



STATE OF TENNESSEE
DEPARTMENT OF FINANCE & ADMINISTRATION, BENEFITS ADMINISTRATION

**REQUEST FOR PROPOSALS #31786-00169
AMENDMENT #TWO
FOR DECISION SUPPORT TOOL**

DATE: September 21, 2022

RFP #31786-00169 IS AMENDED AS FOLLOWS:

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

EVENT	TIME (central time zone)	DATE
1. RFP Issued		July 20, 2022
2. Disability Accommodation Request Deadline	2:00 p.m.	July 26, 2022
3. Pre-response Conference	11:30 a.m.	July 27, 2022
4. Notice of Intent to Respond Deadline	2:00 p.m.	July 28, 2022
5. Written "Questions & Comments" Deadline	2:00 p.m.	August 3, 2022
6. State Response to Written "Questions & Comments"		August 26, 2022
7. Written "Questions & Comments" Deadline ROUND 2 *NOTE: Vendors may submit no more than five (5) questions to the State in the 2nd round of Written Questions and Comments.	2:00 p.m.	September 2, 2022
8. State Response to Written "Questions & Comments" ROUND 2		September 21, 2022
9. Response Deadline	2:00 p.m.	September 30, 2022
10. State Completion of Technical Response Evaluations		October 24, 2022
11. State Schedules Respondent Oral Presentation		October 26-28, 2022
12. Respondent Oral Presentation	9 a.m. - 3:30 p.m.	November 15-18, 2022
13. State Opening & Scoring of Cost Proposals	2:00 p.m.	November 21, 2022

14. State Notice of Intent to Award Released <u>and</u> RFP Files Opened for Public Inspection	2:00 p.m.	December 9, 2022
15. End of Open File Period		December 19, 2022
16. State sends contract to Contractor for signature		December 20, 2022
17. Contractor Signature Deadline	2:00 p.m.	January 3, 2023

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

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

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Attachment 6.2 #A.6.	1.	Would the State accept a reference letter from our bank or tax return information in lieu of a formal letter of credit/guarantee?	No, a reference letter is a professional opinion of a person's or organization's skills and abilities, written by someone who is familiar with their work, character and reputation.
RFP B.15	2.	Is Diversity Registration a requirement to bidding, or alternative to something else?	Diversity Registration or Certification for the awarded proposer and possible subcontractors is not required. However, RFP Attachment 6.2, at Section B.15 provides an opportunity for Respondents to provide diversity related information. This section is included as part of the General Qualifications & Experience Items section that has an overall potential point value of 15 points, that will be evaluated. Please visit the Governor's Office of Diversity Business Enterprises website for more information about the State's initiatives and programs: https://www.tn.gov/general-services/procurement/central-procurement-office--cpo-/go-dbe.html
RFP B.15.b	3.	Do we have to give ALL contracts by diverse businesses or a sampling?	There are no minimum or maximum requirements for Item B.15. This is an

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			opportunity for the Respondents to share their diversity related information.
Attachment 6.3 Cost Proposal	4.	Can two cost proposals be submitted? Similar economics on both, but with different services cost setup?	No. The State has set forth the cost proposal we want respondents to bid costs. Refer to RFP 3.1.2.
A. Scope	5.	Vendor will need to discuss several areas that do not precisely match its current processes.	Any discussions need to be done through the two rounds of Questions and Comments portion of the RFP process.
Contract section A.13 and Attachment 6.3 Cost Proposal	6.	Would the State be open to Professional Services (A.13) at reduced or no cost but offset in the PMPM with preset number of hours offered. Allows for a normalized flat budget.	The State does not agree.
A.15.g	7.	<p>Comment: Vendor will allow input but not prior approval here.</p> <p>Contract language: The State shall have the right to approve or disapprove the Contractor's key personnel assigned to this Contract, approve, or disapprove any proposed changes in key staff or to require the removal or assignment of any key Contractor employee or subcontractor personnel found unacceptable by the State at any time during the Term, without exception.</p>	The State does not agree.
A.18.a	8.	<p>Comment: Dates to be mutually agreed upon by the parties prior to contract execution.</p> <p>Contract language: The Contractor is responsible for implementing the DSS during the implementation period commencing with the Effective Date and through all identified dates in Contract Section A.19.</p>	The State does not agree. The dates are what the State intends for implementation. During the implementation kickoff if there are reasons for modifying the dates, the Contractor may submit those to the State. The State reserves the right to approve or reflect those changes.
D.20	9.	<p>For the following reasons, Contractor requests that the State incorporate the changes below into D.20- Hold Harmless</p> <p>Contractor will indemnify for third party claims, State can bring a first party claim through a contract breach action; claims must arise out of Contractor's breach of the contract—Contractor</p>	In looking at the <i>Pro Forma</i> contract, this referenced section is D.19 instead of D.20.

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		<p>should we not be responsible for claims caused by State or third parties.</p> <p>D.20. Hold Harmless. The Contractor agrees to indemnify and hold harmless the State of Tennessee as well as its officers, agents, and employees from and against any and all third party claims and pay any damages, liabilities, losses ("Damages"), 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 in breach of this Contract on the part of the Contractor, its employees, or any person acting for or on its or their behalf relating to this Contract. The Contractor further agrees it shall be liable for the reasonable cost of attorneys for the State to enforce the terms of this Contract.</p> <p>In the event of any suit or claim, the Parties shall give each other immediate prompt notice and provide all necessary assistance to respond. The failure of the State to give notice shall only relieve the Contractor of its obligations under this Section to the extent that the Contractor can demonstrate actual prejudice arising from the failure to give notice. This Section shall not grant the Contractor, through its attorneys, the right to represent the State in any legal matter, as the right to represent the State is governed by Tenn. Code Ann. § 8-6-106.</p>	<p>The State will not agree to this revision. The State is a sovereign organization and cannot provide indemnification of any claims.</p> <p>The change from the word "immediate" to "prompt" is acceptable to the State. See amendment item #6 below.</p>
D.32.e.1	10.	<p>See Contract term D.32.e.1 comment regarding policy language.</p> <p>This is not a typical piece of this policy.</p> <p>Technology Professional Liability (Errors & Omissions)/Cyber Liability Insurance</p> <p>1) The Contractor shall maintain technology professional liability (errors & omissions)/cyber liability insurance appropriate to the Contractor's profession in an amount not less than ten million dollars (\$10,000,000) per occurrence or claim and ten million dollars (\$10,000,000) annual aggregate, covering all acts, claims, errors, omissions, negligence, infringement of intellectual property (including copyright, patent and trade secret); network security and privacy risks, including but not limited to unauthorized access, failure of security, information theft, damage to destruction of or alteration of electronic information, breach of privacy perils, wrongful disclosure and release of private information,</p>	<p>The State agrees. See amendment item #7</p>

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		collection, or other negligence in the handling of confidential information, and including coverage for related regulatory fines, defenses, and penalties.	
Contract section D.33	11.	Can you elaborate on the expectation for Contractor remitting sales tax? Based on the code, is the interpretation that the Contractor is expected to remit potential sales tax in lieu of the State, who would be the potential customer? Is the State tax exempt?	<p>The expectation is that 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.</p> <p>The State does qualify for the Government Exemption if certain conditions are met; however, in general, Contractors owe sales or use tax on the purchase price of the materials even when contracted by tax exempt agencies. https://revenue.support.tn.gov/hc/en-us/articles/360058171112-SUT-21-Sales-and-Use-Tax-for-Contractors-Overview-</p> <p>Please note that under Contract section C.6.b. the Contractor's Invoices should not include Contractor's taxes on invoices submitted to the State.</p> <p>Please see the Department of Revenue Sales and Use Tax Guide for more information: https://www.tn.gov/content/dam/tn/revenue/documents/taxguides/salesanduse.pdf</p>
D.33	12.	<p>We request that the State incorporate the below noted changes into D.33 Insurance in order reflect Contractor's policies.</p> <p>D.33. Insurance. Contractor shall maintain insurance coverage as specified in this Section. The State and Contractor may mutually agree reserves the right to amend or add require additional insurance coverage, coverage</p>	<p>In looking at the <i>Pro Forma</i> contract, this referenced section is D.32 instead of D.33.</p> <p>The State will not agree to the proposed revisions.</p>

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	<p>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- / VIII or better by A.M. Best. Commercial General Liability and Automobile Liability Insurance 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), crime, umbrella, and technology professional liability (errors and omissions) insurance. All policies must contain an endorsement for a waiver of subrogation in favor of the State with the exception of workers' compensation (employer liability), crime, umbrella, and technology errors and omissions insurance. 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 or expand any liability the Contractor has assumed under this Contract including any indemnification or hold harmless requirements.</p> <p>To achieve the required coverage amounts, a combination of an otherwise deficient specific policy and an umbrella policy with an aggregate meeting or exceeding the required coverage amounts is acceptable. For example: If the required policy limit under this Contract is for two million dollars (\$2,000,000) in coverage, acceptable coverage would include a specific policy covering one million dollars (\$1,000,000) combined with an umbrella policy for an additional one million dollars (\$1,000,000). If the deficient underlying policy is for a coverage area without aggregate limits (generally Automobile Liability and Employers' Liability Accident), Contractor shall provide a copy of the certificate of insurance for umbrella insurance policy documents to ensure that no aggregate limit</p>	<p>These requirements as required by the State insurance carrier and cannot be changed or modified.</p> <p>The Contractor is obliged to provide a current COI 10 days prior to the Effective Date and again 30 days before renewal or replacement of coverage. In the event of a claim or lawsuit filed against the State, the State must be</p>

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	<p>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.</p> <p>Contractor shall provide the State a certificate of insurance ("COI") evidencing the coverages and amounts specified in this Section. The COI must be on a form approved by the TDCI (standard ACORD form preferred). The COI must list each insurer's National Association of Insurance Commissioners (NAIC) number and be signed by an authorized representative of the insurer. The COI must list the State of Tennessee – CPO Risk Manager, 312 Rosa L. Parks Ave., 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 insurance coverages of the types and in the amounts customary for businesses of similar size and in accordance with industry practice 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.</p> <p>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 COIs for complete copies of all required insurance policies, including endorsements required by these specifications, at any time.</p> <p>The State agrees that it shall give written notice to the Contractor as soon as practicable after the State becomes aware of any claim asserted or made against the State, but in no event later than thirty (30) calendar days after the State becomes</p>	<p>able to obtain a copy of all insurance policies.</p> <p>The State will not agree to these revisions. The State's insurance carrier requires this provision and cannot be changed</p> <p>The State will not agree to this revision.</p> <p>The State will not agree to this revision.</p>

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	<p>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.</p> <p>§ 8-6-106.</p> <p>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.</p> <p>a. Commercial General Liability (“CGL”) Insurance</p> <p>1) The Contractor shall maintain CGL, which shall be written on an ISO Form CG 00 01 occurrence form (or a substitute form providing equivalent coverage) and shall cover liability arising from property damage, premises and operations products and completed operations, bodily injury, personal and advertising injury, and liability assumed under an insured contract (including the tort liability of another assumed in a business contract).</p> <p>The Contractor shall maintain single limits not less than one million dollars (\$1,000,000) per occurrence. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this policy or location of occurrence or the general aggregate limit shall be twice the required occurrence limit.</p> <p>b. Workers’ Compensation and Employer Liability Insurance</p> <p>1) For Contractors statutorily required to carry workers’ compensation and employer liability insurance, the Contractor shall maintain:</p>	<p>The State will not agree to this revision. The Contractor will be providing consulting and professional services to the State so this insurance requirement cannot be deleted.</p>

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	<p>i. Workers' compensation in an amount not less than one million dollars (\$1,000,000) including employer liability of one million dollars (\$1,000,000) per accident for bodily injury by accident, one million dollars (\$1,000,000) policy limit by disease, and one million dollars (\$1,000,000) per employee for bodily injury by disease.</p> <p>2) If the Contractor certifies that it is exempt from the requirements of Tenn. Code Ann. §§ 50-6-101 – 103, then the Contractor shall furnish written proof of such exemption for one or more of the following reasons:</p> <p>i. The Contractor employs fewer than five (5) employees;</p> <p>ii. The Contractor is a sole proprietor;</p> <p>iii. The Contractor is in the construction business or trades with no employees;</p> <p>iv. The Contractor is in the coal mining industry with no employees;</p> <p>v. The Contractor is a state or local government; or</p> <p>vi. The Contractor self-insures its workers' compensation and is in compliance with the TDCI rules and Tenn. Code Ann. § 50-6-405.</p> <p>c. Automobile Liability Insurance</p> <p>1) The Contractor shall maintain automobile liability insurance which shall cover liability arising out of any automobile (including owned, leased, hired, and non- owned automobiles).</p> <p>2) The Contractor shall maintain bodily injury/property damage with a limit not less than one million dollars (\$1,000,000) per occurrence or combined single limit.</p> <p>d. Professional Liability Insurance</p> <p>1) Professional liability insurance shall be written on an occurrence basis or on a claims-made basis. If this coverage is written on a claims-made basis, then:</p> <p>vii. The retroactive date must be shown, and must be on or before the earlier of the Effective Date of the Contract or the beginning of Contract work or provision of goods and services;</p> <p>viii. Insurance must be maintained and evidence of insurance must be provided for at</p>	<p>The State will not agree to this revision.</p>

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	<p>least five (5) full years from the date of the final Contract payment; and</p> <p>ix. If coverage is canceled or non-renewed, and not replaced with another claims-made policy form with a retroactive date on or prior to the Contract Effective Date, the Contractor must purchase "extended reporting" or "tail coverage" for a minimum of five (5) full years from the date of the final Contract payment.</p> <p>2) Any professional liability insurance policy shall have a limit not less than one million dollars (\$1,000,000) per claim and two million dollars (\$2,000,000) in the aggregate; and</p> <p>3) If the Contract involves the provision of services by medical professionals, a policy limit not less than three million (\$3,000,000) per claim and three million dollars (\$3,000,000) in the aggregate for medical malpractice insurance.</p> <p>d. Technology Professional Liability (Errors & Omissions, which includes network security) /Cyber Liability Insurance</p> <p>1) The Contractor shall maintain technology professional liability (errors & omissions, which includes network security,)cyber liability insurance appropriate to the Contractor's profession in an amount not less than ten million dollars (\$10,000,000) per occurrence or claim and ten million dollars (\$10,000,000) annual aggregate, covering all acts, claims, errors, omissions, negligence, infringement of intellectual property (including copyright, patent and trade secret); network security and privacy risks, including but not limited to unauthorized access, failure of security, information theft, damage to destruction of or alteration of electronic information, breach of privacy perils, wrongful disclosure and release of private information, collection, or other negligence in the handling of confidential information, and including coverage for related regulatory fines, defenses, and penalties.</p> <p>2) Such coverage shall include data breach response expenses, in an amount not less than ten million dollars (\$10,000,000) and payable whether incurred by the State or Contractor, including but not limited to consumer notification, whether or not required by law, computer forensic investigations, public relations and crisis management firm fees, credit file or identity</p>	<p>The State will accept the changes in the description of the cyber liability policy provided the policy contains the coverage requirements for all acts, claims, errors, omissions, and negligence, as specified by the State. See amendment item #7 below.</p>

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		<p>monitoring or remediation services and expenses in the performance of services for the State or on behalf of the State hereunder.</p> <p>f. Crime Insurance</p> <p>1) The Contractor shall maintain crime insurance, which shall be written on a “loss sustained form” or “loss discovered form” providing coverage for third party fidelity, including cyber theft and extortion. The policy must allow for reporting of circumstances or incidents that may give rise to future claims, include an extended reporting period of no less than two (2) years with respect to events which occurred but were not reported during the term of the policy, and not contain a condition requiring an arrest or conviction.</p> <p>2) Any crime insurance policy shall have a limit not less than one million dollars (\$1,000,000) per claim and one million dollars (\$1,000,000) in the aggregate. Any crime insurance policy shall contain a Social Engineering Fraud Endorsement with a limit of not less than two hundred and fifty thousand dollars (\$250,000). This insurance may be written on a claims-made basis, but in the event that coverage is cancelled or non-renewed, the Contractor shall purchase an extended reporting or “tail coverage” of at least two (2) years after the Term.</p>	
E.3	13.	<p>We request the State incorporate the below changes into E.3 Software License Warranty to ensure accurate reference to the solution being provided.</p> <p>Contractor will provide the State with a third-party license agreement, which will govern the State's rights to use such third-party software provided under this Contract in the course of the State's business and purposes.</p> <p>E.3 Contractor grants a license to the State to use all COTS software provided under this Contract in accordance with the terms of the applicable license agreements.</p>	<p>See RFP section 3.3.2, the State will not accept any license agreements. See amendment item #4</p>

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E.7	14.	<p>Comment: The specific damages and measurements here to be mutually agreed to by the parties prior to execution of the contract.</p> <p>Contract language: <u>Liquidated Damages.</u> If the Contractor fails to perform in accordance with any term or provision of this contract, only provides partial performance of any term or provision of the Contract, violates any warranty, or any act prohibited or restricted by the Contract occurs, (“Liquidated Damages Event”), the State may assess damages on Contractor (“Liquidated Damages”). The State shall notify the Contractor of amounts to be assessed as Liquidated Damages. The Parties agree that due to the complicated nature of the Contractor’s obligations under this Contract it would be difficult to specifically designate a monetary amount for Contractor’s failure to fulfill its obligations regarding the Liquidated Damages Event as these amounts are likely to be uncertain and not easily proven. Contractor has carefully reviewed the Liquidated Damages contained in Attachment B and agrees that these amounts represent a reasonable relationship between the amount and what might reasonably be expected in the event of a Liquidated Damages Event, and are a reasonable estimate of the damages that would occur from a Liquidated Damages Event. The Parties agree that the Liquidated Damages represent solely the damages and injuries sustained by the State in losing the benefit of the bargain with Contractor and do not include any injury or damage sustained by a third party. The Contractor agrees that the Liquidated Damages are in addition to any amounts Contractor may owe the State pursuant to the indemnity provision or any other sections of this Contract.</p>	<p>The State does not agree. The liquidated damages are listed in <i>Pro Forma</i> Contract Attachment B for respondent comments during the two rounds of Questions and Comments periods of the RFP process.</p>
E.8	15.	<p>See contract term E.8 comment regarding added language.</p> <p>Language updated to specify the privacy office.</p>	

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		<p>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’s privacy office . 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.</p>	<p>The State agrees. See amendment item #8 below.</p>
E.8	16.	<p>Contractor proposes the changes below for E.8 Personally Identifiable Information for the following reasons.</p> <p>Contractor needs time to investigate any potential disclosure first; Any costs associated with credit monitoring or notice Contractor would be responsible for shall be subject to the limitation of liability and a result of Contractor’s breach of the contract and not other reasons for disclosure (for example, State or third party is the cause).</p> <p>E.8. 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</p>	<p>The State agrees to some of the changes. See amendment item #8 below.</p>

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	<p>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, as approved by the State, 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. In accordance with the timeframe for audits listed in Contract Section D.11 and in consultation with the State, 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.</p> <p>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 seventy-two (72) 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.</p> <p>Subject to the limitation of liability set forth in D.18 “Limitation of Contractor’s Liability” and to the extent the Unauthorized Disclosure is due to</p>	

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	<p>Contractor's breach of the Agreement, 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. Subject to the limitation of liability set forth in D.19 "Limitation of Contractor's Liability" and to the extent the Unauthorized Disclosure is due to Contractor's breach of the Agreement, 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.</p>	
E.9.e	<p>17. See contract term E.9.e regarding language</p> <p>These reports are reviewed by our Relationship Managers to ensure proper controls are in place. We have determined that information contained within the subcontractor Service Organization Control (SOC) reports is confidential information as defined in applicable non-disclosure agreements and therefore we are prohibited from disclosing any information regarding the subcontractor SOC reports.</p> <p>The audit controls are designed to cover all of our business and are created in conjunction with our external auditing team. The controls are not externally determined and since they are applicable to all business.</p> <p>The Contractor and any Subcontractor used by the Contractor to host State data, including data center contractors, shall be subject to an annual engagement by a CPA firm in accordance with the standards of the American Institute of Certified Public Accountants ("AICPA") for a System and Organization Controls for service organizations ("SOC") 2 Type II audit. The State shall approve the SOC audit control objectives shall include all five trust services principles. The Contractor shall provide the State with the Contractor's and Subcontractor's annual audit report within 30 days from when the CPA firm provides the audit report to the Contractor or Subcontractor in addition to periodic bridge reports as requested by the State, see Contract Attachment C, #6.</p>	<p>The State will not agree to these revisions.</p>

RFP SECTION		QUESTION / COMMENT	STATE RESPONSE
		<p>The Contractor shall submit corrective action plans to the State for any issues included in the audit report within 30 days after the CPA firm provides the audit report to the Contractor and Subcontractor.</p> <p>If the scope of the most recent SOC audit report does not include all of the current State fiscal year, upon request from the State, the Contractor must provide to the State a letter from the Contractor or Subcontractor stating whether the Contractor or Subcontractor made any material changes to their control environment since the prior audit and, if so, whether the changes, in the opinion of the Contractor or Subcontractor, would negatively affect the auditor's opinion in the most recent audit report.</p> <p>No additional funding shall be allocated for these audits as they are included in the Maximum Liability of this Contract.</p>	
E.10	18.	<p>Contractor proposes the changes below for E.10, Intellectual Property Indemnity for the following reasons.</p> <p>The Contractor is in the best position to defend an infringement claim and to adequately do so, would require the State to provide notice and any information needed and to cooperate in that defense, including any mitigation efforts. In addition, there are certain claims Contractor would not be able to defend. And lastly, Contractor should only be on the hook for damages approved by it in a settlement (or finally awarded by a court)- the State should not make a settlement without Contractor's approval.</p> <p>E.10. Intellectual Property Indemnity. The Contractor agrees to indemnify and hold harmless the State of Tennessee as well as its officers, agents, and employees from and against any and all third party claims or suits which may be brought against the State concerning or arising out of any claim of an alleged patent, copyright, trade secret or other registered intellectual property infringement. In any such claim or action brought against the State, the Contractor shall defend and pay out of pocket costs, fees, and expenses, incurred by Contractor in defense of</p>	The State will not agree to these revisions.

RFP SECTION		QUESTION / COMMENT	STATE RESPONSE
		<p>the claim, and pay damages, judgments, penalties and fines to satisfy and indemnify the State to the third party for the amount of any settlement approved by Contractor or final court judgment, and the Contractor shall be responsible for all legal or other fees or expenses incurred by the State arising from any such claim. The State shall give the Contractor: (i) prompt written notice of any such claim or suit, however, the failure of the State to give such notice shall only relieve Contractor of its obligations under this Section to the extent Contractor can demonstrate actual prejudice arising from the State's failure to give notice; (ii) supplying information reasonably requested by Contractor; and (iii) tendering to Contractor the right to control, and reasonably cooperating in, the defense and settlement, including mitigation efforts. This Section shall not grant the Contractor, through its attorneys, the right to represent the State of Tennessee in any legal matter, as provided in Tenn. Code Ann. § 8-6-106. Contractor has no responsibility for claims based, in whole or part, on non-Contractor products, items not provided by Contractor, or any violation of law or third party rights caused by State's content, materials, designs, specifications, or use of a non-current version or release of a Contractor product when an infringement claim could have been avoided by using a current version or release.</p>	
Contract Attachment B	19.	<p>Comment: Vendor will discuss and agree upon applicable liquidated damages and SLA measurements with the State prior to execution of an agreement Liquidated damages and SLAs to be mutually agreed upon in good faith with the State.</p>	The State does not agree.

3. Delete RFP # 31786-00169, in its entirety, and replace it with RFP # 31786-00169, Release # 3, attached to this amendment. Revisions of the original RFP document are emphasized within the new release. Any sentence or paragraph containing revised or new text is highlighted.

4. 3.3. Response & Respondent Prohibitions

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

3.3.2. A Respondent shall not include in its response, or after contract award, any end-user license agreement, manufacturer's terms and conditions, service guide, clickwrap agreement, shrinkwrap agreement, online terms and conditions, or other terms and conditions that supplement, modify, or contradict the terms set forth in the pro forma contract

- 3.3.3.** A response must not restrict the rights of the State or otherwise qualify either the offer to deliver goods or provide services as required by this RFP or the Cost Proposal. If a response restricts the rights of the State or otherwise qualifies either the offer to deliver goods or provide services as required by this RFP or the Cost Proposal, the State, at its sole discretion, may determine the response to be a non-responsive counteroffer and reject it.
- 3.3.4.** A response must not propose alternative goods or services (*i.e.*, offer services different from those requested and required by this RFP) unless expressly requested in this RFP. The State may consider a response of alternative goods or services to be non-responsive and reject it.
- 3.3.5.** A Cost Proposal must be prepared and arrived at independently and must not involve any collusion between Respondents. The State will reject any Cost Proposal that involves collusion, consultation, communication, or agreement between Respondents. Regardless of the time of detection, the State will consider any such actions to be grounds for response rejection or contract termination.
- 3.3.6.** A Respondent must not provide, for consideration in this RFP process or subsequent contract negotiations, any information that the Respondent knew or should have known was materially incorrect. If the State determines that a Respondent has provided such incorrect information, the State will deem the Response non-responsive and reject it.
- 3.3.7.** A Respondent must not submit more than one Technical Response and one Cost Proposal in response to this RFP, except as expressly requested by the State in this RFP. If a Respondent submits more than one Technical Response or more than one Cost Proposal, the State will deem all of the responses non-responsive and reject them.
- 3.3.8.** A Respondent must not submit a response as a prime contractor while also permitting one or more other Respondents to offer the Respondent as a subcontractor in their own responses. Such may result in the disqualification of all Respondents knowingly involved. This restriction does not, however, prohibit different Respondents from offering the same subcontractor as a part of their responses (provided that the subcontractor does not also submit a response as a prime contractor).
- 3.3.9.** 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 RFP:
- 3.3.9.1 An individual shall be deemed a State employee until such time as all compensation for salary, termination pay, and annual leave has been paid;
- 3.3.9.2 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
- 3.3.9.3 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
- 3.3.10** This RFP is also subject to Tenn. Code Ann. § 12-4-101—105.

5. Add the following as RFP Section B.19 (any sentence or paragraph containing revised or new text is highlighted):

	B.19.	<p>Provide up to five (5) customer references from individuals who are not current or former State employees for projects similar to the goods or services sought under this RFP and which represent:</p> <ul style="list-style-type: none"> ▪ two (2) accounts Respondent currently services that are similar in size to the State; and ▪ three (3) completed projects. <p>References from at least three (3) different individuals are required to satisfy the requirements above, e.g., an individual may provide a reference about a completed project and another reference about a currently serviced account. The standard reference questionnaire, which <u>must</u> be used and completed, is provided at RFP Attachment 6.4. References that are not completed as required may be deemed non-responsive and may not be considered.</p> <p>The Respondent will be <u>solely</u> responsible for obtaining fully completed reference questionnaires and ensuring they are e-mailed to the solicitation coordinator or including them in the sealed Technical Response.</p> <p>NOTES:</p> <ul style="list-style-type: none"> ▪ The State will not accept late references or references submitted by any means other than the two which is described above, and each reference questionnaire submitted must be completed as required. ▪ The State will not review more than the number of required references indicated above. ▪ While the State will base its reference check on the contents of the reference e-mails or sealed reference envelopes included in the Technical Response package, the State reserves the right to confirm and clarify information detailed in the completed reference questionnaires and may consider clarification responses in the evaluation of references. <p>The State is under <u>no</u> obligation to clarify any reference information.</p>
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6. Delete pro forma contract section D.19 in its entirety and insert the following in its place (any sentence or paragraph containing revised or new text is highlighted):

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

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

7. Delete pro forma contract section D.32.e(1) in its entirety and insert the following in its place (any sentence or paragraph containing revised or new text is highlighted):

- e. Technology (Errors & Omissions, which includes network security) Insurance
 - 1) The Contractor shall maintain technology (errors & omissions, which includes network security) insurance appropriate to the Contractor's profession in an

amount not less than ten million dollars (\$10,000,000) per occurrence or claim and ten million dollars (\$10,000,000) annual aggregate, covering all acts, claims, errors, omissions, negligence, 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.

8. E.8. 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. In accordance with the timeframe for audits listed in Contract Section D.11 and in consultation with the State, 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 **seventy-two (72)** hours after the Unauthorized Disclosure has come to the attention of **Contractor's privacy office**. 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.