Office, email=mike.perry@tn.gov, c=US
Date: 2020.04.24 13:37:56 -05'00'

4/24/2020

MICHAEL F. PERRY, CHIEF PROCUREMENT OFFICER

DATE

ATTACHMENT A

ATTESTATION RE PERSONNEL USED IN CONTRACT PERFORMANCE

SUBJECT CONTRACT NUMBER:	Edison Contract #66331
CONTRACTOR LEGAL ENTITY NAME:	McKinsey & Company, Inc. Washington D.C.
EDISON VENDOR IDENTIFICATION NUMBER:	0000164023

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.

Kirk Rieckhoff, Senior Partner

PRINTED NAME AND TITLE OF SIGNATORY

04/24/2020

DATE OF ATTESTATION

COVID-19 Response Execution Support: Statement of Work #1: Re-Opening Tennessee

COVID-19 is a humanitarian challenge that has affected communities across multiple continents, with significant loss of life around the world. Solving the humanitarian challenge is the top priority, and much remains to be done globally to prepare, respond, and recover, from protecting populations at risk, to supporting affected communities, to developing a vaccine.

Tennessee is facing statewide challenges, both in terms of mitigating short-term harm and planning for longer-term recovery, across health, economy, state finances, and social services, among many other dimensions. As part of its broader crisis response effort, the State of Tennessee ("State") is seeking outside support. McKinsey & Company, Inc. Washington D.C. ("McKinsey") is pleased to respond to the State's request for a statement of work (SOW) to deliver assistance in the State's COVID-19 response efforts as they relate to re-opening Tennessee.

This note has three parts:

1. Approach and Deliverables;
2. Proposed team; and
3. Professional fees.

1.0 Approach & Deliverables

The goal of this effort is to provide data and best practices to inform the choices that the State will need to make as it re-opens Tennessee's economy, while still working to minimize further spread of COVID-19. These issues are complex and require a data-driven approach informed by best practices from the public and private sectors around the world. Therefore, the activities will begin with a rigorous assessment of Tennessee's current situation and will proceed with developing a strategy and implementation approach to support State decision-making, deeply informed by case studies and integrated healthcare, economic, and government services data from Tennessee and elsewhere.

1.1 Activities

The initial phase of work to support the State with implementation advice around re-opening could be completed in roughly eight weeks. The State may exercise options to extend this effort with additional activities and deliverables as helpful to the State. Initial activities include:

- Build baseline and range of possible scenarios for Tennessee's COVID-19 situation and economic effects to date:
 - Develop view of current healthcare and economic impacts to date across the state
 - Build on epidemiological and economic modeling to understand a range of possible future scenarios for COVID-19 and the economy in Tennessee.
- Support the State as it defines a strategy to re-open the economy while guarding against spikes in COVID-19 cases:
 - Outline range of possible paths for decisions about re-opening (industry, geography, etc.);
 - For each priority, define the enablers and interdependencies required to safely re-open, drawing from best practices implemented elsewhere (and on clinical/health advice from the State and its clinical/health advisors);

- Define a sequence of actions, including enablers, interdependencies, and government resources needed to accomplish decisions that are made; and
- Share relevant case studies and options for State decision makers based upon successful actions implemented elsewhere (including private sector interventions).
- Outline options for State decision-making on data-driven metrics to monitor, and possible ranges of actions if issues arise:
 - Support leadership alignment, before actions are taken, around specific indicators to monitor that would signal emergent issues (e.g., Y% increase in new infections); and
 - For each indicator, identify possible options of actions to re-instate changes to respond to the issues, based on clinical/health advice from the State and its clinical/health advisors.
- Support monitoring of the situation as re-opening begins and support the State in identifying any issues and generating options in response;
 - Rigorously track leading and lagging indicators of problems;
 - If any previously defined thresholds are surpassed, support the State with a fact base to inform any decisions; and
 - Share best practices on critical implementation or project management issues that could support re-opening, e.g., resolving bottlenecks in testing.

1.2 Key Deliverables

- Baseline of COVID-19 and economy in Tennessee, with a range of possible scenarios;
- Initial strategy options for State decision-making on the approach to economic re-opening, including interdependencies and enablers; and
- Ongoing data and reports on the re-opening situation across Tennessee.

2.0 PROPOSED TEAM

McKinsey's team to support the State in this effort will consist of:

- The Tennessee partner leadership team;
- A full-time team of consultant(s), which can be scaled up or down as needs require;
- A broad network of subject-matter experts to support McKinsey's team;
- Supporting specialist activities including administrative support, analytic support, research and information specialists, graphics and design specialists, and specialists in the tools and assets McKinsey deploys; and
- Use during this effort of McKinsey's intellectual property in McKinsey's tools and assets described above as well as any others McKinsey brings to bear during the course of McKinsey's work.

McKinsey's leadership team would consist of the following highly experienced leaders:

- Tom Latkovic, Tim Ward, Tom Dohrmann, and Sarah Tucker-Ray, who will provide overall senior direction to the team and ensure that McKinsey brings the best of McKinsey's global Firm to support the state; and
- Direct partner expertise will be drawn from Jordan VanLare and Leah Pollack.

The project manager is the day-to-day coordinator of work and management of all analysis and deliverables; 100% dedicated during the engagement. The additional consultants conduct analysis, work with Tennessee representatives to collect and interpret data, pull in McKinsey tools and benchmarks, and are 100% dedicated during the engagement.

McKinsey's subject-matter experts are an array of McKinsey functional leads that have proven experience in similar state or private-sector-efforts. SMEs will typically commit 10-20% of their time during the engagement.

3.0 PROFESSIONAL FEES

In both the public and private sectors, McKinsey works exclusively on a firm fixed-price basis. McKinsey commits to deliver the agreed end products – if necessary adding resources at no additional cost to the State to ensure delivery of the work to which McKinsey has committed. McKinsey's approach to pricing reflects McKinsey's commitment to bring the best of McKinsey's global resources to support each project and to provide a flexible, integrated approach to supporting clients on issues that are invariably both important and complex. It ensures that McKinsey's clients receive the high-quality support they require for the negotiated price and that McKinsey bears the risk of delivering the promised results at the quoted price.

In light of the unprecedented situation presented by the COVID-19 crisis, for all COVID-related public sector engagements McKinsey will be utilizing McKinsey's philanthropic rates through December 31, 2020. These rates, which can be found in Section C.3 of this Contract, do not apply to any other scopes of work unless otherwise specified.

McKinsey's professional fees will be the weekly team rates shown in the table at Contract Section C.3.b under the COVID-19 column, The State intends to start by utilizing Team B, but anticipates needed resources to fluctuate throughout the engagement; therefore the State reserves the right to utilize different teams at their contracted weekly rates in accordance with Section 2.0 of this SOW. The total fee liability paid under this SOW is estimated at \$1,000,000 but shall not exceed \$1,136,000 without amending this SOW. If a team size change from one week to the next week is necessary, the State will confirm in writing to McKinsey by Friday the desired team size for the following week.

These fees are "all-in" meaning they are inclusive of out-of-pocket expenses, as well as services provided in support of the project, such as research, report production, secretarial, IT, administrative, and other services.

The State would have the right to terminate McKinsey's work for convenience at any time, in which case McKinsey would bill up until the date of termination.

The parties may jointly agree to extend the period of performance.

3.1 Invoicing

Invoicing for half of the professional fees outlined above will occur at the mid-point of the engagement (i.e. at the end of week 4) and again for the remainder of fees at the end of activities (i.e. the end of week 8).

3.2 Working Guidelines

McKinsey will provide fact-based, independent analysis that the State can use to develop its own work and recommendations. The State will develop and will own its work and recommendations both internally and externally. McKinsey is not registered as a lobbyist and will not provide advice, opinions or recommendations on policy or political matters nor will it be involved in, or support, any advocacy, policy, or lobbying efforts. McKinsey's services cannot be for the principal purpose of supporting, promoting, influencing, modifying, opposing, delaying, or advancing any legislative or administrative action.

McKinsey will stay behind the scenes and will not engage in any direct communication with any government official for the purpose of influencing legislative or administrative action on behalf of the State. Direct communication includes appearing as a witness before, talking to (either by telephone or in person), corresponding with, or answering questions or inquiries from, any government official, either personally or through an agent who acts under McKinsey's direct supervision, control or direction.

McKinsey will provide the deliverables in the State's name and format, or as designated by the State, but with no reference to McKinsey or use of McKinsey's brand.

COVID-19 Response Execution Support: Statement of Work #2: Tennessee State Government Operations

COVID-19 is a humanitarian challenge that has affected communities across multiple continents, with significant loss of life around the world. Solving the humanitarian challenge is the top priority, and much remains to be done globally to prepare, respond, and recover, from protecting populations at risk, to supporting affected communities, to developing a vaccine.

Tennessee is facing statewide challenges, both in terms of mitigating short-term harm and planning for longer-term recovery, across health, economy, state finances, and social services, among many other dimensions. As part of its broader crisis response effort, the State of Tennessee ("State") is seeking outside support. McKinsey & Company, Inc. Washington D.C. ("McKinsey") is pleased to respond to the State's request for a statement of work (SOW) to deliver assistance in the State's COVID-19 response efforts as they relate to Tennessee State Government Operations.

This note has three parts:

1. Approach and Deliverables;
2. Proposed team; and
3. Professional fees.

1.0 Approach & Deliverables

The State government is the largest employer in Tennessee (with 48,000+ State employees), and it is a major provider of public-facing services (drivers licenses, unemployment benefits, etc.). While the COVID-19 amending of services has significantly changed the way that State employees work and that services are delivered to Tennessee residents, the full effects and implications are still not clear. As the State looks to re-open the broader economy, therefore, it will be important to ensure that the two domains in which it has the most direct role – as an employer and a service provider – are operating in a safe and efficient manner.

1.1 Activities

This stream of work would take roughly eight weeks to support the State in designing and beginning to implement a coordinated and well-communicated plan to return to pre-COVID levels of service (and beyond) without introducing unnecessary risk and while capturing efficiencies. Activities include:

- Provide input to the State in its decisions on a governance structure for Tennessee State government returning to operations that were in-place prior to the amending of those operations due to COVID-19.
 - Outline options for the working group and decision rights for necessary policy and procedure changes; and
 - Support State leadership in aligning on an aspiration and high-level timeline for returning to normal operations.
- Build a fact base on the current state of remote government employee work in Tennessee:
 - Quantify and analyze remote work – survey departments to build a view of the number of employees working from home, working shifted schedules, working in new roles, unable to work, etc. and understand performance and productivity where possible; and
 - Collect any lessons learned or best practices from across departments and outside Tennessee.

- Build a fact base of public-facing service delivery across Tennessee (before and during the COVID-19 shutdown):
 - Build before/after view of service delivery centers, hours, number of people served, etc.; and
 - Conduct case studies on adjusted physical environments and their relative success.
- Project-manage responses to advice/decisions from the State's own clinical/health experts to help State agencies operate safely in the light of these advice/decisions:
 - Support State and agencies in reaching project management and implementation decision-making to put this clinical/health advice into practice by environment (e.g., agency main offices, field sites, etc.);
 - Share implementation best practices from other states and internationally;
 - Identify options for implementation approach in the light of this clinical/health advice – communications, incentives, structuring the workweek, etc.;
 - Translate playbook into implementation plan, including defined needs for training, contracts, PPE, etc.; and
 - Estimate resource needs to accomplish and plan to access resources.
- Identify case studies for de-risking physical public-facing service delivery locations, as input for the State's own clinical/health advisors:
 - Collect best practices from physical location safeguarding across industries and geographies; and
 - Outline options for consideration by the State and its clinical/health advisors on the implementation plan for selected sites across Tennessee.
- Identify possible opportunities for efficiencies and innovation:
 - Collect and document possible “leapfrog” opportunities in returning to regular operations: transitioning to more digital services, continuing work from home for suitable employees to economize on real estate footprint, etc.

1.2 Key Deliverables

- Analysis of governance structure for returning to traditional government operations, including a checklist of actions and analysis of those actions to safely return employees to traditional operations.
- Analysis of existing State employee remote work across State government and providing of options for consideration for maintaining state operations with differing levels of employees working remotely for differing periods of time.
- Analysis of existing data and practices on physical service delivery locations and providing of options for consideration for maintaining state operations with fewer necessary in-person interactions between individuals in those centers to decrease the risk of illness spread.
- Draft case examples on State office operations, including a list of efficiency options that build off already completed analysis during the State's existing efficiency engagement.
- Case studies for physical service delivery locations.
- Identification and proposed options for consideration for efficiencies and innovation.

2.0 PROPOSED TEAM

McKinsey's team to support the State in this effort will consist of:

- The Tennessee partner leadership team;

- A full-time team of consultant(s), which can be scaled up or down as needs require;
- A broad network of subject-matter experts to support McKinsey's team;
- Supporting specialist activities including administrative support, analytic support, research and information specialists, graphics and design specialists, and specialists in the tools and assets McKinsey deploys; and
- Use during this effort of McKinsey's intellectual property in McKinsey's tools and assets described above as well as any others McKinsey brings to bear during the course of work.

McKinsey's leadership team would consist of the following highly experienced leaders:

- Tom Latkovic, Tim Ward, Tom Dohrmann, and Sarah Tucker-Ray, who will provide overall senior direction to the team and ensure that McKinsey brings the best of McKinsey's global firm to support the State.

The project manager is the day-to-day coordinator of work and management of all analysis and deliverables; 100% dedicated during the engagement. The additional consultants conduct analysis, work with Tennessee representatives to collect and interpret data, pull in McKinsey tools and benchmarks, and are 100% dedicated during the engagement.

McKinsey's subject-matter experts are an array of McKinsey functional leads that have proven experience in similar state or private-sector efforts. SMEs will typically commit 10-20% of their time during the engagement.

3.0 PROFESSIONAL FEES

In both the public and private sectors, McKinsey works exclusively on a firm fixed-price basis. McKinsey commits to deliver the agreed end products – if necessary adding resources at no additional cost to the State to ensure delivery of the work to which McKinsey has committed. McKinsey's approach to pricing reflects McKinsey's commitment to bring the best of McKinsey's global resources to support each project and to provide a flexible, integrated approach to supporting clients on issues that are invariably both important and complex. It ensures that McKinsey's clients receive the high-quality support they require for the negotiated price and that McKinsey bears the risk of delivering the promised results at the quoted price.

In light of the unprecedented situation presented by the COVID-19 crisis, for all COVID-related public sector engagements McKinsey will be utilizing McKinsey's philanthropic rates through December 31, 2020. These rates, which can be found in Section C.3 of this Contract, do not apply to any other scopes of work unless otherwise specified.

McKinsey's professional fees will be the weekly team rates shown in the table at Contract Section C.3.b under the COVID-19 column, The State intends to start by utilizing Team C, but anticipates needed resources to fluctuate throughout the engagement; therefore the State reserves the right to utilize different teams at their contracted weekly rates in accordance with Section 2.0 of this SOW. The total fee liability paid under this SOW is estimated at \$1,000,000 but shall not exceed \$1,320,000 without amending this SOW. If a team size change from one week to the next week is necessary, the State will confirm in writing to McKinsey by Friday the desired team size for the following week.

These fees are "all-in" meaning they are inclusive of out-of-pocket expenses, as well as services provided in support of the project, such as research, report production, secretarial, IT, administrative, and other services.

The State would have the right to terminate McKinsey's work for convenience at any time, in which case McKinsey would bill up until the date of termination.

The parties may jointly agree to extend the period of performance.

3.1 Invoicing

Invoicing for half of the professional fees outlined above will occur at the mid-point of the engagement (i.e. at the end of week 4) and again for the remainder of fees at the end of activities (i.e. the end of week 8).

3.2 Working Guidelines

McKinsey will provide fact-based, independent analysis that the State can use to develop its own work and recommendations. The State will develop and will own its work and recommendations both internally and externally. McKinsey is not registered as a lobbyist and will not provide advice, opinions or recommendations on policy or political matters nor will it be involved in, or support, any advocacy, policy, or lobbying efforts. McKinsey's services cannot be for the principal purpose of supporting, promoting, influencing, modifying, opposing, delaying, or advancing any legislative or administrative action.

McKinsey will stay behind the scenes and will not engage in any direct communication with any government official for the purpose of influencing legislative or administrative action on behalf of the State. Direct communication includes appearing as a witness before, talking to (either by telephone or in person), corresponding with, or answering questions or inquiries from, any government official, either personally or through an agent who acts under McKinsey's direct supervision, control or direction.

McKinsey will provide the deliverables in the State's name and format, or as designated by the State, but with no reference to McKinsey or use of McKinsey's brand.

COVID-19 Response Execution Support: Statement of Work #3: Support to Unified Command Group

COVID-19 is a humanitarian challenge that has affected communities across multiple continents, with significant loss of life around the world. Solving the humanitarian challenge is the top priority, and much remains to be done globally to prepare, respond, and recover, from protecting populations at risk, to supporting affected communities, to developing a vaccine.

Tennessee is facing statewide challenges, both in terms of mitigating short-term harm and planning for longer-term recovery, across health, economy, state finances, and social services, among many other dimensions. As part of its broader crisis response effort, the State of Tennessee ("State") is seeking outside support. McKinsey & Company, Inc. Washington D.C. ("McKinsey") is pleased to respond to the State's request for a statement of work (SOW) to deliver assistance to the Unified Command Group (UCG).

This note has three parts:

1. Approach and Deliverables;
2. Proposed team; and
3. Professional fees.

1.0 APPROACH AND DELIVERABLES

The UCG has had positive impact on the management and coordination of Tennessee's response to COVID-19 in the weeks since it was established. The State sees a high likelihood that the UCG will need to continue for some time and expects that the UCG's role and the topics it covers will continue to evolve. The State therefore has a desire to secure support for the developing role and operations of the UCG.

1.1 Topics

Over the next eight weeks, McKinsey expects to support the UCG across some or all of the topics listed below and potentially adjacent topics that are not included. This would be done via presenting fact-based options, sharing case studies and best practices, proposing management and data approaches, and facilitating access to McKinsey's ongoing modeling and best practice libraries.

- Enhancing the effectiveness of the UCG – for example, progress overviews, infrastructure options, process management approaches, support on implementing safeguarding recommendations for the UCG itself.
- Creation and maintenance of enhanced dashboards and broader data and facts, including structuring, obtaining, presenting and interpreting the most relevant information.
- Deep dive(s) on test acquisition – for example, de-bottlenecking test acquisition challenges.
- Deep dive(s) on test distribution/execution – for example, options for testing processes.
- Implementation options for support for those testing positive (i.e., approaches for implementing clinical/health advice from the State's expert advisors).
- Healthcare worker safety protocols, patient protocols, distribution of PPE.
- Options to expand and adapt physical supplies, such as ventilators and other supplies, adapting physical spaces, accessing physical capacity.

- Options for expanding or adapting the health workforce: retraining, telemedicine, potential geographic migration (always following the appropriate clinical/health or accreditation advice from the State's own advisors).
- Considerations for PPE acquisition and distribution for healthcare workers, essential services, etc.
- Options for defining and executing programs to support the needs of the most affected vulnerable populations, including case studies and implications.
- Input to choices around public communication (for example, lessons learned from elsewhere about objectives, messages and channels).
- Input to choices around stakeholder communication (for example, lessons learned from elsewhere about objectives, messages and channels).
- Options for creating a "plan ahead" team to identify potential future issues in supply/ demand models/projections, based on science and situational facts.

1.2 Key Deliverables

- Fact-based options to facilitate UCG decision making in selected topics.
- Targeted analyses in selected deep dive topics.
- Access to the outputs from McKinsey modeling, tools and assets.

2.0 PROPOSED TEAM

McKinsey's team to support the State in this effort will consist of:

- The Tennessee partner leadership team;
- A full-time team of consultant(s), which can be scaled up or down as needs require;
- A broad network of subject-matter experts to support McKinsey's team;
- Supporting specialist activities including administrative support, analytic support, research and information specialists, graphics and design specialists, and specialists in the tools and assets McKinsey deploys; and
- Use during this effort of McKinsey's intellectual property in McKinsey's tools and assets described above as well as any others McKinsey brings to bear during the course of work.

McKinsey's leadership team would consist of the following highly experienced leaders:

- Tom Latkovic, Tim Ward, Tom Dohrmann, and Sarah Tucker-Ray, who will provide overall senior direction to the team and ensure that McKinsey brings the best of McKinsey's global firm to support the State.

McKinsey's subject-matter experts are an array of McKinsey functional leads that have proven experience in similar state or private-sector-efforts. SMEs will typically commit 10-20% of their time during the engagement.

At the beginning of this effort, the size of the full-time team would be one Project Manager and two additional consultants.

McKinsey would agree with the State at the end of each week the appropriate team size for the following week, based on the State's needs. Where this represents a change compared with the previous week, McKinsey would document this in writing.

McKinsey initially expects this support to last for 8 weeks. However, the State would have the right to terminate McKinsey's work for convenience at any time, in which case McKinsey would bill up until the date of termination. The parties may jointly agree to extend the period of performance beyond the 8-week period.

3.0 PROFESSIONAL FEES

In both the public and private sectors, McKinsey works exclusively on a firm fixed-price basis. McKinsey commits to deliver the agreed end products – if necessary adding resources at no additional cost to the State to ensure delivery of the work to which McKinsey has committed. McKinsey's approach to pricing reflects McKinsey's commitment to bring the best of McKinsey's global resources to support each project and to provide a flexible, integrated approach to supporting clients on issues that are invariably both important and complex. It ensures that McKinsey's clients receive the high-quality support they require for the negotiated price and that McKinsey bears the risk of delivering the promised results at the quoted price.

In light of the unprecedented situation presented by the COVID-19 crisis, for all COVID-related public sector engagements McKinsey will be utilizing McKinsey's philanthropic rates through December 31, 2020. These rates, which can be found in Section C.3 of this Contract, do not apply to any other scopes of work unless otherwise specified.

McKinsey's professional fees will be the weekly team rates shown in the table at Contract Section C.3.b under the COVID-19 column, The State intends to start by utilizing Team E, but anticipates needed resources to fluctuate throughout the engagement; therefore the State reserves the right to utilize different teams at their contracted weekly rates in accordance with Section 2.0 of this SOW. The total fee liability paid under this SOW is estimated at \$1,000,000 but shall not exceed \$1,136,000 without amending this SOW. If a team size change from one week to the next week is necessary, the State will confirm in writing to McKinsey by Friday the desired team size for the following week.

These fees are "all-in" meaning they are inclusive of out-of-pocket expenses, as well as services provided in support of the project, such as research, report production, secretarial, IT, administrative, and other services.

The State would have the right to terminate McKinsey's work for convenience at any time, in which case McKinsey would bill up until the date of termination.

The parties may jointly agree to extend the period of performance.

3.1 Invoicing

Invoicing for half of the professional fees outlined above will occur at the mid-point of the engagement (i.e. at the end of week 4) and again for the remainder of fees at the end of activities (i.e. the end of week 8).

3.2 Working Guidelines

McKinsey will provide fact-based, independent analysis that the State can use to develop its own work and recommendations. The State will develop and will own its work and recommendations both internally and externally. McKinsey is not registered as a lobbyist and will not provide advice, opinions or recommendations on policy or political matters nor will it be involved in, or support, any advocacy, policy, or lobbying efforts. McKinsey's services cannot be for the principal purpose of supporting, promoting, influencing, modifying, opposing, delaying, or advancing any legislative or administrative action.

McKinsey will stay behind the scenes and will not engage in any direct communication with any government official for the purpose of influencing legislative or administrative action on behalf of the State. Direct communication includes appearing as a witness before, talking to (either by telephone or in person), corresponding with, or answering questions or inquiries from, any government official, either personally or through an agent who acts under McKinsey's direct supervision, control or direction.

McKinsey will provide the deliverables in the State's name and format, or as designated by the State, but with no reference to McKinsey or use of McKinsey's brand.