



**STATE OF TENNESSEE
DEPARTMENT OF HUMAN SERVICES**

**SOLICITATION # 34570-80024
FOR PRE-EMPLOYMENT TRANSITION SERVICES PROVIDER**

1. INTRODUCTION

The Rehabilitation Act, as amended by the Workforce Innovation and Opportunity Act (WIOA, 2014), expands the types of services, including pre-employment transition services, Vocational Rehabilitation (“VR”) agencies may provide to students with disabilities transitioning from school to postsecondary education to postschool activities. Pre-employment transition services (“Pre-ETS”) provides an early start to job exploration that assists students with disabilities in identifying career interests which may be further explored through additional VR services, such as transition services and other individualized VR services. Pre-ETS may begin once a student requests or is recommended for one or more Pre-ETS services. Pre-ETS must be provided or arranged in collaboration with Local Educational Agencies (“LEA”). These services are intended to provide students with disabilities opportunities to practice and improve workplace readiness skills through work-based learning experiences in competitive, integrated work settings. In addition, these services are intended to allow students with disabilities to explore post-secondary training options, leading to more industry recognized credentials, and meaningful post-secondary employment. This increased emphasis on transition-to-employment in the Rehabilitation Act, as amended by the WIOA, aligns with the Individuals with Disabilities Education Act (“IDEA”) to ensure that students with disabilities are provided work experiences before leaving high school.

1.1. Respondent Eligibility

- 1.1.1. Respondents (“Respondents”) to this Solicitation may include an Individual, For-Profit Corporation, Non-Profit Corporation, Special Purpose Corporation or Association, Partnership, Joint Venture, or Limited Liability Company.
- 1.1.2. Respondents must provide in-person Pre-ETS onsite at Tennessee schools, virtual Pre-ETS (as requested), and demonstrate experience providing Pre-Employment Transition Services in coordination with Local Educational Agencies.

1.2. Contract Term Length and Award

A contract will be awarded to eligible Respondents who are able to show they meet the eligibility and qualifications required in this Solicitation.

1.3. Location of Services

VR operates statewide in nine (9) geographic regions, and each grouping of counties represented is considered one service area where VR services will be provided. Respondents may view the nine (9) geographic regions and their respective counties by visiting VR’s website or clicking the following link: [VR Office Locations \(tn.gov\)](http://www.tn.gov/vr/office-locations). Due to their size, Davidson County and Shelby County have been separated into individual service areas in addition to the VR geographic regions. Responses to this solicitation which separate out counties under a service area will not be considered. Respondents may bid on more than one service area.

Contracts may be awarded per service area for each of the nine (9) service areas specified in this Solicitation. However, multiple service areas may be awarded to a single Respondent. Respondents may submit a bid for any number of service areas in response to this Solicitation.

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

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

- Scope of Services and Deliverables (Section A);
- Contract Period (Section B);
- Payment Terms (Sections C);
- Standard Terms and Conditions (Section D); and
- Special Terms and Conditions (Section E).

3. SOLICITATION SCHEDULE

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

EVENT	TIME (central time zone)	DATE
1. Solicitation Issued		July 14, 2023
2. Disability Accommodation Request Deadline		July 19, 2023
3. Pre-Response Conference		July 20, 2023
4. Notice of Intent to Respond Deadline		July 21, 2023
5. Written "Questions & Comments" Deadline	2:00 p.m.	July 26, 2023
6. State Response to Written "Questions & Comments"		July 31, 2023
7. Response Deadline	2:00 p.m.	August 7, 2023
8. State Completion of Technical Response Evaluations		August 11, 2023
9. State Notice of Intent to Award Released <u>and</u> Solicitation Files Opened for Public Inspection	2:00 p.m.	August 15, 2023
10. End of Open File Period		August 22, 2023
11. State sends contract to Contractor for signature		August 23, 2023
12. Contractor Signature Deadline	2:00 p.m.	August 25, 2023

4. GENERAL INFORMATION AND REQUIREMENTS

4.1. Nondiscrimination

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

4.2. Communications

4.2.1. The State has assigned the following Solicitation identification number that must be referenced in all communications regarding this Solicitation:

34570-80024 Pre-Employment Transition Services Provider

4.2.2. Respondents must direct all communications concerning this Solicitation to the following person designated as the Solicitation Coordinator:

Gina Burnett, Program Coordinator
 Department of Human Services
 James K. Polk Building, 15th Floor
 505 Deaderick Street
 Nashville, Tennessee 37243
 Email: Gina.Burnett@tn.gov

Unauthorized contact about this Solicitation with other employees or officials of the State of Tennessee except as detailed in this Solicitation may result in disqualification from consideration under this procurement process.

Notwithstanding the foregoing, Respondents may also contact the following as appropriate:

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

Jeffrey Blackshear, Associate General Counsel
 Department of Human Services
 James K. Polk Building, 14th Floor
 505 Deaderick Street
 Nashville, Tennessee 37243
 Email: Jeffrey.Blackshear@tn.gov
 Telephone: (615) 313-5711
 Fax: (615) 532-3016

4.3. Respondent Registration

Pursuant to Tenn. Code Ann. § 4-56-105 all Respondents must be registered **prior to the issuance** of a contract or a purchase order. Respondents can register online at the State of Tennessee Supplier Portal:

https://sso.edison.tn.gov/psp/paprd/SUPPLIER/SUPP/h/?tab=PAPP_GUEST

4.4. **Respondent's Ability to Perform**

The State shall have the right to require evidence of Respondent's ability to perform the services or deliver the goods required pursuant to the requirements and qualifications of this Solicitation.

4.5. **Assignment & Subcontracting**

4.5.1. Contractor shall not transfer or assign any portion of a Contract awarded as a result of this Solicitation.

4.5.2. If Respondent intends to use subcontractors, the response to this Solicitation shall specifically identify the scope and portions of work that each subcontractor will perform. Subcontractors identified within a response to this Solicitation will be deemed as approved by the State unless the State expressly disapproves one or more of the proposed subcontractors, in writing, prior to signing the Contract.

4.5.3. Notwithstanding any State approval relating to subcontracts, a Respondent awarded a Contract pursuant to this Solicitation is the prime contractor and shall be responsible for all work under the Contract.

4.6. **Conflict of Interest**

The State shall not consider a response from an individual who is, or within the past six (6) months has been, a State employee. For purposes of this Solicitation:

4.6.1. An individual shall be deemed a State employee until such time as all compensation for salary, termination pay, and annual leave has been paid;

4.6.2. A contract with or a response from a company, corporation, or any other contracting entity in which a controlling interest is held by any State employee shall be considered to be a contract with or proposal from the employee; and

4.6.3. A contract with or a response from a company, corporation, or any other contracting entity that employs an individual who is, or within the past six (6) months has been, a State employee shall not be considered a contract with or a proposal from the employee and shall not constitute a prohibited conflict of interest.

4.7. All persons, agencies, firms, or other entities that provide legal or financial opinions, which a Respondent provides for consideration and evaluation by the State as part of a response to this Solicitation, shall be properly licensed to render such opinions.

4.8. **Prohibition of Illegal Immigrants**

Any Respondent awarded a Contract shall comply with Tenn. Code Ann. § 12-3-309 and submit semi-annual attestations to the State.

5. **SOLICITATION REQUIREMENTS**

5.1. **Response Deadline**

Respondent must ensure that the State receives the response no later than the Solicitation deadline time and date detailed in Section 3, Schedule of Events. Respondent must apply, as required, to this Solicitation (including its attachments) as may be updated. The State may not accept late responses, and a Respondent's failure to submit its response before the deadline may result in disqualification of the response.

5.2. Response Submission

Responses must be submitted electronically by clicking the link below or visiting the following URL: https://stateofennessee.formstack.com/forms/preemployment_transition_services_contractor_information_request

Respondent must deliver to the State all documentation required for response to this Solicitation, including any documentation required in the *Qualifications Evidence Guide* in response to this Solicitation.

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

5.3. Qualification Evidence Guide

The Qualifications Evidence Guide, Solicitation 34570-80024 Attachment A, details the specific mandatory qualifications required for a Respondent to be considered as a successful response to this Solicitation.

Respondent must use its completed Qualifications Evidence Guide (Solicitation Attachment A), as a table of contents to organize and reference the supporting documentation for this portion of the Solicitation response.

5.4. Respondent Certification

By electronically submitting a response, Respondent agrees to the terms and conditions of this Solicitation (and its Attachments) and certifies that all goods or services included in the response meet or exceed the eligibility and qualifications of the Solicitation.

Respondent agrees that, if it is awarded a Contract, it will deliver goods or services that meet or exceed the scope in this Solicitation, Attachment C, *Pro Forma* Contract.

5.5. Response Prohibitions.

5.5.1. A response must not include alternate *Pro Forma* contract terms and conditions. If a response contains such terms and conditions, the State, at its sole discretion, may determine the response to be non-responsive and reject it.

5.5.2. A response must not restrict the rights of the State or otherwise qualify the provision of services as required by this Solicitation. If a response restricts the rights of the State or qualifies the provision of services, the State, at its sole discretion, may determine the response to be non-responsive and reject it.

5.5.3. A response must not propose alternative services (i.e. offer different services from those requested and required by this Solicitation). The State, at its sole discretion, may consider a response of alternative services to be non-responsive and reject it.

5.5.4. A Respondent must not provide, for consideration in this Solicitation or subsequent Contract, and information that Respondent knew or should have known was materially incorrect. If the State determines that a Respondent provided such incorrect information, the State shall deem the response non-responsive and reject it.

5.6. State Right of Rejection

5.6.1. Subject to applicable laws and regulations, the State reserves the right to reject, at its sole discretion, any and all responses.

5.6.2. The State may deem as non-responsive and reject any response that does not comply with all terms, conditions, and performance requirements of this Solicitation. Notwithstanding

the foregoing, the State reserves the right to waive, at its sole discretion, minor variances in a response, such waiver shall not modify the Solicitation requirements or excuse Respondent from full compliance, and the State may hold any resulting Contractor to strict compliance with this Solicitation.

- 5.7. **Solicitation Cancellation.** The State may cancel this Solicitation in its entirety and re-issue it in whole or in part.

6. EVALUATION & CONTRACT AWARD

6.1. Response Evaluation

The State will review each Respondent's Pre-ETS Participant service numbers that were completed between October 1, 2022 – March 31, 2023 ("Period"). Contract award amounts will be based on the maximum number of Pre-ETS Participants who received services from the Respondent during a calendar month within the Period. The Table in Section 6.1., details a range of Participants served each month and the Maximum Liability threshold for providing these services across the Contract Term. To apply for this Solicitation the Respondent must provide sufficient evidence showing the number of Pre-ETS Participants it provided services to during the Period. Contract Award amounts are shown below.

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

Maximum Contract Term: two years (October 1, 2023 – September 30, 2025)

Tier No.	Number of Pre-ETS Participants Per Calendar Month	Maximum Contract Award for the Term
12	1000+	\$1,907,348
11	851-999	\$1,525,878
10	701-850	\$1,220,702
9	551-700	\$976,562
8	401-550	\$781,250
7	301-400	\$624,000
6	251-300	\$468,000
5	201-250	\$390,000
4	151-200	\$281,250
3	101-150	\$210,940
2	51-100	\$156,000
1	< 50	\$5,000

6.2. Contract Award Criteria

A contract shall be awarded to each Potential Respondent. A Potential Respondent ("Potential Respondent") is a Respondent that has submitted and won an award under this Solicitation, but whose contract has not yet been executed. All Potential Respondents are individuals or entities that meet the eligibility and qualification requirements set forth in this Solicitation. Contract(s) shall be awarded to responsive and responsible Contractor(s) whose responses are determined to meet the VR eligibility and qualifications. VR will make an award based on the Qualifications Evidence Guide set forth herein. VR shall be the sole judge as to whether the Respondent's response has or has not satisfactorily met the eligibility and qualification requirements of this Solicitation.

6.3. **Contract Approval**

This Solicitation and its evaluation processes do not obligate the State and do not create rights, interests, or claims of entitlement in an apparent successful Respondent or any other Respondent. State obligations pursuant to a contract award shall commence only after the Contract is signed by the State agency head and the Contractor and after the Contract is approved by all other state officials as required by applicable laws and regulations.

6.4. **Right to Refuse Personnel**

The State reserves the right to refuse, at its sole discretion and notwithstanding any prior approval, any personnel of the prime contractor providing goods or services in the performance of a Contract resulting from this Solicitation.

6.5. **Insurance**

Before any Contract resulting from this Solicitation is executed, the Respondent shall provide a Certificate of Insurance issued by an insurance company licensed or authorized to provide insurance in the State of Tennessee. Each Certificate of Insurance shall indicate current insurance coverages meeting minimum requirements as are specified by this Solicitation (including its Attachments). A failure to provide a current, Certificate of Insurance shall deem the response to be non-responsive and reject it.

6.6. **Professional Licensure and Department of Revenue Registration**

6.6.1. Before the Contract resulting from this Solicitation is signed, every Respondent (and Respondent employees and subcontractors, as applicable) must hold all required business or professional licenses to provide the relevant goods or services as designated by the contract. The State may require any apparent successful Respondent to submit evidence of proper licensure.

6.6.2. Before the Contract resulting from this Solicitation is executed, every Respondent must be registered with the Tennessee Department of Revenue for the collection of Tennessee sales and use tax. The State shall not award a contract unless the Respondent provides proof of such registration or provides documentation from the Department of Revenue that the Contractor is exempt from this registration requirement. The foregoing is a mandatory requirement of an award of a contract pursuant to this application. To register, please visit the Department of Revenue's Tennessee Taxpayer Access Point (TNTAP) website for Online Registration and the Vendor Contract Questionnaire. These resources are available at the following: <https://tntap.tn.gov/eservices/#1>.

6.7. **Contractor Performance**

Contractors must be able to maintain the number of Pre-ETS participants within the awarded Tier during each month throughout the entirety of the Contract Term. A Contractor shall not be compensated for increasing the number of Pre-ETS participants per month without an amendment to the Contract. The State reserves the right to decrease the Maximum Liability under the Contract with an amendment if the Contractor cannot maintain its Pre-ETS participant range.

6.8. **Disclosure of Proposal Contents.** All materials submitted to the State in response to this Solicitation become the property of the State of Tennessee. Selection for award does not affect this right. Upon completion of evaluations, indicated by the award notification (refer to Section 3, above), the full contents and associated documents submitted in response to this Solicitation will be open for review by the public. By submitting a response, a Respondent acknowledges and accepts that the full contents and associated documents submitted in response to this Solicitation will become open to public inspection.

Pre-Employment Transition Services Provider

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Solicitation Attachment A**QUALIFICATIONS EVIDENCE GUIDE**

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

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

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

POTENTIAL CONTRACTOR LEGAL ENTITY NAME		
<u>Reference</u>	<u>Item</u>	<u>Signature- By signing in this column, Respondent certifies, to the best of Respondent's knowledge, that the corresponding item is true and acknowledges that any required documentation has been attached or otherwise included.</u>
A.1.	<p><i>Name:</i> _____</p> <p><i>Company Name:</i> _____</p> <p><i>E-mail Address:</i> _____</p> <p><i>Mailing Address:</i> _____</p> <p>_____</p> <p>_____</p> <p><i>Telephone Number:</i> _____</p>	<i>Signature:</i> _____
A.2.	<p>Respondent has completed Solicitation Attachment B, <i>Statement of Certifications and Assurances</i>, and it has been signed by an individual empowered to bind Respondent to the provisions of this Solicitation and any resulting Contract.</p> <p>NOTE: The document must be signed without exception or qualification.</p>	<i>Signature:</i> _____
A.3.	<p>Neither the Respondent nor any individual who shall perform work under the contract including but not limited to Respondent's employees, agents, independent contractors, sub-contractors, and interns has a possible conflict of interest (e.g., employment by the State of Tennessee). If there is a possible conflict of interest, an explanation has been included below.</p> <p><i>Any questions of conflict of interest shall be solely within the discretion of the State, and the State reserves the right to reject any response or cancel any award.</i></p>	<i>Signature:</i> _____

	<i>Explanation:</i>	
A.4.	<p>Neither the Respondent nor any of Respondent's employees, agents, independent contractors, or subcontractors, proposed to provide work on a contract pursuant to this Solicitation, have been convicted of, pled guilty to, or pled <i>nolo contendere</i> to any felony or convicted of the following:</p> <ol style="list-style-type: none"> 1. The physical, sexual or emotional abuse or neglect of a child or vulnerable person; 2. A crime of violence against a child or any person; 3. Any offense that presents a threat to the health, safety or welfare of children or vulnerable persons; or 4. A felony conviction involving a crime of dishonesty or fraud within the past ten (10) years. <p>If there has been any such conviction or plea, an explanation has been included below.</p> <p><i>Any issues relating to such a matter shall be solely within the discretion of the State, and the State reserves the right to reject any response or cancel any award.</i></p>	<p><i>Signature:</i> _____</p>
	<i>Explanation:</i>	
A.5.	<p>There is no material, pending litigation that Respondent should reasonably believe could adversely affect its ability to meet contract requirements pursuant to this Solicitation, or that is likely to have a materially adverse effect on the Respondent's financial condition.</p> <p>If such exists, list <u>each</u> separately below, explain the relevant details, and attach the opinion of counsel addressing whether and to what extent it would impair Respondent's performance in a contract pursuant to this Solicitation</p> <p><i>Any issues relating to such a matter shall be solely within the discretion of the State, and the State reserves the right to reject any response or cancel any award.</i></p>	<p><i>Signature:</i> _____</p>
	<i>Explanation:</i>	

A.6.	The Respondent and all individuals who shall perform work under a contract resulting from this Solicitation meet the requirements of Solicitation Attachment C, <i>Pro Forma Contract</i> , Section A.8 Staff Qualifications.	Signature: _____
A.7.	Neither the Respondent or any of the Respondent's subcontractors, in the last ten (10) years, have filed (or had filed against it) a bankruptcy or insolvency proceeding, whether voluntary or involuntary, or have undergone the appointment of a receiver, trustee, or assignee for the benefit of creditors. If so, include an explanation providing all relevant details. <i>Any issues relating to such a matter shall be solely within the discretion of the State, and the State reserves the right to reject any response or cancel any award.</i>	Signature: _____
	<i>Explanation:</i>	
A.8.	The Respondent and any individual who shall perform work under a contract resulting from this Solicitation meets the requirements of Tenn. Comp. R. & Regs. 1240-08-03-.05 Background Checks for Vocational Rehabilitation Employees, Contractors, and Interns. NOTE: By signing, Respondent certifies he or she has read Tenn. Comp. R. & Regs. 1240-08-03-.05 Background Checks for Vocational Rehabilitation Employees, Contractors, and Interns and certifies it is in compliance.	Signature: _____
A.9.	Respondent has not defaulted on monies owed to the State.	Signature: _____
A.10.	Neither Respondent or any individual who shall perform work under this Solicitation has been a party to a previous contract with the State of Tennessee for pre-employment transition services which was terminated for any reason. If so, include an explanation providing all relevant details. <i>Any disqualification due to a prior termination for convenience may, within the sole discretion of the State, be waivable; however, the State reserves the right to reject any offer or cancel any award.</i>	Signature: _____

A.11.	Respondent nor its employee(s) or subcontractor has responded to this solicitation under a different company name.	Signature: _____
	<i>Explanation:</i>	
A.12.	Respondent has and will maintain throughout the Contract Term a computer or tablet with Wi-Fi capabilities, or other similar technology approved by the State, to access the State's online portal.	Signature: _____
A.13.	<p>Respondent has at least three (3) letters of support. At least one (1) letter must be from be a Local Educational Agency, demonstrating Respondent's expertise in providing pre-employment transition services and collaboration within the community.</p> <p>Copies of the letters <u>must</u> be provided in the response to this solicitation.</p> <p><i>The State reserves the right, in its sole discretion, to contact the Local Educational Agency to confirm support. The State reserves the right to reject any letters or cancel any award.</i></p>	Signature: _____
A.14.	<p>Respondents <u>must</u> provide evidence showing the maximum number of students it provided Pre-ETS to during a calendar month between the period of October 1, 2022 – March 31, 2023 in the response to this Solicitation.</p> <p>Respondents shall submit a list, for the month during this period with the greatest number students in which it provided Pre-ETS, that clearly and accurately details all of the following information:</p> <ul style="list-style-type: none"> • Number of Pre-ETS Participants • Specific services and/or activities provided to each Pre-ETS Participant; • Name and location of school where each Participant is registered; • Pre-ETS Case ID number; and • Calendar Month in which services were provided. 	Signature: _____

<p>A.15.</p>	<p>Respondent certifies the following to be true:</p> <ul style="list-style-type: none"> (a) Is not presently debarred, suspended, proposed for debarment, or voluntarily excluded from covered transactions by any federal or state department or agency; (b) has not within the past three (3) years, been convicted of, or had a civil judgment rendered against the contracting party 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) is 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 above; and <p>has not within a three (3) year period preceding the contract had one or more public transactions (federal, state, or local) terminated for cause or default.</p>	<p><i>Signature:</i> _____</p>
<p>A.16.</p>	<p>Respondent has provided, at a minimum, an outline of the Pre-ETS curriculum they will be using throughout a school semester as well as a sample instructor's lessons plan.</p>	<p><i>Signature:</i> _____</p>

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Solicitation 34570-80024

Solicitation Attachment B

STATEMENT OF CERTIFICATIONS AND ASSURANCES

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

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

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

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

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

SIGNATURE & DATE: _____

PRINTED NAME & TITLE: _____

LEGAL ENTITY NAME: _____

FEIN or SSN: _____

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Solicitation Attachment C

PRO FORMA CONTRACT

The pro forma contract detailed in following pages of this exhibit contains some “blanks” (signified by field descriptions in capital letters or red text) that will be completed with appropriate information if a final contract is awarded to you from this Solicitation.



CONTRACT

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

Begin Date	End Date	Agency Tracking #	Edison Record ID
Contractor Legal Entity Name			Edison Vendor ID

Goods or Services Caption (one line only)

Contractor <input checked="" type="checkbox"/> Contractor	CFDA #
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Funding —					
FY	State	Federal	Interdepartmental	Other	TOTAL Contract Amount
TOTAL:					

Contractor Ownership Characteristics:

- Minority Business Enterprise (MBE):
 - African American
 - Asian American
 - Hispanic American
 - Native American
- Woman Business Enterprise (WBE)
- Tennessee Service Disabled Veteran Enterprise (SDVBE)
- Disabled Owned Business (DSBE)
- Tennessee Small Business Enterprise (SBE): \$10,000,000.00 averaged over a three (3) year period or employs no more than ninety-nine (99) employees.
- Government Non-Minority/Disadvantaged Other:

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

<input checked="" type="checkbox"/> Competitive Selection	This contract resulted from a competitive procurement pursuant to authority delegated by the Central Procurement Office in accordance with Tenn. Comp. R. & Regs. 0690-03-01-.04.
<input type="checkbox"/> Other	

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

Speed Chart (optional)	Account Code (optional)
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**CONTRACT
BETWEEN THE STATE OF TENNESSEE,
DEPARTMENT OF HUMAN SERVICES
AND
CONTRACTOR NAME**

This Contract, by and between the State of Tennessee, **Tennessee Department of Human Services** ("State") and **Contractor Legal Entity Name** ("Contractor"), is for the provision of **Pre-Employment Transition Services or Pre-ETS (as defined below)**, as further defined in the "SCOPE." State and Contractor may be referred to individually as a "Party" or collectively as the "Parties" to this Contract.

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

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

Contractor Edison Registration ID # **Number**

A. SCOPE:

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

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

- a. "Counseling on Post-Secondary Education" means providing information and instruction on course offerings, career options, and types of academic and occupational training needed to succeed in the workplace, and post-secondary opportunities associated with career fields or pathways.
- b. "Fair Labor Standards Act" is a United States labor law which establishes minimum wage overtime pay eligibility, recordkeeping, and child labor standards affecting full-time and part-time workers in the private sector and in federal, state, and local governments.
- c. "Instruction in Self-Advocacy" means instruction designed to develop an individual's ability to effectively communicate, convey, negotiate, and assert his or her own interests and desires.
- d. "Instructional Unit" means a unit of measure consisting of fifteen (15) consecutive minutes of Pre-ETS instruction to a Participant.
- e. "Integrated Setting" means integrated setting as defined in 34 CFR § 361.5(c)(32).
- f. "Job Exploration Counseling" means or advising participants with the intent to foster motivation, consideration of employment opportunities, and informed career path decision-making.
- g. "Local Educational Agency" ("LEA") means a public board of education or other public authority, legally constituted within a state, for either administrative control or direction of, or to perform a service function for, public elementary schools or secondary schools in a city, county, township, school district, or other political subdivision of a state, or for a combination of school districts or counties as are recognized in a state as an administrative agency for its public elementary schools or secondary schools.
- h. "Pre-employment Transition Services" ("Pre-ETS") means pre-employment transition services as defined in 34 CFR § 361.5(c)(42) and 34 CFR § 361.48.
- i. "Pre-ETS Specialist" means a professional, employed by the Tennessee Vocational Rehabilitation Services program, who collects eligibility documentation, manages Pre-

ETS case files, and provides technical assistance to the LEA and Contractor.

- j. "Participant" means a student with a disability who is receiving Pre-ETS.
- k. "Student with a Disability" means an individual with a disability in a secondary, postsecondary, or other recognized education program who meets the requirements of 34 CFR § 361.5(c)(51).
- l. "Tier" means the range of Participants shown in Section 6.1 of Solicitation 34570-80024 in which the Contractor responded and provided evidence and acknowledgement that it can and will provide Pre-ETS to the number of Participants within the Tier each month of the Term.
- m. "Vocational Rehabilitation Services Program" ("VR") means the Tennessee Department of Human Resources' Vocational Rehabilitation Program.

"Workforce Innovation and Opportunity Act" ("WIOA") means the federal law codified at 29 U.S.C. § 3101 et seq.
- n. "Workplace Readiness Training" means training and curriculum designed for Participants (as defined above) to develop social and independent living skills, such as communication and interpersonal skills, financial literacy, orientation and mobility skills, job-seeking skills, and employer expectations.
- o. "Work-based Learning Services" or "WBL Services" means an educational approach or instructional methodology that uses the workplace, or real work, to provide students with the knowledge and skills that will help them connect school experiences to real-life work activities and future career opportunities.

A.3. Pre-Employment Transition Service Activities. The Contractor shall collaborate with Local Educational Agencies to offer the following five (5) Pre-ETS activities for Students with Disabilities in accordance with the Workforce Innovation and Opportunity Act of 2014, Section 422 and the *Code of Federal Regulations*, Title 34, Part 361, as amended:

- a. Job Exploration Counseling;
- b. Work-Based Learning Services;
- c. Workplace Readiness Training to develop social skills and independent living;
- d. Instruction in Self-Advocacy; and
- e. Counseling on opportunities for enrollment in comprehensive transition or post-secondary educational programs.

The Contractor shall offer such Pre-ETS in accordance with the needs of the Student with a Disability.

A.4. Pre-ETS Units of Instruction. Contractor shall maintain an attendance log which documents the:

- a. Date the Participant received Pre-ETS;
- b. Start and end times of services;
- c. Pre-ETS activity (reference A.3.); and
- d. Daily Participant acknowledgement (e.g. signature).

Contractor shall provide a minimum of two (2) Instructional Units per Participant during each instructional session.

A.5. Service Level Requirements. Contractor shall maintain the number of Pre-ETS Participants within the awarded Tier each month throughout the entirety of the Contract Term and strictly adhere to the requirements of this Contract. The State shall notify Contractor of an identified performance deficiency and require corrective action be taken. In the event of a performance deficiency, the State may issue a written directive to the Contractor to provide a corrective action plan.

Contractor shall prepare and submit to the State a written corrective action plan no later than thirty (30) calendar days after the date of the State's notice of deficiency. Contractor shall carry out the measures described in the corrective action plan within thirty (30) calendar days.

- A.6. Duration of Service. The Contractor shall make services available to Participants during every month of the Term. The Contractor shall also provide services in LEAs throughout the Contract Term. Contractor shall create opportunities for Participants to receive Pre-ETS within integrated settings during summer months.
- A.7. Participant Progress. The Contractor shall submit individualized monthly student progress reports and monthly program reports to the designated VR Pre-Employment Specialist using the report templates provided by the State. The Contractor agrees to submit all reports monthly, within the timeframe designated by the State, and no later than the deadlines established by the State in accordance with the terms and conditions described in Section C.5 of this Contract.
- A.8. Staff Qualifications. The Contractor shall be responsible for hiring staff that meet the following qualifications:
- a. All Contractor staff providing Pre-ETS must have a minimum of three (3) months professional experience working with individuals with disabilities and meet one of the following criteria:
 - (1) High school diploma or GED and one year of experience in social work, human resources, business, counseling, job placement, job coaching, or a public vocational rehabilitation program; or
 - (2) A Master's, Bachelor's, or Associate's degree from an accredited college or university in education, social work, human resources, healthcare, business, public administration, or disability related field of study.
 - b. In addition to the above qualifications, Contractor staff providing Counseling on Post-Secondary Education must be at least twenty-one (21) years old and have experience with career development. Experience may include completing training such as the Tennessee Achieves Mentoring Program, Tennessee Promise, Free Application for Federal Student Aid (FAFSA) Frenzy, or Gaining Early Awareness and Readiness for Undergraduate Programs (GEAR UP) program.
 - c. Contractor staff shall complete a minimum of ten (10) hours of continuing education training in Pre-ETS within the first twelve (12) months of the Term and an additional ten (10) hours of continuing education training in Pre-ETS in the second year of the Term. Contractor shall submit its most recent continuing education completion training certificates to the State within five (5) business days of receiving a request for such information.
 - d. The Contractor must keep records of the following for the duration of the period specified in Section D.11:
 - (1) A job description must be maintained, which includes the employment requirements and the job responsibilities for each staff position;
 - (2) A personnel record must be maintained which verifies that each employee meets the respective employment and background check requirements for the staff position held;
 - (3) Evidence of a criminal background check, as required by Tenn. Comp. R. & Regs. 1240-08-03-.05 Background Checks for Vocational Rehabilitation Employees, Contractors, and Interns;
 - (4) Evidence of the staff's status on the Tennessee registry of persons who have abused, neglected, or misappropriated the property of vulnerable individuals

("Abuse Registry") maintained by the Department of Health;

- (5) Evidence of the staff's status on the State's sexual offender registry (After January 1, 2016, no individual or volunteer who is listed on the State's Sex Offender Registry may be hired or otherwise permitted to provide services); and
 - (6) Evidence of the staff's status the Tennessee Felony Offender Information Lookup (FOIL). The information available on this list pertains to Tennessee felony offenders who are or who have been in the custody of the Tennessee Department of Correction or under the Supervision of the Tennessee Board of Probation and Parole. The information is submitted by various jurisdictions within Tennessee. Confirmation and/or elaboration should be obtained from the originating jurisdiction.
- A.9. Staff Roster. Contractor shall send a roster of its staff to the State within the first thirty (30) calendar days of the Contract Term. An updated roster with a complete list of current staff providing services must be submitted to assigned Pre-ETS Specialist and VR.Contracts.DHS@tn.gov within ten (10) business days any time there is a change in staff who provide Pre-ETS services.
- A.10. Accommodations. Contractor shall make reasonable efforts to accommodate the needs of Participants in compliance with state and federal law, including without limitation, the Americans with Disabilities Act. Such accommodation shall include, but are not limited to, making information and products available in alternative, accessible formats, such as Braille, large print, or tape cassette upon request of the Participant.
- A.11. Permission Documentation. Prior to beginning Pre-ETS, the Contractor shall obtain written permission (may be electronic) from the Student with a Disability's parent or guardian (or equivalent). The Student with a Disability may sign if eighteen (18) years of age or older and has not been determined by the court to be in need of partial or full supervision, protection, and assistance by reason of mental illness, physical illness or injury, developmental disability, or other mental or physical incapacity. For each Student with a Disability, the Contractor shall provide the permission documents to the Pre-ETS Specialist within three (3) business days of the date of permission being received along with proof of eligibility to receive Pre-ETS. The Contractor must receive written confirmation from the Pre-ETS Specialist that the student is eligible to be a Participant and a case file has been created for the Student with a Disability prior to offering Pre-ETS.
- A.12. Pre-ETS Curriculum. The Contractor shall submit to the State's Pre-ETS Specialist its Pre-ETS Curriculum used in performance of this Contract at least ten (10) days before the beginning of each year of the Term. The Pre-ETS Specialist may suggest revisions to the Pre-ETS curriculum, alternatives, or deny its use.
- A.13. VR Referral. Contractor shall coordinate with its assigned Pre-ETS Specialist to identify Participants, as early as fourteen (14) years of age, who may need more intensive or individualized support services through the State's VR Program.
- A.14. Reporting. Contractor shall submit detailed service reports using State approved templates, monthly, to the assigned Pre-ETS Specialist, by the deadline established by the State. The service reports shall be in a file format requested by the State (Excel, Word, Adobe PDF, etc.). Any report deemed deficient by the Pre-ETS Specialist shall be rejected and returned to the Contractor. If the report is returned, the Contractor agrees to correct the report and resubmit to the Pre-ETS Specialist.
- A.15. Data Certification. When State payments to the Contractor are based on data submitted by the Contractor, the Contractor shall certify the data. The data shall be certified by one of the following: the Contractor's Chief Executive Officer, the Contractor's Chief Financial Officer, or an individual who has delegated authority to sign for, and who reports directly to the contractor's Chief Executive Officer or Chief Financial Officer. The certification shall attest, based on best

knowledge, information, and belief, as follows to the accuracy, completeness, and truthfulness of the data. The Contractor shall submit the certification concurrently with the certified data.

- A.16. Service Coordination. Contractor understands and agrees that the Pre-ETS Specialist determines where services are needed, and which services will be provided to Participants. Contractor shall follow all directives from the Pre-ETS Specialist and must involve the Pre-ETS Specialist when coordinating services with each LEA in a service area. This includes rotating Contractor staff to different Tennessee schools, within the Contractor's service area, at different times throughout the Contract Term. LEA requirements must be followed by the Contractor where applicable.
- A.17. Service Area. The Contractor shall provide Pre-ETS in the following Tennessee counties: **<SEVICE AREA COUNTY NAME(S)>**.

The Contractor agrees that the LEA retains the discretion to admit the Contractor into the school(s) and that the LEA may refuse services by the Contractor. The State shall not be responsible for Contractor admittance into school(s). The Contractor further agrees that the LEA may change service providers or cease services at any time without advance notice.

In the event an LEA requests services, the Pre-ETS Specialist will assist in coordinating efforts between the Contractor and LEA. At its sole discretion, the State may make written requests to the Contractor to expand services to new Participants or Tennessee schools within a designated service area. Contractor shall provide Pre-ETS to new Participants or Tennessee Schools within thirty (30) calendar days of receiving a written request to expand services within its service area. The Contractor agrees to coordinate any expansion effort with the State and comply with all requests and directives by the State regarding the provision of service.

- A.18. Internal Controls. The Contractor shall monitor and review all work performed; and coordinate budgeting and scheduling to assure that the Contract is completed within budget, on schedule, and in accordance with approved procedures, applicable laws, and regulations. The State is not obligated to increase the Maximum Liability under any circumstances.

Contractor shall:

- a. Establish and maintain effective internal control over this Contract that verifies the Contractor is managing the Contract in compliance with any governmental entity, statutes, rules and regulations, and the terms and conditions of the Contract. These internal controls shall comply with:
 - (1) The "[Standards for Internal Control in the Federal Government](#)" issued by the Comptroller General of the United States as it is amended from time to time; or
 - (2) The "[Internal Control Integrated Framework](#)" issued by the Committee of Sponsoring Organizations of the Treadway Commission (COSO), as it amended from time to time.
- b. Evaluate and monitor the Contractor's compliance with statutes, regulations, and the terms and conditions of this Contract.
- c. Take prompt action to become compliant with the relevant rules, statutes, regulations, or terms and conditions of this Contract when instances of noncompliance are identified including noncompliance identified in audit findings.
- d. Take reasonable measures to safeguard protected Personally Identifiable Information and other information the State designates as sensitive consistent with any applicable governmental entity and tribal law regarding privacy and obligations of confidentiality.
- e. Establish a process of supervisory review and signoff of work performed under this Contract to establish separation of duties and appropriate oversight.

- A.19. Standard Operating Procedures. The Contractor shall establish and maintain standard operating procedures for managing and reporting data related to the provision of services under this Contract, the handling of Personally Identifiable Information, performance of obligations, and record keeping. The procedures must specify the time frame for the reconciliation of report data, the method for inputting and reviewing units of service, and the persons responsible in the performance of duties under this Contract. The Contractor shall train its employees according to the standard operating procedures. All necessary copies of the standard operating procedure shall be provided to the Contractor's employees. The State reserves the right to review said standard operating procedures and the implementation thereof.
- A.20. WIOA Section 511. The Contractor shall refrain from entering into an arrangement with an entity holding a special wage certificate under section 14(c) of the Fair Labor Standards Act for the purpose of operating a program under which a Student with a Disability is engaged in work at a subminimum wage. The Contractor agrees to adhere to the documentation requirements under Section 511 of the WIOA for students with disabilities seeking subminimum wage employment.
- A.21. Work Product. The Contractor shall submit all products and materials developed through the Contract to the State for pre-approval prior to use under this Contract.
- A.22. Background Checks. At no additional cost to the State throughout the Contract Term, the Contractor shall comply with Tenn. Comp. R. & Regs.1240-08-03-.05 Background Checks for Vocational Rehabilitation Employees, Contractors, and Interns, and any written directive the State issues to the Contractor pertaining to background checks for staff whose duties will include unsupervised contact with persons served by VR; unsupervised access to the funds, personal property, or Personal Identification Information of persons served by VR; and those whose duties will include direct responsibility for such individuals.
- A.23. Charges to Service Participants Prohibited. The Contractor shall not collect any amount in the form of fees or reimbursements from the Participants of any service provided pursuant to this Contract.
- A.24. Warranty. Contractor represents and warrants that the term of the warranty ("Warranty Period") shall be the greater of the Term of this Contract or any other warranty generally offered by Contractor, its suppliers, or manufacturers to customers of its goods or services. The goods or services provided under this Contract shall conform to the terms and conditions of this Contract throughout the Warranty Period. Any nonconformance of the goods or services to the terms and conditions of this Contract shall constitute a "Defect" and shall be considered "Defective." If Contractor receives notice of a Defect during the Warranty Period, then Contractor shall correct the Defect, at no additional charge.

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

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

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

- A.25. 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 October 1, 2023 (“Effective Date”) and ending on September 30, 2025 (“Term”). The State shall have no obligation for goods delivered or services provided by the Contractor prior to the Effective Date.

C. PAYMENT TERMS AND CONDITIONS:

C.1. Maximum Liability. In no event shall the maximum liability of the State under this Contract exceed **Written Dollar Amount (\$Number)** (“Maximum Liability”). This Contract does not grant the Contractor any exclusive rights. The State does not guarantee that it will buy any minimum quantity of goods or services under this Contract. Subject to the terms and conditions of this Contract, the Contractor will only be paid for goods or services provided under this Contract after a purchase order is issued to Contractor by the State or as otherwise specified by this Contract.

C.2. Compensation Firm. The payment methodology in Section C.3. 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, equipment, or personnel required. The payment methodology includes all applicable taxes, fees, overhead, and all other direct and indirect costs incurred or to be incurred by the Contractor.

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

- a. The Contractor’s compensation shall be contingent upon the satisfactory provision of goods or services as set forth in Section A.
- b. The Contractor shall be compensated based upon the following payment methodology:

Goods or Services Description	Amount (per compensable increment)
Pre-Employment Transition Services	\$ 65.00 Per Participant Per Month

The Contractor shall provide the State with supporting documentation for payments under this Contract to ensure accurate data collection and financial accountability. The Contractor shall ensure this documentation permits the tracing of funds to a level of expenditures adequate to establish that such funds have not been used in violation of the restrictions and prohibitions of applicable federal and state statutes. Supporting documentation shall include attendance sheets, signed by each Participant, verifying attendance, and confirming Pre- ETS was provided without violating any state statutes pertaining to the ratio of instructor to students. Attendance sheets must coincide with the number of Instructional Units reported each month per Participant. By submitting an invoice under this Contract, the Contractor represents, warrants, and certifies that the Contractor has provided the deliverables reflected on the invoice, monthly reports, and supporting documentation. Contractor represents and warrants that any invoice submitted under this Contract does not include any cost or fee for which the Contractor or the LEA has submitted any other invoice or received any payment from the State.

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

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

been provided to the following address:

ATTN: Vocational Rehabilitation
Department of Human Services
505 Deaderick Street, 15th Floor
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: Department of Human Services, Division of Rehabilitation Services;
 - (5) Customer account number (assigned by the Contractor to the above-referenced Customer);
 - (6) Contractor name;
 - (7) Contractor Tennessee Edison registration ID number;
 - (8) Contractor contact for invoice questions (name, phone, or email);
 - (9) Contractor remittance address;
 - (10) Description of delivered goods or services provided and invoiced, including identifying information as applicable;
 - (11) Number of delivered or completed units, increments, hours, or days as applicable, of each good or service invoiced;
 - (12) Applicable payment methodology (as stipulated in Section C.3.) of each good or service invoiced;
 - (13) Amount due for each compensable unit of good or service; and
 - (14) Total amount due for the invoice period.
- b. Contractor's invoices shall:
 - (1) Only include charges for goods delivered or services provided as described in Section A and in accordance with payment terms and conditions set forth in Section C;
 - (2) Only be submitted for goods delivered or services completed and shall not include any charge for future goods to be delivered or services to be performed;
 - (3) Not include Contractor's taxes, which includes without limitation Contractor's sales and use tax, excise taxes, franchise taxes, real or personal property taxes, or income taxes; and
 - (4) Include shipping or delivery charges only as authorized in this Contract.
- c. The timeframe for payment (or any discounts) begins only when the State is in receipt of an invoice that meets the minimum requirements of this Section C.5.

- C.6. Payment of Invoice. A payment by the State shall not prejudice the State's right to object to or question any payment, invoice, or other matter. A payment by the State shall not be construed as acceptance of goods delivered, any part of the services provided, or as approval of any amount invoiced.
- C.7. Invoice Reductions. The Contractor's invoice shall be subject to reduction for amounts included in any invoice or payment that is determined by the State, on the basis of audits conducted in accordance with the terms of this Contract, to not constitute proper compensation for goods delivered or services provided.
- C.8. Deductions. The State reserves the right to deduct from amounts, which are or shall become due and payable to the Contractor under this or any contract between the Contractor and the State of Tennessee, any amounts that are or shall become due and payable to the State of Tennessee by the Contractor.

- C.9. Prerequisite Documentation. The Contractor shall not invoice the State under this Contract until the State has received the following, properly completed documentation.
- a. The Contractor shall complete, sign, and present to the State the "Authorization Agreement for Automatic Deposit Form" provided by the State. By doing so, the Contractor acknowledges and agrees that, once this form is received by the State, payments to the Contractor, under this or any other contract the Contractor has with the State of Tennessee, may be made by ACH; and
 - b. The Contractor shall complete, sign, and return to the State the State-provided W-9 form. The taxpayer identification number on the W-9 form must be the same as the Contractor's Federal Employer Identification Number or Social Security Number referenced in the Contractor's Edison registration information.

D. MANDATORY TERMS AND CONDITIONS:

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

The State:

Blake Shearer, Program Director
Department of Human Services
James K. Polk Building, 15th Floor
505 Deaderick Street
Nashville, Tennessee 37243
Email: Blake.A.Shearer@tn.gov
Telephone: (615) 350-4064

Gina Burnett, Program Coordinator
Department of Human Services
James K. Polk Building, 15th Floor
505 Deaderick Street
Nashville, Tennessee 37243
Email: Gina.Burnett@tn.gov

The Contractor:

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

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

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

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

- D.9. Nondiscrimination. The Contractor hereby agrees, warrants, and assures that no person shall be excluded from participation in, be denied benefits of, or be otherwise subjected to discrimination in the performance of this Contract or in the employment practices of the Contractor on the grounds of handicap or disability, age, race, creed, color, religion, sex, national origin, or any

other classification protected by federal or state law. The Contractor shall, upon request, show proof of nondiscrimination and shall post in conspicuous places, available to all employees and applicants, notices of nondiscrimination.

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

provision. No term or condition of this Contract shall be held to be waived, modified, or deleted except by a written amendment signed by the Parties.

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

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

- D.20. HIPAA Compliance. The State and Contractor shall comply with obligations under the Health Insurance Portability and Accountability Act of 1996 ("HIPAA"), Health Information Technology for Economic and Clinical Health ("HITECH") Act and any other relevant laws and regulations

regarding privacy (collectively the "Privacy Rules"). The obligations set forth in this Section shall survive the termination of this Contract.

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

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

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

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

duties, responsibilities, and performance under this Contract, these items shall govern in order of precedence below:

- a. any amendment to this Contract, with the latter in time controlling over any earlier amendments;
- b. this Contract with any attachments or exhibits (excluding the items listed at subsections c. through f., below), which includes Attachment A and Attachment B;
- c. any clarifications of or addenda to the Contractor's proposal seeking this Contract;
- d. the State solicitation, as may be amended, requesting responses in competition for this Contract;
- e. any technical specifications provided to proposers during the procurement process to award this Contract; and
- f. the Contractor's response seeking this Contract.

D.31. Iran Divestment Act. The requirements of Tenn. Code Ann. § 12-12-101, *et seq.*, addressing contracting with persons as defined at Tenn. Code Ann. §12-12-103(5) that engage in investment activities in Iran, shall be a material provision of this Contract. The Contractor certifies, under penalty of perjury, that to the best of its knowledge and belief that it is not on the list created pursuant to Tenn. Code Ann. § 12-12-106.

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

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

Contractor shall provide the State a certificate of insurance ("COI") evidencing the coverages and amounts specified in this Section. The COI must be on a form approved by the TDCI (standard ACORD form preferred). The COI must list each insurer's National Association of Insurance Commissioners (NAIC) number and be signed by an authorized representative of the insurer. The COI must list the State of Tennessee – CPO Risk Manager, 312 Rosa L. Parks Ave., 3rd floor Central Procurement Office, Nashville, TN 37243 as the certificate holder. Contractor shall

provide the COI ten (10) business days prior to the Effective Date and again thirty (30) calendar days before renewal or replacement of coverage. Contractor shall provide the State evidence that all subcontractors maintain the required insurance or that subcontractors are included under the Contractor's policy. At any time, the State may require Contractor to provide a valid COI. The Parties agree that failure to provide evidence of insurance coverage as required is a material breach of this Contract. If Contractor self-insures, then a COI will not be required to prove coverage. Instead Contractor shall provide a certificate of self-insurance or a letter, on Contractor's letterhead, detailing its coverage, policy amounts, and proof of funds to reasonably cover such expenses. The State reserves the right to require complete copies of all required insurance policies, including endorsements required by these specifications, at any time.

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

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

a. Commercial General Liability ("CGL") Insurance

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

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

b. Workers' Compensation and Employer Liability Insurance

- 1) For Contractors statutorily required to carry workers' compensation and employer liability insurance, the Contractor shall maintain:
 - i. Workers' compensation in an amount not less than one million dollars (\$1,000,000) including employer liability of one million dollars (\$1,000,000) per accident for bodily injury by accident, one million dollars (\$1,000,000) policy limit by disease, and one million dollars (\$1,000,000) per employee for bodily injury by disease.
- 2) If the Contractor certifies that it is exempt from the requirements of Tenn. Code Ann. §§ 50-6-101 – 103, then the Contractor shall furnish written proof of such exemption for one or more of the following reasons:

- i. The Contractor employs fewer than five (5) employees;
 - ii. The Contractor is a sole proprietor;
 - iii. The Contractor is in the construction business or trades with no employees;
 - iv. The Contractor is in the coal mining industry with no employees;
 - v. The Contractor is a state or local government; or
 - vi. The Contractor self-insures its workers' compensation and is in compliance with the TDCI rules and Tenn. Code Ann. § 50-6-405.
- c. Automobile Liability Insurance
- 1) The Contractor shall maintain automobile liability insurance which shall cover liability arising out of any automobile (including owned, leased, hired, and non-owned automobiles).
 - 2) The Contractor shall maintain bodily injury/property damage with a limit not less than one million dollars (\$1,000,000) per occurrence or combined single limit.
- d. Technology Professional Liability (Errors & Omissions)/Cyber Liability Insurance
- 1) The Contractor shall maintain technology professional liability (errors & omissions)/cyber liability insurance appropriate to the Contractor's profession in an amount not less than one million dollars (\$1,000,000.00) per occurrence or claim and one million dollars (\$1,000,000.00) annual aggregate, covering all acts, claims, errors, omissions, negligence, infringement of intellectual property (including copyright, patent and trade secret); network security and privacy risks, including but not limited to unauthorized access, failure of security, information theft, damage to destruction of or alteration of electronic information, breach of privacy perils, wrongful disclosure and release of private information, collection, or other negligence in the handling of confidential information, and including coverage for related regulatory fines, defenses, and penalties.
 - 2) Such coverage shall include data breach response expenses, in an amount not less than one million dollars (\$1,000,000) and payable whether incurred by the State or Contractor, including but not limited to consumer notification, whether or not required by law, computer forensic investigations, public relations and crisis management firm fees, credit file or identity monitoring or remediation services and expenses in the performance of services for the State or on behalf of the State hereunder.
- e. Crime Insurance
- 1) The Contractor shall maintain crime insurance, which shall be written on a "loss sustained form" or "loss discovered form" providing coverage for third party fidelity, including cyber theft and extortion. The policy must allow for reporting of circumstances or incidents that may give rise to future claims, include an extended reporting period of no less than two (2) years with respect to events which occurred but were not reported during the term of the policy, and not contain a condition requiring an arrest or conviction.
 - 2) Any crime insurance policy shall have a limit not less than one million dollars (\$1,000,000) per claim and one million dollars (\$1,000,000) in the aggregate. Any crime insurance policy shall contain a Social Engineering Fraud

Endorsement with a limit of not less than two hundred and fifty thousand dollars (\$250,000). This insurance may be written on a claims-made basis, but in the event that coverage is cancelled or non-renewed, the Contractor shall purchase an extended reporting or "tail coverage" of at least two (2) years after the Term.

f. Sexual Abuse and Molestation Insurance

- i. The Contractor shall maintain sexual abuse and molestation insurance written on either an occurrence or a claims-made basis. This insurance may be written on a claims-made basis, but in the event that coverage is cancelled or non-renewed, the Contractor shall purchase an extended reporting or "tail coverage" of at least two (2) years after the Term.
- ii. Any sexual abuse and molestation insurance policy shall have a limit not less than one million dollars (\$1,000,000) per occurrence and two million dollars (\$2,000,000) in the aggregate.
- iii. In lieu of this coverage requirement, the Contractor may provide an Educator's Legal Liability (ELL) insurance policy endorsed to provide equivalent coverages as indicated in this provision.

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

D.34. Confidentiality of Records. Strict standards of confidentiality of records and information shall be maintained in accordance with applicable state and federal law. All material and information, regardless of form, medium or method of communication, provided to the Contractor by the State or acquired by the Contractor on behalf of the State that is regarded as confidential under state or federal law shall be regarded as "Confidential Information." Nothing in this Section shall permit Contractor to disclose any Confidential Information, regardless of whether it has been disclosed or made available to the Contractor due to intentional or negligent actions or inactions of agents of the State or third parties. Confidential Information shall not be disclosed except as required or permitted under state or federal law. Contractor shall take all necessary steps to safeguard the confidentiality of such material or information in conformance with applicable state and federal law.

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

D.35. Boycott of Israel. The Contractor certifies that it is not currently engaged in, and covenants that it will not, for the duration of the Contract, engage in a Boycott of Israel, as that term is defined in Tenn. Code Ann. § 12-4-119.

D.36. 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. Contractor Commitment to Diversity. The Contractor shall comply with and make reasonable business efforts to exceed the commitment to diversity represented by the Contractor's Response to Solicitation 34570-80024 (Attachment B) and resulting in this Contract.

The Contractor shall assist the State in monitoring the Contractor's performance of this commitment by providing, as requested, a monthly report of participation in the performance of this Contract by small business enterprises and businesses owned by minorities, women, service-disabled veterans, and persons with disabilities. Such reports shall be provided to the State of Tennessee Governor's Office of Diversity Business Enterprise in the TN Diversity Software available online at:
<https://tn.diversitysoftware.com/FrontEnd/StartCertification.asp?TN=tn&XID=9810>.

- E.3. 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.4. Family Educational Rights and Privacy Act & Tennessee Data Accessibility, Transparency and Accountability Act. The Contractor shall comply with the Family Educational Rights and Privacy Act of 1974 (20 U.S.C. 1232(g)) and its accompanying regulations (34 C.F.R. § 99) ("FERPA"). The Contractor warrants that the Contractor is familiar with FERPA requirements and that it will comply with these requirements in the performance of its duties under this Contract. The Contractor agrees to cooperate with the State, as required by FERPA, in the performance of its duties under this Contract. The Contractor agrees to maintain the confidentiality of all education records and student information. The Contractor shall only use such records and information for the exclusive purpose of performing its duties under this Contract. The obligations set forth in this Section shall survive the termination of this Contract.

The Contractor shall also comply with Tenn. Code Ann. § 49-1-701, *et seq.*, known as the "Data Accessibility, Transparency and Accountability Act," and any accompanying administrative rules or regulations (collectively "DATAA"). The Contractor agrees to maintain the confidentiality of all records containing student and de-identified data, as this term is defined in DATAA, in any databases, to which the State has granted the Contractor access, and to only use such data for the exclusive purpose of performing its duties under this Contract.

Any instances of unauthorized disclosure of data containing personally identifiable information in violation of FERPA or DATAA that come to the attention of the Contractor shall be reported to the State within twenty-four (24) hours. Contractor shall indemnify and hold harmless State, its

employees, agents and representatives, from and against any and all claims, liabilities, losses, or causes of action that may arise, accrue, or result to any person or entity that is injured or damaged as a result of Contractor's failure to comply with this section.

E.5. 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.6. 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.7. 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.8. 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.9. 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.10. 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.11. Federal Funding Accountability and Transparency Act (FFATA). This Contract requires the Contractor to provide supplies or services that are funded in whole or in part by federal funds that are subject to FFATA. The Contractor is responsible for ensuring that all applicable requirements, including but not limited to those set forth herein, of FFATA are met and that the Contractor provides information to the State as required.

The Contractor shall comply with the following:

a. Reporting of Total Compensation of the Contractor's Executives.

- (1) The Contractor shall report the names and total compensation of each of its five most highly compensated executives for the Contractor's preceding completed fiscal year, if in the Contractor's preceding fiscal year it received:
 - i. 80 percent or more of the Contractor's annual gross revenues from federal procurement contracts and federal financial assistance subject to the Transparency Act, as defined at 2 CFR 170.320 (and subawards); and
 - ii. \$25,000,000 or more in annual gross revenues from federal procurement contracts (and subcontracts), and federal financial assistance subject to the Transparency Act (and subawards); and
 - iii. The public does not have access to information about the compensation of the executives through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(a), 78o(d)) or section 6104 of the Internal Revenue Code of 1986. (To determine if the public has access to the compensation information, see the U.S. Securities and Exchange Commission total compensation filings at <http://www.sec.gov/answers/execomp.htm>.)

As defined in 2 C.F.R. § 170.315, "Executive" means officers, managing partners, or any other employees in management positions.

- (2) Total compensation means the cash and noncash dollar value earned by the executive during the Contractor's preceding fiscal year and includes the following (for more information see 17 C.F.R. § 229.402(c)(2)):
 - i. Salary and bonus.
 - ii. Awards of stock, stock options, and stock appreciation rights. Use the dollar amount recognized for financial statement reporting purposes with respect to the fiscal year in accordance with the Statement of Financial Accounting Standards No. 123 (Revised 2004) (FAS 123R), Shared Based Payments.
 - iii. Earnings for services under non-equity incentive plans. This does not include group life, health, hospitalization or medical reimbursement plans that do not discriminate in favor of executives, and are available generally to all salaried employees.
 - iv. Change in pension value. This is the change in present value of defined benefit and actuarial pension plans.
 - v. Above-market earnings on deferred compensation which is not tax qualified.
 - vi. Other compensation, if the aggregate value of all such other compensation (e.g. severance, termination payments, value of life insurance paid on behalf of the employee, perquisites or property) for the executive exceeds \$10,000.

b. The Contractor must report executive total compensation described above to the State by the end of the month during which this Contract is awarded.

- c. If this Contract is amended to extend the Term, the Contractor must submit an executive total compensation report to the State by the end of the month in which the term extension becomes effective.
- d. The Contractor will obtain a Data Universal Numbering System (DUNS) number and maintain its DUNS number for the term of this Contract. More information about obtaining a DUNS Number can be found at: <http://fedgov.dnb.com/webform/>

The Contractor's failure to comply with the above requirements is a material breach of this Contract for which the State may terminate this Contract for cause. The State will not be obligated to pay any outstanding invoice received from the Contractor unless and until the Contractor is in full compliance with the above requirements.

IN WITNESS WHEREOF,

CONTRACTOR LEGAL ENTITY NAME:

CONTRACTOR SIGNATURE

DATE

PRINTED NAME AND TITLE OF CONTRACTOR SIGNATORY (above)

DEPARTMENT OF HUMAN SERVICES:

CLARENCE H. CARTER, COMMISSIONER

DATE

ATTACHMENT A

ATTESTATION RE PERSONNEL USED IN CONTRACT PERFORMANCE

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

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

CONTRACTOR SIGNATURE

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

PRINTED NAME AND TITLE OF SIGNATORY

DATE OF ATTESTATION