



STATE OF TENNESSEE  
**SOLICITATION # 31701-03028**  
**PROFESSIONAL SERVICES SOLICITATION FOR**  
**ONE PLUS DIALING – InterLATA, Interstate, & International**  
**AMENDMENT # 1**

December 11, 2009

**THE SUBJECT PROFESSIONAL SERVICE SOLICITATION (PSS) IS HEREBY AMENDED AS FOLLOWS.**

**1. The following PSS Schedule of Events updates or confirms scheduled PSS dates.**

EVENT	TIME	DATE	UPDATED / CONFIRMED
1. State Issues Solicitation		November 18, 2009	CONFIRMED
2. WRITTEN COMMENTS DEADLINE		November 30, 2009	CONFIRMED
3. State's Response To Written Comments		December 11, 2009	CONFIRMED
4. RESPONSE DEADLINE	2:00 p.m.	December 18, 2009	CONFIRMED
5. State Identifies Responsive & Responsible Solicitation Responses		January 4, 2010	CONFIRMED
6. State Identifies the Best, Responsive & Responsible Cost Offer		January 5, 2010	CONFIRMED
7. State Releases Award Notification	2:00 p.m.	January 7, 2010	CONFIRMED
8. Contract Signing		January 20, 2010	CONFIRMED
9. Contract Signature Deadline	2:00 p.m.	January 27, 2010	CONFIRMED

**2. The following State responses to the questions detailed shall amend or clarify this PSS accordingly.** (NOTE: Any restatement of PSS text in the Question/Comment column below shall NOT be construed to change the actual wording of the PSS document.)

QUESTION/COMMENT	STATE RESPONSE
1) [VENDOR NAME REDACTED] would like to [a] request minutes, both switched and dedicated and [b] locations for the aforementioned rfp.	[a] The State has modified Attachment 3 – Cost Offer for this solicitation to include “Usage Estimate Minutes (Per Year).” See the attached Solicitation #31701-03028, Release 2, Attachment 3, Cost Offer.  [b] All locations are switched except Nashville, Tennessee. See also the response to this Amendment # 1, Item 3), below.
2) Will there be average number of minutes per month for InterLATA Dedicated and Switched, Interstate Dedicated and Switched and Canada Dedicated and Switched given to base our per minute rate on?	See response to this Amendment # 1, Item 1), above.

QUESTION/COMMENT	STATE RESPONSE
<p>3) Do you have an estimate on how many locations would require dedicated access via T1 or a list of addresses and telephone numbers that would possibly warrant that service?</p>	<p>As stated in Contract Section A.3.a, the only probable location at this time is the Nashville Centrex, which is located at 2nd Avenue and Church Street, Nashville, Tennessee. The numbers involved are the entire exchanges of 741, 253, and 532; all within the 615 area code. There will probably be other locations in the future, but they are not identified at this time.</p>
<p>4) [a], [b], and [c] [W]e would like to submit this ProForma Contract with the changes we have marked in red to be considered. [See attached Exhibit 1 – Vendor’s Red-Lined Contract.]</p> <p>[d] [“Vendor’s Red-Lined Contract,” Section C.3 includes the question: (WHAT IS THE PAYMENT SCHEDULE?)]</p> <p>[e] [In the “Vendor’s Red-Lined Contract,” under Section C.9, in the paragraph labeled “Payments,” vendor suggests language that reads, in part: “Payment is due within 30 days after the date of the invoice . . . .”]</p>	<p>Please refer to PSS #31701-03028, Release 2, Section 2, and PSS Attachment 2, Statement of Certifications and Assurances, Items 1 and 2. As indicated therein, the State does not intend to negotiate terms within the <i>pro forma</i> Contract.</p> <p>However, the State has reviewed the attached “red-lined” contract (labeled “Exhibit 1 – Vendor’s Red-Lined Contract”) and identified areas where the State will agree to revise the <i>pro forma</i> Contract.</p> <p>NOTE: <u>Do not confuse the vendor’s red-lined contract with the State’s pro forma Contract that appears in the attached Solicitation #31701-03028, Release 2.</u> The red-lined version is attached for information purposes only and does <b>not</b> mean or imply that the State is accepting the suggested changes.</p> <p>The following revisions have been incorporated into an amended <i>pro forma</i> Contract, which is contained within the attached Solicitation #31701-03028, Release 2, Attachment 1. This is the contract that the State intends to execute with the successful proposer. The State does not intend to make any other changes to the <i>pro forma</i> Contract.</p> <p>[a] Section D.5. Acceptable language has been added as the second paragraph of D.5.</p> <p>[b] Section D.16. Language has been modified.</p> <p>[c] Section E.6.a.(1). Liability insurance reduced to \$500,000.</p> <p>[d] For clarification purposes, the State is amending the <i>pro forma</i> Contract to add a paragraph specifying that the Contractor may invoice the State on a monthly basis. Please see the attached Solicitation #31701-03028, Release 2, Attachment 1, <i>pro forma</i> Contract, Section C.3.h.</p> <p>In addition, the State provides the following response to comment [e]:</p> <p>[e] The State does not accept the proposed language. However, note that TCA 12-4-701, et seq. sets certain statutory requirements on the State regarding prompt payment of the State’s contractors.</p>

3. **Delete PSS 31701-03028 in its entirety and replace the document with PSS 31701-03028, Release 2, attached hereto.** (NOTE: ALL PSS document revisions are emphasized as follows. Any sentence or paragraph reflecting either revised or new text is highlighted in yellow. The location of any text that is deleted from the PSS and NOT replaced in the new release will be identified by the words, “**TEXT DELETED**” inserted in bold red caps.)



STATE OF TENNESSEE  
DEPARTMENT OF FINANCE AND ADMINISTRATION

SOLICITATION # 31701-03028, RELEASE 2

PROFESSIONAL SERVICE SOLICITATION FOR  
ONE PLUS (1+) DIALING – **InterLATA, Interstate, & International**

1. **INTRODUCTION**

The state intends to award a contract for statewide long distance calling services (1+ dialing) – **InterLATA, Interstate, & International**.

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

The *Pro Forma* Contract (Solicitation Attachment 1) represents the contract document that the contractor selected by the state must sign.

3. **PROCUREMENT SCHEDULE**

The state reserves the right, at its sole discretion, to adjust the procurement schedule as necessary. The following table represents the best estimate of the schedule that will be followed.

EVENT	TIME (central time)	DATE
1. State Issues Solicitation		November 18, 2009
2. WRITTEN COMMENTS DEADLINE		November 30, 2009
3. State's Response To Written Comments		December 11, 2009
4. RESPONSE DEADLINE	2:00 p.m.	December 18, 2009
5. State Identifies Responsive & Responsible Solicitation Responses		January 4, 2010
6. State Identifies the Best, Responsive & Responsible Cost Offer		January 5, 2010
7. State Releases Award Notification	2:00 p.m.	January 7, 2010
8. Contract Signing		January 20, 2010
9. Contractor Signature Deadline	2:00 p.m.	January 27, 2010
<b>The state reserves the right, at its sole discretion, to amend or cancel this solicitation at any time.</b>		

3.a. **WRITTEN COMMENTS**

Each Offeror must carefully review this solicitation and all attachments, including but not limited to the *Pro Forma* contract, for comments, questions, defects, objections, or any other matter requiring clarification or correction (collectively called "comments"). Comments concerning procurement objections must be made in writing and received by the Procurement Coordinator identified in Section 5 no later than the Written Comments Deadline detailed in Section 3 above.

4. **RESPONSE REQUIREMENTS**

An offer in response to this solicitation must consist of two parts, *Qualifications Evidence* (including any supporting documentation) and *Cost Offer*, exactly as specified below.

- 4.1. **Qualifications Evidence.** The Qualification Evidence and supporting documentation must detail responses or provide documentation as required to address each of the following requirements (of the potential contractor or potential contractor's employees as applicable):
- a. Detail the name, e-mail address, mailing address, telephone number, and facsimile number of the contact person regarding the offer.
  - b. Submit a *Statement of Certifications and Assurances* document (Solicitation Attachment 2) completed and signed by an individual empowered to bind the Offeror to the provisions of this solicitation and any resulting contract. The document must be signed without exception or qualification.
  - c. Provide a statement, based upon reasonable inquiry, of whether the Offeror or any individual who shall perform work under a contract resulting from this solicitation has a possible conflict of interest (e.g., employment by the State of Tennessee) and, if so, the nature of that conflict.
  - d. Provide a statement confirming that the Offeror can provide all the long distance services required in the Scope of Services.

- 4.2. **Cost Offer.** The Cost Offer must be in the form of a completed, exact copy of the *Cost Offer* document (Attachment 3).

**DO NOT LEAVE AN OFFERED COST CELL "BLANK."** The State shall deem a *Cost Offer* with a "blank" cell as non-responsive and shall reject it.

The Proposed Rate Per Minute for each Cost Item Description must be a single rate. **DO NOT PROPOSE MORE THAN ONE RATE OR A RANGE OF RATES for each Offered Cost.**

The *Qualifications Evidence* must not include any pricing or cost information. If any pricing or cost information amounts of any type (even pricing relating to other projects) are included in any part of the *Qualifications Evidence*, the State will deem the offer to be non-responsive and reject it.

**NOTICE: The Cost Offer must incorporate ALL costs for services under the contract for the total contract period, and it must record the proposed price of the subject service exactly as required by the Cost Offer document and must NOT record any other rates, amounts, or information.**

**5. RESPONSE DELIVERY**

No later than the response deadline detailed in procurement schedule above, a potential contractor must deliver to the state ALL documentation required for both the *Qualifications Evidence* and the *Cost Offer* components of an offer in response to this solicitation. It must be delivered to:

Travis Johnson, Procurement Coordinator  
State of Tennessee  
Department of Finance and Administration  
Wm R. Snodgrass Tennessee Tower, 17<sup>th</sup> Floor  
312 Rosa L. Parks Avenue  
Nashville, TN 37243-1102  
Phone: 615-741-5727  
Email: [Travis.Johnson@tn.gov](mailto:Travis.Johnson@tn.gov)

- 5.1 An Offeror must submit the original *Qualifications Evidence* and *Cost Offer* components and copies as specified below:
- a. One (1) original *Qualifications Evidence* paper document labeled:  
**"PSS # 31701-03028 QUALIFICATIONS EVIDENCE ORIGINAL"**  
and four (4) paper copies of the *Qualifications Evidence* labeled:

**“PSS # 31701-03028 QUALIFICATIONS EVIDENCE COPY”**

- b. One (1) original *Cost Offer* paper document labeled:

**“PSS # 31701-03028 COST OFFER ORIGINAL”**

- 5.2. An Offeror must separate, seal, package, and label the documents for delivery as follows:

- a. The *Qualifications Evidence* original document and copies must be placed in a sealed package that is clearly labeled:

**“DO NOT OPEN... PSS # 31701-03028 QUALIFICATIONS EVIDENCE FROM [OFFEROR LEGAL ENTITY NAME]”**

- b. The *Cost Offer* original document must be placed in a separate, sealed package that is clearly labeled:

**“DO NOT OPEN... PSS # 31701-03028 COST OFFER FROM [OFFEROR LEGAL ENTITY NAME]”**

The separately, sealed *Qualifications Evidence* and *Cost Offer* components may be enclosed in a larger package for mailing or delivery, provided that the outermost package is clearly labeled:

**“PSS # 31701-03028 SEALED QUALIFICATIONS EVIDENCE & SEALED COST OFFER FROM [OFFEROR LEGAL ENTITY NAME]”**

**6. EVALUATION PROCESS**

A team of at least three procuring agency employees will review the *Qualifications Evidence* and any supporting documentation submitted with each offer. For an offer to be acceptable and eligible for contract award, the evaluators must determine that it documents that the Offeror meets minimum qualifications and requirements specified by the solicitation and is, at least, minimally acceptable as a contractor for the subject services. The procurement coordinator will review the *Cost Offer* submitted by each Offeror deemed acceptable for contract award by evaluators to assess whether it complies, without qualification, with solicitation instructions. The procurement coordinator will identify the responsive, responsible *Cost Offer* indicating the lowest cost to the state. The procuring agency will award the contract to the individual or entity making said offer indicating the lowest cost to the state.

**7. GENERAL INFORMATION**

- 7.1. **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 disability, age, race, color, religion, sex, national origin, or any other classification protected by federal, Tennessee state constitutional, or statutory law. The contractor pursuant to this solicitation shall, upon request, show proof of such nondiscrimination and shall post in conspicuous places, available to all employees and applicants, notices of nondiscrimination.

- 7.2. **Conflict of Interest.** For the purposes of applying these requirements, the state will deem an individual to be an employee or official of the State of Tennessee until such time as all compensation for salary, termination pay, and annual leave has been paid. This solicitation shall not result in a contract with:
- an individual who is, or within the past six months has been, an employee or official of the State of Tennessee;
  - a company, corporation, or any other contracting entity in which an ownership of two percent (2%) or more is held by an individual who is, or within the past six months has been, an employee or official of the State of Tennessee (this will not apply either to financial interests that have been placed into a “blind trust” arrangement pursuant to which the employee does not have knowledge of the retention or disposition of such interests or to the ownership of publicly traded stocks or bonds where such

ownership constitutes less than 2% of the total outstanding amount of the stocks or bonds of the issuing entity); or,

- a company, corporation, or any other contracting entity which employs an individual who is, or within the past six months has been, an employee or official of the State of Tennessee in a position that would allow the direct or indirect use or disclosure of information, which was obtained through or in connection with his or her employment and not made available to the general public, for the purpose of furthering the private interest or personal profit of any person.

7.3. **Disclosure of Response 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 the Procurement Schedule), the full contents and associated documents submitted in response to this solicitation will be open for review by the public. By submitting a response to this solicitation, a potential contractor acknowledges and accepts that the full contents and associated documents submitted in response to this solicitation will become open to public inspection.

**SOLICITATION # 31701-03028, RELEASE 2  
ATTACHMENT 1 – PRO FORMA CONTRACT**

**CONTRACT  
BETWEEN THE STATE OF TENNESSEE,  
DEPARTMENT OF FINANCE AND ADMINISTRATION  
AND  
CONTRACTOR NAME**

This Contract, by and between the State of Tennessee, Department of Finance and Administration, hereinafter referred to as the "State" and **CONTRACTOR LEGAL ENTITY NAME**, hereinafter referred to as the "Contractor," is for the provision of long distance calling services (one plus dialing) – **InterLATA, Interstate, and International**, as further defined in the "SCOPE OF SERVICES."

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 Federal Employer Identification or Social Security Number: **ID NUMBER**

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

**A. SCOPE OF SERVICES:**

- A.1. The Contractor shall provide all service and deliverables as required, described, and detailed by this Scope of Services and shall meet all service and delivery timelines specified in the Scope of Services section or elsewhere in this Contract.
- A.2. The Contractor shall provide long distance calling services (one plus dialing) for the following types:
- a. calls between LATAs where any portion of the LATA is within the state of Tennessee (InterLATA)
  - b. Interstate
  - c. Canada
  - d. Mexico
  - e. International Locations (other than Canada or Mexico)
- A.3. The Contractor may provide long distance calling services by two (2) methods of access, Dedicated Access and Switched Access.
- a. Dedicated Access is defined as long distance calls that originate from the telephone numbers assigned or allocated to the State, **that are within a LATA, where any portion of that LATA is within the state of Tennessee**, via a t1.5 or other broadband facility. The Contractor may provide Dedicated Access in locations mutually agreeable to the State and the Contractor. Currently, Dedicated Access will be probable in Nashville, where the access from the Contractor's point of presence (POP) will be terminated into AT&T's Centrex common block. The State may in the future, with agreement of the Contractor, install Dedicated Access at other locations in addition to Nashville.
  - b. Switched Access is defined as long distance calls that originate from the telephone numbers assigned or allocated to the State, **that are within a LATA, where any portion of that LATA is within the state of Tennessee**, over the public switched network. The Contractor shall provide Switched Access where Dedicated Access is not mutually agreed upon by the State and the Contractor.

- c. The Contractor shall provide sufficient capacity to assure a P.01 grade of service for Dedicated Access and Switched Access.

A.4. The Contractor shall add telephone numbers to or remove telephone numbers from the State's account within two (2) business days after written/e-mail notification from the State.

A.5. Technical Support Requirements.

- a. The Contractor shall provide technical support including, but not limited to, troubleshooting service problems and technical advice on service implementation, suitability or other requirements. These services shall be available via telephone twenty-four (24) hours a day, seven (7) days a week, three hundred sixty-five (365) days a year. The Contractor may also be required to provide on-site technical support during Normal Business Hours.
- b. The Office for Information Resources, Data Networking and Telecommunications Division (OIR DNT) or the OIR Integrated Help Desk (OIR IHD) will contact the Contractor when technical support is required.
- c. The Contractor will be required, when necessary and directed by the State, to work directly with the State's premise/Centrex Contractor and/or local carrier to solve service problems. The Contractor may also be required to work directly with State end users.
- d. The State uses Remedy to track trouble reporting incidents and resolution of these incidents. The State may expand this system to support service ordering and tracking of long distance calling service. This expansion for ordering and tracking will be Internet based.

A.6. Outages.

- a. The State shall designate outages as being either critical or non-critical and will be the sole determinant of whether an outage is critical or non-critical.
- b. A critical outage is an interruption in service where an emergency/urgent need exists. Technical support for a critical outage must be initialized within two (2) hours after notification regardless of the day of the week/year or time of day (twenty-four (24) hours a day, seven (7) days a week, three hundred sixty-five (365) days a year). The Contractor must provide a local Nashville, TN telephone number or toll-free telephone number for reporting critical outages after Normal Business Hours and on State holidays and/or Weekends. All critical outages shall be repaired no later than twenty-four (24) hours after notification from the State.
- c. A non-critical outage is an interruption in service where an urgent need does not exist. Technical support for a non-critical outage must be initialized within twenty-four (24) hours after notification. Repairs may be scheduled or performed at the time the request is made by the State. Repairs may be accomplished, during the State's Normal Business Hours and must be completed to the satisfaction of the State.
- d. It is the Contractor's responsibility to collect the following minimum information upon receiving an outage notification from the State:
  - i. problem description
  - ii. on-site point of contact information (State end user)
  - iii. critical or non-critical outage designation

A.7. Technical Support Team.

- a. The Contractor's technical support team shall include a point of contact representative for each of the following titles. At a minimum, the contact information required will include

name, e-mail address, telephone number (local Nashville, TN number or toll-free number), mobile/cell number and fax number. The State requires a single point of contact for each title and one (1) individual must not hold more than two (2) titles.

- i. Account Service Manager
  - ii. Contractor Telephone Technical Support
  - iii. Field Service Representative
- b. The Contractor's contact information for the technical support team must be provided to the State upon contract award. If any individual from the Contractor's team leaves the Contractor's employ or is removed by the Contractor, the Contractor must provide a replacement within five (5) business days.
- c. The Contractor must provide an escalation procedure such that technical support is available as requested in Contract Section A.5.a. if any or all of the point of contact individuals are not available. Escalation procedure staff must be certified to provide services required for the Contract.

A.8. Contract Transition and Implementation.

- a. If the current Contractor changes at the beginning of this contract, the following shall apply:
- i. The Contractor shall provide a detailed plan for the transition of all current users by March 1, 2010, including the Contractor's plans for Primary Interstate Carrier (PIC) changes with minimum service outage time, equipment delivery, and scheduling.
  - ii. The State will provide the Contractor with a list of possible dedicated locations and switched telephone numbers.
  - iii. The Contractor shall provide the service of transitioning all existing services from the current contract holder at no additional cost to the State. The winning Contractor will pay any PIC change charges billed by the Local Exchange Carrier (LEC).
- b. If the Contractor is not awarded the next contract, the following shall apply:
- i. The Contractor shall provide the service of transitioning all existing services awarded from this contract to the next contract holder at no additional cost to the State.
  - ii. The Contractor shall provide services during the transition period at contract prices on a month-to-month basis until the new contract holder is in place and all cutovers are completed. The transition period shall begin no more than ninety (90) days prior to the end of this contract.

A.9. Definitions of Time.

- a. All references made to time in this contract refer to local time within the time zone of the agency location (central standard time/daylight savings time or eastern standard time/daylight savings time).
- b. Normal Business Hours (State of Tennessee) – Monday through Friday 8:00 a.m. through 4:30 p.m., except State holidays.
- c. After Normal Business Hours (State of Tennessee) – Monday through Thursday 4:31 p.m. through 7:59 a.m., except State Holidays.

- d. Weekends (State of Tennessee) – 4:31 p.m. Friday through 7:59 a.m. Monday.
- e. State Holiday (State of Tennessee) – 8:00 a.m. - 7:59 a.m. the following day.

**B. CONTRACT TERM:**

This Contract shall be effective for the period commencing on February 1, 2010 and ending on January 31, 2015. The State shall have no obligation for services rendered by the Contractor which are not performed within the specified period.

**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)**. The payment rates in Section C.3 shall constitute the entire compensation due the Contractor for the Service and all of the Contractor's obligations hereunder regardless of the difficulty, materials or equipment required. The payment rates include, but are not limited to, all applicable taxes, fees, overheads, and all other direct and indirect costs incurred or to be incurred by the Contractor.

The Contractor is not entitled to be paid the maximum liability for any period under the Contract or any extensions of the Contract for work not requested by the State. The maximum liability represents available funds for payment to the Contractor and does not guarantee payment of any such funds to the Contractor under this Contract unless the State requests work and the Contractor performs said work. In which case, the Contractor shall be paid in accordance with the payment rates detailed in Section C.3. The State is under no obligation to request work from the Contractor in any specific dollar amounts or to request any work at all from the Contractor during any period of this Contract.

C.2. Compensation Firm. The payment rates and the maximum liability of the State under this Contract are firm for the duration of the Contract and are not subject to escalation for any reason unless amended.

C.3. Payment Methodology. The Contractor shall be compensated based on the payment rates herein for units of service authorized by the State in a total amount not to exceed the Contract Maximum Liability established in Section C.1.

- a. The Contractor's compensation shall be contingent upon the satisfactory completion of units, milestones, or increments of service defined in Section A.
- b. The Contractor shall be compensated for said units, milestones, or increments of service based upon the following payment rates:

<b>Service Description</b>	<b>Year 1 Amount</b> (per compensable increment)	<b>Year 2 Amount</b> (per compensable increment)	<b>Year 3 Amount</b> (per compensable increment)	<b>Year 4 Amount</b> (per compensable increment)	<b>Year 5 Amount</b> (per compensable increment)
InterLATA Dedicated Access	\$ NUMBER per minute	\$ NUMBER per minute	\$ NUMBER per minute	\$ NUMBER per minute	\$ NUMBER per minute
InterLATA Switched Access	\$ NUMBER per minute	\$ NUMBER per minute	\$ NUMBER per minute	\$ NUMBER per minute	\$ NUMBER per minute
Interstate Dedicated Access	\$ NUMBER per minute	\$ NUMBER per minute	\$ NUMBER per minute	\$ NUMBER per minute	\$ NUMBER per minute
Interstate Switched Access	\$ NUMBER per minute	\$ NUMBER per minute	\$ NUMBER per minute	\$ NUMBER per minute	\$ NUMBER per minute

Service Description	Year 1 Amount (per compensable increment)	Year 2 Amount (per compensable increment)	Year 3 Amount (per compensable increment)	Year 4 Amount (per compensable increment)	Year 5 Amount (per compensable increment)
Canada Dedicated Access	\$ NUMBER per minute	\$ NUMBER per minute	\$ NUMBER per minute	\$ NUMBER per minute	\$ NUMBER per minute
Canada Switched Access	\$ NUMBER per minute	\$ NUMBER per minute	\$ NUMBER per minute	\$ NUMBER per minute	\$ NUMBER per minute
Mexico Dedicated Access	\$ NUMBER per minute	\$ NUMBER per minute	\$ NUMBER per minute	\$ NUMBER per minute	\$ NUMBER per minute
Mexico Switched Access	\$ NUMBER per minute	\$ NUMBER per minute	\$ NUMBER per minute	\$ NUMBER per minute	\$ NUMBER per minute
International Locations Dedicated Access	\$ NUMBER per minute	\$ NUMBER per minute	\$ NUMBER per minute	\$ NUMBER per minute	\$ NUMBER per minute
International Locations Switched Access	\$ NUMBER per minute	\$ NUMBER per minute	\$ NUMBER per minute	\$ NUMBER per minute	\$ NUMBER per minute

- c. Each call is to be billed to the nearest tenth of a minute or less. There will be no rounding up to the next whole minute.
- d. The rate per minute for Dedicated Access and Switched Access shall be all inclusive including the Universal Service Fee and the addition or removal of telephone numbers.
- e. The State shall pay no fees other than the contracted rates per minute for Switched Access.
- f. The cost of Dedicated Access will be borne by the Contractor and be included in the rate per minute. The State will pay the cost of any terminating hardware required for the termination in the Centrex or PBX. Any one time/installation or other equipment cost other than the Centrex or PBX terminating equipment will be the responsibility of the Contractor.
- g. The rate per minute for International Locations (calls using country codes) shall be a maximum rate per minute for all countries. The invoiced rate per minute may not exceed the maximum rate per minute; however, the invoiced rate per minute may be less.

**h. The Contractor shall submit invoices no more often than monthly.**

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

C.5. Invoice Requirements. The Contractor shall invoice the State only for completed increments of service and for the amount stipulated in Section C.3, above, and as required below prior to any payment.

C.5.a. Electronic Billing Requirements:

- i. The State requires three (3) CD's (1 original and 2 duplicates) (or other type of Electronic billing approved by Billing Services) to be provided as invoicing to the Department of Finance and Administration, Billing Services) by the 10th of the month at no additional charge to the State. The method of billing provided must be compatible for use with

computer equipment (hardware and software) used by the State and must be operational.

- ii. Billing Services will assist in the formatting of such Electronic invoicing to insure the proper information is in place. The Electronic invoicing shall be delivered each month in lieu of paper invoicing covering the service on the contract.
- iii. The Electronic invoicing must provide all billing information of all usage associated with each request for service. The billing information on the Electronic invoice shall be matched with the contract line commodity codes or NIGP codes used by the State.
- iv. All charges based on the appropriate line commodity code or NIGP codes shall be presented on the Electronic invoicing and billed to the appropriate Request for Service (RFS) number and/or telephone number that incurred said charges.
- v. The format of the Electronic billing must be provided to Billing Services, in writing, within thirty (30) days of award of contract. Format of the Electronic invoicing is required to be in the following billing records format for call charges. The format is not inclusive and additional fields or records may be required as determined by the State.

Format of call records must include:

- 1) Account Number
- 2) Billing Number
- 3) Call Date
- 4) Time of Call
- 5) Duration of Call
- 6) Call to City
- 7) Call to State
- 8) Call to Number
- 9) Call Charges
- 10) Commodity Code

- vi. At the bottom of the billing records, a summary record must be provided that summarizes the billing by commodity code/NIGP code and the amount billed to each commodity code/NIGP code.
- vii. Records that do not conform to the above criteria shall be rejected from the Electronic Billing received and must be credited to the State's account no later than the second consecutive month after the date of rejection.
- viii. Rejected records can be resubmitted after correction no later than sixty (60) calendar days from the date of rejection by adding to the current month's Electronic invoice. The State will not accept corrections after June 30 (the State's fiscal year end) of any year. The corrected rejected charges must be identified as being previously rejected on a prior month.
- ix. An operational sample of the Electronic Billing must be provided and approved by Billing Services as functional within ninety (90) calendar days of contract award.

C.5.b. Billing/Invoices.

- i. Invoices are to be sent to:

State of Tennessee  
Department of Finance and Administration  
Billing Services  
20th floor, WRS Tennessee Tower

312 Rosa L. Parks Avenue  
Nashville, TN 37243-1102

- ii. If at anytime the Contractor is unable to submit accurate invoice information in the required format, Billing Services may, at its sole option, refuse payment of the Vendor's invoice, or may delay payments without penalty.
- iii. All requests for credits made ten (10) calendar days or more before the close of a billing cycle must be reflected on the next invoice. If the Contractor does not include the credits requested and due on the invoice, the State will deduct a like amount from future bills.

C.5.c. Contractor Invoicing Contact.

Name: [NAME]  
Title: [TITLE]  
Address: [ADDRESS]

Telephone number: [TELEPHONE NUMBER]  
(including area code) local Nashville, TN or toll free  
Fax telephone number: [FAX TELEPHONE NUMBER]  
(including area code) local Nashville, TN or toll free  
Email address: [EMAIL ADDRESS]

- i. This information shall be updated with Billing Services, when changes in personnel occur during the contract term.

C.5.d. Billing Acceptance.

- i. Upon satisfactory completion of a ninety (90) calendar day billing acceptance period, the State shall issue written notification of billing acceptance. If the Contractor fails to gain Billing Service's acceptance within ninety (90) calendar days from contract award effective date, the State may terminate the contract.

C.5.e. Remedies.

- i. The Contractor will be imposed a penalty of One Thousand Dollars (\$1,000.00) if a readable Electronic Invoice for billing purposes is not delivered, after the initial ninety (90) day award period, by the 10th day of the following month. An additional charge of One Hundred Dollars (\$100.00) a day will be imposed on the Contractor for each additional day of the contract that the Contractor does not have a readable Electronic billing.

C.5.f. The Contractor understands and agrees that an invoice to the State under this Contract shall:

- (1) include only charges for service described in Contract Section A and in accordance with payment terms and conditions set forth in Contract Section C;
- (2) not include any future work but will only be submitted for completed service; and
- (3) not include sales tax or shipping charges.

- i. The Contractor agrees that timeframe for payment (and any discounts) begins when the State is in receipt of each invoice meeting the minimum requirements above.
- ii. The Contractor shall complete and sign a "Substitute W-9 Form" provided to the Contractor by the State. The taxpayer identification number contained in the Substitute W-9 submitted to the State shall agree to the Federal Employer Identification Number or Social Security Number referenced in this Contract for the Contractor. The Contractor shall not invoice the State for services until the State has received this completed form.

- C.5.g. The Contractor shall provide compiled traffic statistics and operational reports (usage detail reports) as required by Billing Services. The information shall be provided monthly by Electronic means approved by Billing Services at no cost to the State. The Contractor shall provide eight (8) hours of training to designated State personnel on the use of the software used to establish the Electronic information. The Contractor is required to provide support pertaining to this software via telephone during the State's normal business hours throughout the term of the contract.
- C.6. Payment of Invoice. The payment of the invoice by the State shall not prejudice the State's right to object to or question any invoice or matter in relation thereto. Such payment by the State shall neither be construed as acceptance of any part of the work or service provided nor as an approval of any of the amounts invoiced therein.
- C.7. Invoice Reductions. The Contractor's invoice shall be subject to reduction for amounts included in any invoice or payment theretofore made which are determined by the State, on the basis of audits conducted in accordance with the terms of this Contract, not to constitute proper remuneration for compensable services.
- 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 which are or shall become due and payable to the State of Tennessee by the Contractor.
- C.9. Automatic Deposits. The Contractor shall complete and sign an "Authorization Agreement for Automatic Deposit (ACH Credits) Form." This form shall be provided to the Contractor by the State. Once this form has been completed and submitted to the State by the Contractor all payments to the Contractor, under this or any other Contract the Contractor has with the State of Tennessee shall be made by Automated Clearing House (ACH). The Contractor shall not invoice the State for services until the Contractor has completed this form and submitted it to the State.

**D. STANDARD TERMS AND CONDITIONS:**

- D.1. Required Approvals. The State is not bound by this Contract until it is approved by the appropriate State officials in accordance with applicable Tennessee State laws and regulations.
- D.2. Modification and Amendment. This Contract may be modified only by a written amendment executed by all parties hereto and approved by the appropriate Tennessee State officials in accordance with applicable Tennessee State laws and regulations.
- D.3. Termination for Convenience. The State may terminate this Contract without cause for any reason. Said termination shall not be deemed a Breach of Contract by the State. The State shall give the Contractor at least thirty (30) days written notice before the effective termination date. The Contractor shall be entitled to receive compensation for satisfactory, authorized service completed as of the termination date, but in no event shall the State be liable to the Contractor for compensation for any service which has not been rendered. Upon such termination, the Contractor shall have no right to any actual general, special, incidental, consequential, or any other damages whatsoever of any description or amount.
- D.4. 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 violates any terms of this Contract, the State shall have the right to immediately terminate the Contract and withhold payments in excess of fair compensation for completed services. Notwithstanding the above, the Contractor shall not be relieved of liability to the State for damages sustained by virtue of any breach of this Contract by the Contractor.
- D.5. Subcontracting. The Contractor shall not assign this Contract or enter into a subcontract for any of the services performed under this Contract without obtaining the prior written approval of the State. If such subcontracts are approved by the State, they shall contain, at a minimum, sections

of this Contract below pertaining to "Conflicts of Interest," "Nondiscrimination," and "Records" (as identified by the section headings). Notwithstanding any use of approved subcontractors, the Contractor shall be the prime contractor and shall be responsible for all work performed.

Notwithstanding the foregoing, Contractor may, without Customer's consent but with sixty (60) days prior written notice to Customer, assign its rights and delegate its duties under this Contract to Contractor's Affiliate that controls, is controlled by, or is under common control with Contractor, or subcontract to such an Affiliate the work and services to be performed under this Contract, but Contractor will in either case remain primarily responsible to Customer for the Affiliate's failure to perform the delegated duties or the subcontracted work and services under this Contract.

- D.6. Conflicts of Interest. The Contractor warrants that no part of the total Contract 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 Contractor in connection with any work contemplated or performed relative to this Contract.
- D.7. 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 disability, age, race, color, religion, sex, national origin, or any other classification protected by Federal, Tennessee State constitutional, or statutory law. The Contractor shall, upon request, show proof of such nondiscrimination and shall post in conspicuous places, available to all employees and applicants, notices of nondiscrimination.
- D.8. Prohibition of Illegal Immigrants. The requirements of Public Acts of 2006, Chapter Number 878, of the state of Tennessee, 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 hereby attests, certifies, warrants, and assures 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, hereto, semi-annually during the period of this Contract. Such 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 period of this Contract, 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 relative to this Contract and shall not knowingly utilize the services of any subcontractor who will utilize the services of an illegal immigrant to perform work relative to this Contract. Attestations obtained from such 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. Said 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 Public Chapter 878 of 2006 for acts or omissions occurring after its effective date. This law requires the Commissioner of Finance and Administration to prohibit a contractor from contracting with, or submitting an offer, proposal, or bid to

contract with the State of Tennessee to supply goods or services for a period of one year after a contractor is discovered to have knowingly used the services of illegal immigrants during the performance of this Contract.

- e. For purposes of this Contract, "illegal immigrant" shall be defined as any person who is not either a United States citizen, a Lawful Permanent Resident, or a person whose physical presence in the United States is authorized or allowed by the federal Department of Homeland Security and who, under federal immigration laws and/or regulations, is authorized to be employed in the U.S. or is otherwise authorized to provide services under the Contract.
- D.9. Records. The Contractor shall maintain documentation for all charges under this Contract. The books, records, and documents of the Contractor, insofar as they relate to work performed or money received under this Contract, shall be maintained for a period of three (3) 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.10. Prevailing Wage Rates. All contracts for construction, erection, or demolition or to install goods or materials that involve the expenditure of any funds derived from the State require compliance with the prevailing wage laws as provided in *Tennessee Code Annotated*, Section 12-4-401 *et seq.*
- D.11. 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.12. Progress Reports. The Contractor shall submit brief, periodic, progress reports to the State as requested.
- D.13. Strict Performance. Failure by any party to this Contract to insist in any one or more cases upon 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 such 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 hereto.
- D.14. Independent Contractor. The parties hereto, in the performance of this Contract, shall not act as employees, partners, joint venturers, or associates of one another. It is expressly acknowledged by the parties hereto that such parties are independent contracting entities and that nothing in this Contract shall be construed to create an employer/employee relationship or to allow either 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 shall not be deemed or construed to be the employees or agents of the other party for any purpose whatsoever.
- The Contractor, being an independent contractor and not an employee of the State, agrees to carry adequate public liability and other appropriate forms of insurance, including adequate public liability and other appropriate forms of insurance on the Contractor's employees, and to pay all applicable taxes incident to this Contract.
- D.15. State Liability. The State shall have no liability except as specifically provided in this Contract.
- D.16. Force Majeure. The obligations of the parties to this Contract are subject to prevention by causes beyond the parties' control that could not be avoided by the exercise of due care including, but not limited to, fire, explosion, cable cuts, power blackouts, earthquake, flood, strike, embargo, labor disputes, acts of civil or military authority, terrorism, acts of God, acts of a public enemy,

natural disasters, riots, wars, epidemics, acts of regulatory or governmental agencies or any other similar cause.

- D.17. State and Federal Compliance. The Contractor shall comply with all applicable State and Federal laws and regulations in the performance of this Contract.
- D.18. Governing Law. This Contract shall be governed by and construed in accordance with the laws of the State of Tennessee. The Contractor agrees that it will be subject to the exclusive jurisdiction of the courts of the State of Tennessee in actions that may arise under this Contract. The Contractor acknowledges and agrees that any rights or claims against the State of Tennessee or its employees hereunder, and any remedies arising therefrom, shall be subject to and limited to those rights and remedies, if any, available under *Tennessee Code Annotated*, Sections 9-8-101 through 9-8-407.
- D.19. Completeness. This Contract is complete and contains the entire understanding between the parties relating to the subject matter contained herein, 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 relating hereto, whether written or oral.
- D.20. 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 hereof shall not be affected thereby and shall remain in full force and effect. To this end, the terms and conditions of this Contract are declared severable.
- D.21. Headings. Section headings of this Contract are for reference purposes only and shall not be construed as part of this Contract.

**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, these special terms and conditions shall control.
- E.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. Any such communications, regardless of method of transmission, shall be addressed to the respective party at the appropriate mailing address, facsimile number, or EMAIL address as set forth below or to that of such other party or address, as may be hereafter specified by written notice.

The State:

Mr. Roger Pelham, Director  
Data Networking and Telecommunications (DNT)  
Department of Finance and Administration  
312 Rosa L. Parks Avenue  
Nashville, TN 37243-1102  
Roger.Pelham@tn.gov  
Telephone # 615-253-5094  
FAX # 615-741-6414

The Contractor:

**NAME & TITLE OF CONTRACTOR CONTACT PERSON**  
**CONTRACTOR NAME**

ADDRESS  
EMAIL ADDRESS  
Telephone # NUMBER  
FAX # NUMBER

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

- E.3. Subject to Funds Availability. The Contract is subject to the appropriation and availability of State and/or Federal funds. In the event that the funds are not appropriated or are otherwise unavailable, the State reserves the right to terminate the Contract upon written notice to the Contractor. Said termination shall not be deemed a breach of Contract by the State. Upon receipt of the written notice, the Contractor shall cease all work associated with the Contract. Should such an event occur, the Contractor shall be entitled to compensation for all satisfactory and authorized services completed as of the termination date. Upon such termination, the Contractor shall have no right to recover from the State any actual, general, special, incidental, consequential, or any other damages whatsoever of any description or amount.
- E.4. Tennessee Consolidated Retirement System. The Contractor acknowledges and understands that, subject to statutory exceptions contained in *Tennessee Code Annotated*, Section 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 pursuant to *Tennessee Code Annotated*, Title 8, Chapter 35, Part 3 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 may be required to repay to TCRS the amount of retirement benefits the Contractor received from TCRS during the period of this Contract.
- E.5. Voluntary Buyout Program. The Contractor acknowledges and understands that, for a period of two years beginning August 16, 2008, restrictions are imposed on former state employees who received a State of Tennessee Voluntary Buyout Program (VBP) severance payment with regard to contracts with state agencies that participated in the VBP.
- a. The State will not contract with either a former state employee who received a VBP severance payment or an entity in which a former state employee who received a VBP severance payment or the spouse of such an individual holds a controlling financial interest.
  - b. The State may contract with an entity with which a former state employee who received a VBP severance payment is an employee or an independent contractor. Notwithstanding the foregoing, the Contractor understands and agrees that there may be unique business circumstances under which a return to work by a former state employee who received a VBP severance payment as an employee or an independent contractor of a State contractor would not be appropriate, and in such cases the State may refuse Contractor personnel. Inasmuch, it shall be the responsibility of the State to review Contractor personnel to identify any such issues.
  - c. With reference to either subsection a. or b. above, a contractor may submit a written request for a waiver of the VBP restrictions regarding a former state employee and a contract with a state agency that participated in the VBP. Any such request must be submitted to the State in the form of the *VBP Contracting Restriction Waiver Request* format available from the State and the Internet at: [www.state.tn.us/finance/rds/ocr/waiver.html](http://www.state.tn.us/finance/rds/ocr/waiver.html). The determination on such a request shall be at the sole discretion of the head of the state agency that is a Party to this Contract,

the Commissioner of Finance and Administration, and the Commissioner of Human Resources.

E.6. Insurance. The Contractor shall carry adequate liability and other appropriate forms of insurance.

a. The Contractor shall maintain, at minimum, the following insurance coverage:

(1) Workers' Compensation/ Employers' Liability (including all states coverage) with a limit not less than the relevant statutory amount or **five hundred thousand dollars (\$500,000)** per occurrence for employers' liability whichever is greater.

(2) Comprehensive Commercial General Liability (including personal injury & property damage, premises/operations, independent contractor, contractual liability and completed operations/products) with a bodily injury/property damage combined single limit not less than one million dollars (\$1,000,000) per occurrence and two million dollars (\$2,000,000) aggregate.

b. At any time State may require the Contractor to provide a valid Certificate of Insurance detailing Coverage Description; Insurance Company & Policy Number; Exceptions and Exclusions; Policy Effective Date; Policy Expiration Date; Limit(s) of Liability; and Name and Address of Insured. Failure to provide required evidence of insurance coverage shall be a material breach of this Contract

E.7. Limitation of Liability. The parties agree that the Contractor's liability 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 intentional torts, criminal acts, or fraudulent conduct.

**IN WITNESS WHEREOF,**

**CONTRACTOR LEGAL ENTITY NAME:**

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**CONTRACTOR SIGNATURE**

**DATE**

---

**PRINTED NAME AND TITLE OF CONTRACTOR SIGNATORY (above)**

**DEPARTMENT OF FINANCE AND ADMINISTRATION:**

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**M. D. GOETZ, JR., COMMISSIONER**

**DATE**

**ATTESTATION RE PERSONNEL USED IN CONTRACT PERFORMANCE**

<b>SUBJECT CONTRACT NUMBER:</b>	
<b>CONTRACTOR LEGAL ENTITY NAME:</b>	
<b>FEDERAL EMPLOYER IDENTIFICATION NUMBER:</b> (or Social Security 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. If said individual is not the chief executive or president, this document shall attach evidence showing the individual's authority to contractually bind the Contractor.

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**PRINTED NAME AND TITLE OF SIGNATORY**

---

**DATE OF ATTESTATION**

**SOLICITATION # 31701-03028, RELEASE 2**  
**ATTACHMENT 2 – STATEMENT OF CERTIFICATIONS AND ASSURANCES**

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

1. The Offeror will provide all services as defined in the of the solicitation's *pro forma* contract scope of services for the total contract period.
2. The Offeror accepts and agrees to all terms and conditions set out in the solicitation's *pro forma* contract.
3. The Offeror acknowledges and agrees that a contract resulting from the solicitation may incorporate, by reference, all information provided in response to the solicitation as a part of the contract.
4. The Offeror will comply with:
  - (a) the laws of the State of Tennessee;
  - (b) Title VI of the federal Civil Rights Act of 1964;
  - (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; and,
  - (e) the Americans with Disabilities Act of 1990 and the regulations issued there under by the federal government.
5. To the knowledge of the undersigned, the information detailed within the information submitted in response to the solicitation is accurate.
6. The information submitted in response to the solicitation was independently prepared, without collusion, under penalty of perjury.
7. 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 Offeror in connection with the solicitation or any resulting contract.

**By signing this Statement of Certifications and Assurances, below, the signatory also certifies legal authority to bind the Offeror to any contract awarded pursuant to the solicitation. If the signatory is not the Offeror (if an individual) or the Offeror's President or Chief Executive Officer, this document must attach evidence showing the individual's authority to bind the Offeror.**

<p><b>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</b></p>
--

**OFFEROR SIGNATURE:**

\_\_\_\_\_

**PRINTED NAME & TITLE:**

\_\_\_\_\_

**DATE:**

\_\_\_\_\_

**OFFEROR LEGAL ENTITY NAME:**

\_\_\_\_\_

**OFFEROR FEDERAL EMPLOYER IDENTIFICATION NUMBER (or SSN):**

\_\_\_\_\_

**SOLICITATION # 31701-03028, RELEASE 2  
ATTACHMENT 3 – COST OFFER**

**NOTICE: This Cost Offer MUST be completed EXACTLY as required.**

The Cost Offer, detailed below, shall indicate the proposed price for providing all services as defined in the *Pro Forma Contract Scope of Services* for the total contract period.

**DO NOT LEAVE AN OFFERED COST CELL “BLANK.”** The State shall deem a Cost Offer with a “blank” cell as non-responsive and shall reject it.

The Proposed Rate Per Minute for each Cost Item Description below must be a single rate. **DO NOT PROPOSE MORE THAN ONE RATE OR A RANGE OF RATES for each Offered Cost.**

<b>OFFEROR SIGNATURE:</b>	
<b>PRINTED NAME &amp; TITLE:</b>	
<b>DATE:</b>	
<b>OFFEROR LEGAL ENTITY NAME:</b>	

NOTE: This document must be signed, in the space above, by an individual empowered to bind the Offeror to the provisions of any contract awarded pursuant to this solicitation.

Cost Item Description	Offered Cost					State Use Only		
	Year 1 Amount (per compensable increment) (a)	Year 2 Amount (per compensable increment) (b)	Year 3 Amount (per compensable increment) (c)	Year 4 Amount (per compensable increment) (d)	Year 5 Amount (per compensable increment) (e)	Sum of Yearly Amounts (f) = (a)+(b)+(c)+(d)+(e)	Usage Estimate Minutes (Per Year) (g)	Weighted Cost (f) * (g)
InterLATA Dedicated Access	\$ per minute	\$ per minute	\$ per minute	\$ per minute	\$ per minute		4,753,000	
InterLATA Switched Access	\$ per minute	\$ per minute	\$ per minute	\$ per minute	\$ per minute		11,147,000	
Interstate Dedicated Access	\$ per minute	\$ per minute	\$ per minute	\$ per minute	\$ per minute		1,380,000	
Interstate Switched Access	\$ per minute	\$ per minute	\$ per minute	\$ per minute	\$ per minute		3,220,000	
Canada Dedicated Access	\$ per minute	\$ per minute	\$ per minute	\$ per minute	\$ per minute		2,175	

Canada Switched Access	\$ per minute	\$ per minute	\$ per minute	\$ per minute	\$ per minute		5,075	
Mexico Dedicated Access	\$ per minute	\$ per minute	\$ per minute	\$ per minute	\$ per minute		2,175	
Mexico Switched Access	\$ per minute	\$ per minute	\$ per minute	\$ per minute	\$ per minute		5,075	
International Locations Dedicated Access	\$ per minute	\$ per minute	\$ per minute	\$ per minute	\$ per minute		3,900	
International Locations Switched Access	\$ per minute	\$ per minute	\$ per minute	\$ per minute	\$ per minute		9,000	

The state will use this sum to determine the Cost Offer reflecting the lowest cost to the state. All calculations will use and result in numbers rounded to two (2) places to the right of the decimal point.

**Evaluation Cost Amount:**  
(sum of all weighted cost amounts above)

State Use – Procurement Coordinator Signature, Printed Name and Date:

# EXHIBIT 1 – VENDOR’S RED-LINED CONTRACT

## SOLICITATION # 31701-03030 ATTACHMENT 1 – PRO FORMA CONTRACT

### CONTRACT BETWEEN THE STATE OF TENNESSEE, DEPARTMENT OF FINANCE AND ADMINISTRATION AND CONTRACTOR NAME

This Contract, by and between the State of Tennessee, Department of Finance and Administration, hereinafter referred to as the “State or Customer” and [VENDOR NAME REDACTED] on behalf of itself and its affiliated operated companies, hereinafter referred to as the “Contractor [VENDOR NAME REDACTED],” is for the provision of long distance calling services(one plus dialing) - Intrastate, as further defined in the "SCOPE OF SERVICES." The Contractor is AFOR-PROFIT CORPORATION.  
Contractor Federal Employer Identification or Social Security Number: ID NUMBER  
Contractor Place of Incorporation or Organization: [LOCATION REDACTED]

#### A. SCOPE OF SERVICES:

CLARIFICATION: For the prices as quoted by [VENDOR NAME REDACTED] in its Response to the State’s Solicitation #31701-03030: Professional Service Solicitation for One Plus (1+) Dialing – Intrastate (the “RFP”) herein, [VENDOR NAME REDACTED] will provide only the items of equipment and services specifically listed in said RFP response. Work which is not shown or described in said RFP proposal will require mutual agreement/adjustment to the final configuration, subsequent pricing and implementation schedule.

The information and pricing submitted with said RFP response was made subject to change on account of any error or omission in the RFP information provided by the State, or upon further investigations by [VENDOR NAME REDACTED] as to local conditions and the exact requirements of any future order.

- A.1. The Contractor shall provide all service and deliverables as required, described, and detailed by this Scope of Services and shall meet all service and delivery timelines specified in the Scope of Services section or elsewhere in this Contract.
- A.2. The Contractor shall provide long distance calling services (one plus dialing) for calls within Local Access Transport Areas (LATA) where any portion of the LATA is within the state of Tennessee (IntraLATA). Calls within a LATA that crosses state boundaries are considered IntraLATA.
- A.3. The Contractor may provide long distance calling services by two (2) methods of access, Dedicated Access and Switched Access.
  - a. Dedicated Access is defined as long distance calls that originate from the telephone numbers assigned or allocated to the State via a t1.5 or other broadband facility. The Contractor may provide Dedicated Access in locations mutually agreeable to the State and the Contractor. Currently, Dedicated Access will be probable in Nashville, where the access from the Contractor’s point of presence (POP) will be terminated into AT&T’s Centrex common block. The State may in the future, with agreement of the Contractor, install Dedicated Access at other locations in addition to Nashville.

## **EXHIBIT 1 – VENDOR’S RED-LINED CONTRACT**

- b. Switched Access is defined as long distance calls that originate from the telephone numbers assigned or allocated to the State over the public switched network. The Contractor shall provide Switched Access where Dedicated Access is not mutually agreed upon by the State and the Contractor.
  - c. The Contractor shall provide sufficient capacity to assure a P.01 grade of service for Dedicated Access and Switched Access.
- A.4. The Contractor shall add telephone numbers to or remove telephone numbers from the State’s account within two (2) business days after written/e-mail notification from the State.
- A.5. Technical Support Requirements.
- a. The Contractor shall provide technical support including, but not limited to, troubleshooting service problems and technical advice on service implementation, suitability or other requirements. These services shall be available via telephone twenty-four (24) hours a day, seven (7) days a week, three hundred sixty-five (365) days a year. The Contractor may also be required to provide on-site technical support during Normal Business Hours.
  - b. The Office for Information Resources, Data Networking and Telecommunications Division (OIR DNT) or the OIR Integrated Help Desk (OIR IHD) will contact the Contractor when technical support is required.
  - c. The Contractor will be required, when necessary and directed by the State, to work directly with the State’s premise/Centrex Contractor and/or local carrier to solve service problems. The Contractor may also be required to work directly with State end users.
  - d. The State uses Remedy to track trouble reporting incidents and resolution of these incidents. The State may expand this system to support service ordering and tracking of long distance calling service. This expansion for ordering and tracking will be Internet based.
- A.6. Outages. CLARIFICATION: [VENDOR NAME REDACTED] will provide the Service as defined in the applicable [VENDOR NAME REDACTED] Service Guide. The Service Guide sets forth the Service features and functions, as well as any applicable service level standards. Such terms shall govern in place of terms of the Outages section of this proposed Pro Forma Contract.
- a. The State shall designate outages as being either critical or non-critical and will be the sole determinant of whether an outage is critical or non-critical.
  - b. A critical outage is an interruption in service where an emergency/urgent need exists. Technical support for a critical outage must be initialized within two (2) hours after notification regardless of the day of the week/year or time of day (twenty-four (24) hours a day, seven (7) days a week, three hundred sixty-five (365) days a year). The Contractor must provide a local Nashville, TN telephone number or toll-free telephone number

## ***EXHIBIT 1 – VENDOR’S RED-LINED CONTRACT***

for reporting critical outages after Normal Business Hours and on State holidays and/or Weekends. All critical outages shall be repaired no later than twenty-four (24) hours after notification from the State.

- c. A non-critical outage is an interruption in service where an urgent need does not exist. Technical support for a non-critical outage must be initialized within twenty-four (24) hours after notification. Repairs may be scheduled or performed at the time the request is made by the State. Repairs may be accomplished, during the State's Normal Business Hours and must be completed to the satisfaction of the State.
- d. It is the Contractor's responsibility to collect the following minimum information upon receiving an outage notification from the State:
  - i. problem description
  - ii. on-site point of contact information (State end user)
  - iii. critical or non-critical outage designation

### **A.7. Technical Support Team.**

- a. The Contractor's technical support team shall include a point of contact representative for each of the following titles. At a minimum, the contact information required will include name, e-mail address, telephone number (local Nashville, TN number or toll-free number), mobile/cell number and fax number. The State requires a single point of contact for each title and one (1) individual must not hold more than two (2) titles.
  - i. Account Service Manager
  - ii. Contractor Telephone Technical Support
  - iii. Field Service Representative
- b. The Contractor's contact information for the technical support team must be provided to the State upon contract award. If any individual from the Contractor's team leaves the Contractor's employ or is removed by the Contractor, the Contractor must provide a replacement within five (5) business days.
- c. The Contractor must provide an escalation procedure such that technical support is available as requested in Contract Section A.5.a. if any or all of the point of contact individuals are not available. Escalation procedure staff must be certified to provide services required for the Contract.

### **A.8. Contract Transition and Implementation.**

- a. If the current Contractor changes at the beginning of this contract, the following shall apply:
  - i. The Contractor shall provide a detailed plan for the transition of all current users by March 1, 2010, including the Contractor's plans for Primary Interstate Carrier (PIC) changes with minimum service outage time, equipment delivery, and scheduling.

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- ii. The State will provide the Contractor with a list of possible dedicated locations and switched telephone numbers.
- iii. The Contractor shall provide the service of transitioning all existing services from the current contract holder at no additional cost to the State. The winning Contractor will pay any PIC change charges billed by the Local Exchange Carrier (LEC).  
**Note to Account Team:** ICB Pricing Approval Required

b. If the Contractor is not awarded the next contract, the following shall apply:

- i. The Contractor shall provide the service of transitioning all existing services awarded from this contract to the next contract holder at no additional cost to the State.
- ii. The Contractor shall provide services during the transition period at contract prices on a month-to-month basis until the new contract holder is in place and all cutovers are completed. The transition period shall begin no more than ninety (90) days prior to the end of this contract.  
**Note to Account Team:** ICB Pricing Approval Required

### A.9. Definitions of Time.

- a. All references made to time in this contract refer to local time within the time zone of the agency location (central standard time/daylight savings time or eastern standard time/daylight savings time).
- b. Normal Business Hours (State of Tennessee) – Monday through Friday 8:00 a.m. through 4:30 p.m., except State holidays.
- c. After Normal Business Hours (State of Tennessee) – Monday through Thursday 4:31 p.m. through 7:59 a.m., except State Holidays.
- d. Weekends (State of Tennessee) – 4:31 p.m. Friday through 7:59 a.m. Monday.
- e. State Holiday (State of Tennessee) – 8:00 a.m. - 7:59 a.m. the following day.

### B. **CONTRACT TERM:**

This Contract shall be effective for the period commencing on February 1, 2010 and ending on January 31, 2015. The State shall have no obligation for services rendered by the Contractor which are not performed within the specified period.

**Note to Account Team:** ICB Pricing Approval Required [Note by Adam: ABN long distance terms normally run from the date of installation.]

### C. **PAYMENT TERMS AND CONDITIONS:**

C.2. Compensation Firm. The payment rates and the maximum liability of the State under this

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Contract are firm for the duration of the Contract and are not subject to escalation for any reason unless amended. CLARIFICATION: Rates specifically stated in this Contract are fixed for the length of the Contract. Rates for additional service, such as international calling or additional features, will be as set forth in the then applicable [VENDOR NAME REDACTED] Service Guide.

C.3. Payment Methodology. The Contractor shall be compensated based on the payment rates herein for units of service authorized by the State. **[WHAT IS THE PAYMENT SCHEDULE?]**

- a. The Contractor’s compensation shall be contingent upon the satisfactory completion of units, milestones, or increments of service defined in Section A.
- b. The Contractor shall be compensated for said units, milestones, or increments of service based upon the following payment rates:

<b>Service Description</b>	<b>Year 1 Amount</b> (per compensable increment)	<b>Year 2 Amount</b> (per compensable increment)	<b>Year 3 Amount</b> (per compensable increment)	<b>Year 4 Amount</b> (per compensable increment)	<b>Year 5 Amount</b> (per compensable increment)
IntraLATA Dedicated Access	\$ NUMBER per minute	\$ NUMBER per minute	\$ NUMBER per minute	\$ NUMBER per minute	\$ NUMBER per minute
IntraLATA Switched Access	\$ NUMBER per minute	\$ NUMBER per minute	\$ NUMBER per minute	\$ NUMBER per minute	\$ NUMBER per minute

- c. **Each call is to be billed to the nearest tenth of a minute or less. There will be no rounding up to the next whole minute.**
- d. **The “Rate Per Minute” for Dedicated Access and Switched Access shall be all inclusive including the Universal Service Fee and the addition or removal of telephone numbers.**
- e. The State shall pay no fees other than the contracted rates per minute for Switched Access. CLARIFICATION: Prices set forth in a Pricing Schedule are exclusive of, and the State will pay, all current and future taxes (excluding those on [VENDOR NAME REDACTED]’s net income), surcharges, recovery fees, custom clearances, duties, levies, shipping charges, and other similar charges (and any associated interest and penalties resulting from the State’s failure to timely pay such taxes or similar charges) relating to the sale, transfer of ownership, installation, license, use or provision of the services, except to the extent the State provides satisfactory proof of a valid tax exemption prior to the delivery of services. To the extent the State is required by law to withhold or deduct any applicable taxes from payments due to [VENDOR NAME REDACTED], the State will use reasonable commercial efforts to minimize any such taxes to the extent allowed by law or treaty, and the State will furnish [VENDOR NAME REDACTED] with such evidence as may be required by relevant taxing authorities to establish that such tax has been paid so that [VENDOR NAME REDACTED] may claim any applicable credit.

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- f. The cost of Dedicated Access will be borne by the Contractor and be included in the cost per minute. The State will pay the cost of any terminating hardware required for the termination in the Centrex or PBX. Any one time/installation or other equipment cost other than the Centrex or PBX terminating equipment will be the responsibility of the Contractor.

**Note to Account Team:** ICB Pricing Approval Required

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

C.5. Invoice Requirements. The Contractor shall invoice the State only for completed increments of service and for the amount stipulated in Section C.3, above, and as required below prior to any payment. **SOD #5 Non-Standard Billing Structure. Operations Approval Required.**

C.5.a. Electronic Billing Requirements:

**NOTE TO ACCOUNT TEAM:** Please ensure that we can comply with the billing requirements below. Non-Standard Billing Requirements must be approved by Billing Operations under **SOD #5 Non-Standard Billing Structure. Operations Approval Required.**

- i. The State requires three (3) CD's (1 original and 2 duplicates) (or other type of Electronic billing approved by Billing Services) to be provided as invoicing to the Department of Finance and Administration, Billing Services) by the 10th of the month at no additional charge to the State. The method of billing provided must be compatible for use with computer equipment (hardware and software) used by the State and must be operational.
- ii. Billing Services will assist in the formatting of such Electronic invoicing to insure the proper information is in place. The Electronic invoicing shall be delivered each month in lieu of paper invoicing covering the service on the contract.
- iii. The Electronic invoicing must provide all billing information of all usage associated with each request for service. The billing information on the Electronic invoice shall be matched with the contract line commodity codes or NIGP codes used by the State.
- iv. All charges based on the appropriate line commodity code or NIGP codes shall be presented on the Electronic invoicing and billed to the appropriate Request for Service (RFS) number and/or telephone number that incurred said charges.
- v. The format of the Electronic billing must be provided to Billing Services, in writing, within thirty (30) days of award of contract. Format of the Electronic invoicing is required to be in the following billing records format for call charges. The format is not inclusive and additional fields or records may be required as determined by the State.  
Format of call records must include:
  - 1) Account Number
  - 2) Billing Number
  - 3) Call Date
  - 4) Time of Call
  - 5) Duration of Call
  - 6) Call to City
  - 7) Call to State
  - 8) Call to Number
  - 9) Call Charges
  - 10) Commodity Code

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- vi. At the bottom of the billing records, a summary record must be provided that summarizes the billing by commodity code/NIGP code and the amount billed to each commodity code/NIGP code.
- vii. Records that do not conform to the above criteria shall be rejected from the Electronic Billing received and must be credited to the State's account no later than the second consecutive month after the date of rejection.
- viii. Rejected records can be resubmitted after correction no later than sixty (60) calendar days from the date of rejection by adding to the current month's Electronic invoice. **The State will not accept corrections after June 30 (the State's fiscal year end) of any year. [THIS WILL REQUIRE APPROVAL]**

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The corrected rejected charges must be identified as being previously rejected on a prior month.

- ix. An operational sample of the Electronic Billing must be provided and approved by Billing

Services as functional within ninety (90) calendar days of contract award.

### C.5.b. Billing/Invoices.

- i. Invoices are to be sent to:

State of Tennessee  
Department of Finance and Administration  
Billing Services  
20th floor, WRS Tennessee Tower  
312 Rosa L. Parks Avenue  
Nashville, TN 37243-1102

- ii.

Customer will not be required to pay charges for Services invoiced more than 6 months after close of the billing month in which the charges were incurred, except for automated or live operator assisted calls of any type. If Customer disputes a charge, Customer will provide notice to [VENDOR NAME REDACTED] specifically identifying the charges and the reason it is disputed within 6 months after the date of the affected invoice or Customer waives the right to dispute the charge (except to the extent applicable law or regulation otherwise requires). Disputed charges may be withheld, but if not paid when due, Customer will incur late payment fees as otherwise set out in this Contract; however, to the extent [VENDOR NAME REDACTED] determines the charges Customer disputed and withheld were invoiced in error, late payment fees for such charges will be reversed.

### C.5.c. Contractor Invoicing Contact.

Name: [NAME]  
Title: [TITLE]  
Address: [ADDRESS]

Telephone number: [TELEPHONE NUMBER]  
(including area code) local Nashville, TN or toll free Fax  
telephone number: [FAX TELEPHONE NUMBER]  
(including area code) local Nashville, TN or toll free  
Email address: [EMAIL ADDRESS]

- i. This information shall be updated with Billing Services, when changes in personnel occur

during the contract term.

C.5.d.

- C.5.g. The Contractor shall provide compiled traffic statistics and operational reports (usage detail reports) as required by Billing Services. The information shall be provided monthly by Electronic means approved by Billing Services at no cost to the State. The Contractor shall provide eight (8) hours of training to designated State personnel on the use of the software used to establish the Electronic information. The Contractor is required to provide support

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pertaining to this software via telephone during the State’s normal business hours throughout the term of the contract. [QUESTION FOR ACCOUNT TEAM – CAN YOU DO THIS?]

- C.6. Payment of Invoice. The payment of the invoice by the State shall not prejudice the State's right to object to or question any invoice or matter in relation thereto. Such payment by the State shall neither be construed as acceptance of any part of the work or service provided nor as an approval of any of the amounts invoiced therein.
- C.7.
- C.9. Automatic Deposits. The Contractor shall complete and sign an "Authorization Agreement for Automatic Deposit (ACH Credits) Form." This form shall be provided to the Contractor by the State. Once this form has been completed and submitted to the State by the Contractor all payments to the Contractor, under this or any other Contract the Contractor has with the State of Tennessee shall be made by Automated Clearing House (ACH). The Contractor shall not invoice the State for services until the Contractor has completed this form and submitted it to the State. [QUESTION FOR ACCOUNT TEAM – CAN WE DO THIS?]

**Pricing and Pricing Schedule Term; Terms Applicable After End of Pricing Schedule Term.** Unless a Pricing Schedule states otherwise, the prices listed in a Pricing Schedule are stabilized until the end of the Pricing Schedule Term. No promotion, credit or waiver set forth in a Service Publication will apply unless the Pricing Schedule states otherwise. At the end of a Pricing Schedule Term, Customer will have the option to either: (a) cease using the Service (which will require Customer to take all steps required by [VENDOR NAME REDACTED] to terminate the Service); or (b) continue using the Service under a month-to-month service arrangement. Unless a Pricing Schedule states otherwise, during any month-to-month service arrangement, the prices, terms and conditions in effect on the last day of the Pricing Schedule Term will continue until changed by [VENDOR NAME REDACTED] on 30 days' prior notice to Customer.

**Billing.** Unless a Pricing Schedule specifies otherwise, Customer’s obligation to pay for all Services will begin upon installation and availability of the Services to Customer. [VENDOR NAME REDACTED] will invoice Customer for the Services on a monthly basis, or otherwise as specified in the Pricing Schedule. Customer will pay [VENDOR NAME REDACTED] without deduction (except for withholding taxes as provided elsewhere in this Contract in connection with Additional Charges and Taxes), setoff (except as provided elsewhere in this Contract in connection with Delayed Billing and Disputed Charges), or delay for any reason. At Customer’s request, but subject to [VENDOR NAME REDACTED]’s consent (which may be withheld if there will be operational impediments or tax consequences), Customer’s Affiliates may be invoiced separately and [VENDOR NAME REDACTED] will accept payment from such Affiliates. Customer will be responsible for payment if Customer’s Affiliates do not pay charges in accordance with this Agreement. [VENDOR NAME REDACTED] may require Customer or its Affiliates to tender a deposit if [VENDOR NAME REDACTED] determines, in its reasonable judgment, that Customer or Customer’s Affiliates are not creditworthy.

**Payments.** Payment is due within 30 days after the date of the invoice (unless another date is specified in an applicable Tariff or Guidebook) and must refer to the invoice number. Charges must be paid in the currency specified in the invoice. Restrictive endorsements or other statements on checks are void. Customer will reimburse [VENDOR NAME REDACTED] for all costs associated with collecting delinquent or dishonored payments, including reasonable attorney’s fees. [VENDOR NAME REDACTED] may charge late payment fees (a) for Services contained in a Tariff or Guidebook, at the rate specified therein, or (b) for all other Services, at the lower of 1.5% per month (18% per annum) or the maximum rate allowed by law for overdue payments.

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### D. STANDARD TERMS AND CONDITIONS:

- D.1. Required Approvals. The State is not bound by this Contract until it is approved by the appropriate State officials in accordance with applicable Tennessee State laws and regulations.
- D.2. Modification and Amendment. This Contract may be modified only by a written amendment executed by all parties hereto and approved by the appropriate Tennessee State officials in accordance with applicable Tennessee State laws and regulations.
- D.3. \*SEE CLARIFICATION NOTE BELOW
- D.4. \* SEE CLARIFICATION NOTE BELOW

\*[VENDOR NAME REDACTED] CLARIFICATION AS TO TERMINATION: The following [VENDOR NAME REDACTED] standard terms and conditions as to “Termination” shall govern in place of the terms set out in Sections D3 and D4 of this proposed Pro Forma Contract:

### SUSPENSION AND TERMINATION

\_\_1. **Termination of Contract**. This Contract may be terminated immediately upon notice by either party if the other party becomes insolvent, ceases operations, is the subject of a bankruptcy petition, enters receivership or any state insolvency proceeding, or makes an assignment for the benefit of its creditors.

\_\_2. **Termination or Suspension of Services**. The following additional termination provisions apply:

- (a) **Fraud or Abuse**. [VENDOR NAME REDACTED] may terminate or suspend an affected Service, and if the activity implicates the entire Contract, terminate the entire Contract, immediately by providing Customer with as much advance notice as is reasonably practicable under the circumstances if Customer: (i) commits a fraud upon [VENDOR NAME REDACTED]; (ii) utilizes the Service to commit a fraud upon another party; (iii) unlawfully uses the Service; (iv) abuses or misuses [VENDOR NAME REDACTED]’s network or Service; or (v) interferes with another customer’s use of [VENDOR NAME REDACTED]’s network or services.
- (b) **Material Breach**. If either party fails to perform or observe any material term or condition of this Contract, including non-payment of charges, and such failure continues unremedied for 30 days after receipt of notice, the non-breaching party may terminate the affected Service, and if the breach implicates the entire Contract, terminate the entire Contract. If Customer is in breach, [VENDOR NAME REDACTED] may elect to suspend (and later terminate) the affected Service, and if the breach implicates the entire Contract, suspend (and later terminate) the entire Contract.
- (c) **Materially Adverse Change**. If [VENDOR NAME REDACTED] revises a Service Publication and the revision has a materially adverse impact on Customer, and [VENDOR NAME REDACTED] does not effect revisions that remedy such materially adverse impact within 30 days after notice from Customer, then Customer may, as Customer’s sole remedy, elect to terminate the affected Service Components on 30 days’ notice to [VENDOR NAME REDACTED], given not later than 90 days after Customer first learns of the revision to the Service Publication. However, a revision to a Service Publication will not be considered materially adverse to Customer if it changes prices that are not fixed (stabilized) in a Pricing Schedule, if the price change was mandated by a governmental authority, or if the change affects a charge imposed elsewhere in this Contract as an additional charge or tax.
- (d) **Internet Services**. If Customer fails to rectify a violation of the AUP within 5 days after receiving notice from [VENDOR NAME REDACTED], [VENDOR NAME REDACTED] may suspend the applicable portion of the Service. [VENDOR NAME REDACTED] has the right; however, to suspend or terminate the applicable portion of the Service immediately when: (i) [VENDOR NAME REDACTED]’s suspension or termination is in response to multiple or repeated AUP violations or complaints; (ii) [VENDOR NAME REDACTED] is acting in response to a court order or governmental notice that certain conduct must be stopped; or (iii) [VENDOR NAME REDACTED] reasonably determines: (a) that it may be exposed to sanctions, liability, prosecution, or other adverse consequences under applicable law if [VENDOR NAME REDACTED] were to allow the violation to continue; (b) that such violation may cause harm to or interfere with the integrity or normal operations or security of [VENDOR NAME REDACTED]’s network or networks with which [VENDOR NAME REDACTED] is interconnected or interfere with another customer’s use of [VENDOR NAME REDACTED] Services or the Internet; or (c) that such violation otherwise presents imminent risk of harm to [VENDOR NAME REDACTED] or [VENDOR NAME REDACTED]’s customers or their respective employees.

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- (e) **Infringing Services.** If neither of the options described in this Contract relating to remedy for Infringing Services is reasonably available, [VENDOR NAME REDACTED] may terminate the affected Service without liability other than as stated elsewhere in the Contract.
- (f) **Hazardous Materials.** If [VENDOR NAME REDACTED] encounters any Hazardous Materials at the Site where [VENDOR NAME REDACTED] is to install, maintain or provide Services, [VENDOR NAME REDACTED] may terminate the affected Service or Service Component, or suspend performance until Customer removes and remediates Hazardous Materials at Customer’s expense in accordance with applicable law.

**\_\_\_.3 Withdrawal of Services.** Notwithstanding that a Pricing Schedule may commit [VENDOR NAME REDACTED] to provide a Service to Customer for a Pricing Schedule Term, and unless applicable law or regulation mandates otherwise, [VENDOR NAME REDACTED] may discontinue providing a Service upon 12 months’ notice, or a Service Component upon 120 days’ notice, but only where [VENDOR NAME REDACTED] generally discontinues providing the Service or Service Component to similarly-situated customers.

### **\_\_\_.4 Effect of Termination.**

- (a) Termination by either party of a Service does not waive any other rights or remedies a party may have under this Contract. Termination or suspension of a Service will not affect the rights and obligations of the parties regarding any other Service.
- (b) If a Service or Service Component is terminated, Customer will pay all amounts incurred prior to the effective date of termination. If Customer terminates a Service or Service Component prior to the date Customer’s obligation to pay for Services begins as provided in this Contract, Customer will reimburse [VENDOR NAME REDACTED] for time and materials incurred prior to the effective date of termination, plus any third party charges resulting from the termination.

### **\_\_\_.5 Termination Charges.**

- (a) If Customer terminates this Contract or an affected Service or Service Component pursuant to Sections \_\_\_.1 (Termination of Contract), \_\_\_.2(b) (Material Breach), or \_\_\_.2(c) (Materially Adverse Change); [VENDOR NAME REDACTED] terminates a Service pursuant to Section \_\_\_.2(e) (Infringing Services), or [VENDOR NAME REDACTED] withdraws a Service pursuant to Section \_\_\_.3 (Withdrawal of Services), Customer will not be liable for the termination charges set forth in Section \_\_\_.5(b).
- (b) If Customer terminates a Service or Service Component other than as set forth in Section \_\_\_.5(a), or [VENDOR NAME REDACTED] terminates an affected Service or Service Component pursuant to Sections \_\_\_.1 (Termination of Contract), or \_\_\_.2(a) (Fraud or Abuse), \_\_\_.2(b) (Material Breach), \_\_\_.2(d) (Internet Services), or \_\_\_.2(f) (Hazardous Materials), Customer will pay applicable termination charges as follows: (i) if termination occurs before the end of the Minimum Payment Period, Customer will pay 50% (unless a different percentage is specified in the Pricing Schedule) of the monthly recurring charges for the terminated Service or Service Component multiplied by the months remaining in the Minimum Payment Period, plus any waived or unpaid non-recurring charges identified in the Pricing Schedule (including, but not limited to, any and all charges for failure to satisfy a Minimum Retention Period (MRP)), plus any charges incurred by [VENDOR NAME REDACTED] from a third party (e.g., not an [VENDOR NAME REDACTED] Affiliate) due to the termination, all of which will, if applicable, be applied to Customer’s MARC-Eligible Charges; and (ii) if Customer terminates a Pricing Schedule that has a MARC, Customer will pay an amount equal to 50% of the unsatisfied MARC, after applying amounts received pursuant to (i), for the balance of the Pricing Schedule Term.
- (c) The charges set forth in Section \_\_\_.5(b)(i) will not apply if a terminated Service Component is replaced with an upgraded Service Component at the same Site, but only if (i) the Minimum Payment Period and associated charge for the replacement Service Component are equal to or greater than the Minimum Payment Period and associated charge for the terminated Service Component, and (ii) the upgrade is not restricted in the applicable Service Publication.

**D.5. Subcontracting.** The Contractor shall not assign this Contract or enter into a subcontract for any of the services performed under this Contract without obtaining the prior written approval of the State. If such subcontracts are approved by the State, they shall contain, at a minimum, sections of this Contract below pertaining to "Conflicts of Interest," "Nondiscrimination," and "Records" (as identified by the section headings). Notwithstanding any use of approved

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subcontractors, the Contractor shall be the prime contractor and shall be responsible for all work performed.

CLARIFICATION: Notwithstanding the foregoing, [VENDOR NAME REDACTED] may, without Customer’s consent, assign its rights and obligations under this Contract to an [VENDOR NAME REDACTED] Affiliate that controls, is controlled by, or is under common control with [VENDOR NAME REDACTED], or subcontract to such an Affiliate or a third party work to be performed under this Contract, but [VENDOR NAME REDACTED] will in each such case remain financially responsible for the performance of such obligations.

- D.6. Conflicts of Interest. The Contractor warrants that no part of the total Contract 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 Contractor in connection with any work contemplated or performed relative to this Contract.
- D.7. 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 disability, age, race, color, religion, sex, national origin, or any other classification protected by Federal, Tennessee State constitutional, or statutory law. The Contractor shall, upon request, show proof of such nondiscrimination and shall post in conspicuous places, available to all employees and applicants, notices of nondiscrimination.
- D.8. Prohibition of Illegal Immigrants. The requirements of Public Acts of 2006, Chapter Number 878, of the state of Tennessee, 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 hereby attests, certifies, warrants, and assures 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, hereto, semi-annually during the period of this Contract. Such 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 period of this Contract, 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 relative to this Contract and shall not knowingly utilize the services of any subcontractor who will utilize the services of an illegal immigrant to perform work relative to this Contract. Attestations obtained from such 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. Said 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 Public Chapter 878 of 2006 for acts or omissions occurring after its effective date. This law requires the Commissioner of Finance and Administration

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to prohibit a contractor from contracting with, or submitting an offer, proposal, or bid to contract with the State of Tennessee to supply goods or services for a period of one year after a contractor is discovered to have knowingly used the services of illegal immigrants during the performance of this Contract.

- e. For purposes of this Contract, "illegal immigrant" shall be defined as any person who is not either a United States citizen, a Lawful Permanent Resident, or a person whose physical presence in the United States is authorized or allowed by the federal Department of Homeland Security and who, under federal immigration laws and/or regulations, is authorized to be employed in the U.S. or is otherwise authorized to provide services under the Contract.
- D.9. Records. The Contractor shall maintain documentation for all charges under this Contract. The books, records, and documents of the Contractor, insofar as they relate to work performed or money received under this Contract, shall be maintained for a period of three (3) 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. CLARIFICATION: Subject to [VENDOR NAME REDACTED]'s reasonable security requirements and not more than once every twelve 12 months Customer may at its own expense review [VENDOR NAME REDACTED]'s relevant billing records for a period not to exceed the preceding 12 months for the purpose of assessing the accuracy of [VENDOR NAME REDACTED]'s invoices to Customer. [VENDOR NAME REDACTED] may redact from the billing records provided to Customer any information that reveals the identity or confidential information of other [VENDOR NAME REDACTED] customers or other [VENDOR NAME REDACTED] confidential information that is not relevant to the purposes of this review.
- D.10. Prevailing Wage Rates. All contracts for construction, erection, or demolition or to install goods or materials that involve the expenditure of any funds derived from the State require compliance with the prevailing wage laws as provided in *Tennessee Code Annotated*, Section 12-4-401 *et seq.*
- D.11. 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.12. Progress Reports. The Contractor shall submit brief, periodic, progress reports to the State as requested.
- D.13. Strict Performance. Failure by any party to this Contract to insist in any one or more cases upon 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 such 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 hereto.
- D.14. Independent Contractor. The parties hereto, in the performance of this Contract, shall not act as employees, partners, joint venturers, or associates of one another. It is expressly acknowledged by the parties hereto that such parties are independent contracting entities and that nothing in this Contract shall be construed to create an employer/employee relationship or to allow either 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 shall not be deemed or construed to be the employees or agents of the other party for any purpose whatsoever.

The Contractor, being an independent contractor and not an employee of the State, agrees to carry adequate public liability and other appropriate forms of insurance, including adequate

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public liability and other appropriate forms of insurance on the Contractor’s employees, and to pay all applicable taxes incident to this Contract.

- D.16. Force Majeure. Except for payment of amounts due, the obligations of the parties to this Contract are subject to prevention by causes beyond the parties’ reasonable control that could not be avoided by the exercise of due care including, but not limited to, fire, explosion, cable cuts, power blackouts, earthquake, flood, strike, embargo, labor disputes, acts of civil or military authority, terrorism, acts of God, acts of a public enemy, natural disasters, riots, wars, epidemics, acts of regulatory or governmental agencies or any other similar cause.
- D.17. State and Federal Compliance. The Contractor shall comply with all applicable State and Federal laws and regulations in the performance of this Contract.
- D.18. Governing Law. This Contract shall be governed by and construed in accordance with the laws of the State of Tennessee. The Contractor agrees that it will be subject to the exclusive jurisdiction of the courts of the State of Tennessee in actions that may arise under this Contract. The Contractor acknowledges and agrees that any rights or claims against the State of Tennessee or its employees hereunder, and any remedies arising therefrom, shall be subject to and limited to those rights and remedies, if any, available under *Tennessee Code Annotated*, Sections 9-8-101 through 9-8-407.
- D.19. Completeness. This Contract is complete and contains the entire understanding between the parties relating to the subject matter contained herein, 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 relating hereto, whether written or oral.
- D.20. 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 hereof shall not be affected thereby and shall remain in full force and effect. To this end, the terms and conditions of this Contract are declared severable.
- D.21. Headings. Section headings of this Contract are for reference purposes only and shall not be construed as part of this Contract.

### **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, these special terms and conditions shall control.
- E.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. Any such communications, regardless of method of transmission, shall be addressed to the respective party at the appropriate mailing address, facsimile number, or EMAIL address as set forth below or to that of such other party or address, as may be hereafter specified by written notice.

The State:

Mr. Roger Pelham, Director  
Data Networking and Telecommunications (DNT)  
Department of Finance and Administration  
312 Rosa L. Parks Avenue  
Nashville, TN 37243-1102

## EXHIBIT 1 – VENDOR’S RED-LINED CONTRACT

Roger.Pelham@tn.gov  
Telephone # 615-253-5094  
FAX # 615-741-6414  
The Contractor:

NAME & TITLE OF CONTRACTOR CONTACT PERSON  
CONTRACTOR NAME  
ADDRESS  
EMAIL ADDRESS  
Telephone # NUMBER  
FAX # NUMBER

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

- E.3. Subject to Funds Availability. CLARIFICATION: Customer warrants that Customer has funds appropriated and available to pay all amounts due hereunder through the end of Customer’s current fiscal period. Customer further agrees to request all appropriations and funding necessary to pay for the Services for each subsequent fiscal period through the end of the applicable ordering document term. In the event Customer is unable to obtain the necessary appropriations or funding for the Services provided under a specific ordering document, Customer may terminate the ordering document without liability for the termination charges set forth in herein upon the following conditions: (i) Customer has taken all actions necessary to obtain adequate appropriations or funding; (ii) despite Customer’s best efforts funds have not been appropriated and are otherwise unavailable to pay for the Services; and (iii) Customer has negotiated in good faith with [VENDOR NAME REDACTED] to develop revised terms, an alternative payment schedule or a new ordering document to accommodate Customer’s budget. Customer must provide [VENDOR NAME REDACTED] thirty (30) days’ written notice of its intent to terminate an ordering document under this Section. Termination of an ordering document for failure to obtain necessary appropriations or funding shall be effective as of the last day for which funds were appropriated or otherwise made available. If Customer terminates an ordering document under this Section, Customer agrees as follows: (i) it will pay all amounts due for Services incurred through date of termination, and reimburse all unrecovered non-recurring charges; and (ii) it will not contract with any other provider for the same or substantially similar services or equipment for a period equal to the original ordering document term.
- E.4. Tennessee Consolidated Retirement System. The Contractor acknowledges and understands that, subject to statutory exceptions contained in *Tennessee Code Annotated*, Section 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 pursuant to *Tennessee Code Annotated*, Title 8, Chapter 35, Part 3 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 may be required to repay to TCRS the amount of retirement benefits the Contractor received from TCRS during the period of this Contract.
- E.5. Voluntary Buyout Program. The Contractor acknowledges and understands that, for a period of two years beginning August 16, 2008, restrictions are imposed on former state employees

## EXHIBIT 1 – VENDOR’S RED-LINED CONTRACT

who received a State of Tennessee Voluntary Buyout Program (VBP) severance payment with regard to contracts with state agencies that participated in the VBP.

- a. The State will not contract with either a former state employee who received a VBP severance payment or an entity in which a former state employee who received a VBP severance payment or the spouse of such an individual holds a controlling financial interest.
- b. The State may contract with an entity with which a former state employee who received a VBP severance payment is an employee or an independent contractor. Notwithstanding the foregoing, the Contractor understands and agrees that there may be unique business circumstances under which a return to work by a former state employee who received a VBP severance payment as an employee or an independent contractor of a State contractor would not be appropriate, and in such cases the State may refuse Contractor personnel. Inasmuch, it shall be the responsibility of the State to review Contractor personnel to identify any such issues.
- c. With reference to either subsection a. or b. above, a contractor may submit a written request for a waiver of the VBP restrictions regarding a former state employee and a contract with a state agency that participated in the VBP. Any such request must be submitted to the State in the form of the *VBP Contracting Restriction Waiver Request* format available from the State and the Internet at: [www.state.tn.us/finance/rds/ocr/waiver.html](http://www.state.tn.us/finance/rds/ocr/waiver.html). The determination on such a request shall be at the sole discretion of the head of the state agency that is a Party to this Contract, the Commissioner of Finance and Administration, and the Commissioner of Human Resources.

E.6. Insurance. The Contractor shall carry adequate liability and other appropriate forms of insurance.

- a. The Contractor shall maintain, at minimum, the following insurance coverage:
    - (1) Workers' Compensation/ Employers' Liability (including all states coverage) with a limit not less than the relevant statutory amount and \$500,000 per accident, \$500,000 bodily injury by disease, per employee and \$500,000 bodily injury, aggregate for employers' liability .
    - (2) Commercial General Liability (including personal injury & property damage, premises/operations, independent contractor, contractual liability and completed operations/products) with a bodily injury/property damage combined single limit not less than one million dollars (\$1,000,000) per occurrence and two million dollars (\$2,000,000) aggregate.
  - b. At any time State may require the Contractor to provide a valid Certificate of Insurance detailing Coverage Description; Insurance Company & Policy Number;; Policy Effective Date; Policy Expiration Date; Limit(s) of Liability; and Name and Address of Insured. Failure to provide required evidence of insurance coverage shall be a material breach of this Contract
- Note to Account Team:** If required, Please complete and submit the Certificate of Insurance request form to [VENDOR WEBSITE REDACTED]

## EXHIBIT 1 – VENDOR’S RED-LINED CONTRACT

E.7. Limitation of Liability. The following [VENDOR NAME REDACTED] standard terms and conditions as to “Limitation of Liability” shall govern in place of the terms set out in this Sections E7 of this proposed Pro Forma Contract:

- (a) [VENDOR NAME REDACTED]’S ENTIRE LIABILITY, AND CUSTOMER’S EXCLUSIVE REMEDY, FOR DAMAGES ARISING OUT OF MISTAKES, OMISSIONS, INTERRUPTIONS, DELAYS, ERRORS OR DEFECTS IN THE SERVICES, AND NOT CAUSED BY CUSTOMER’S NEGLIGENCE, SHALL IN NO EVENT EXCEED THE APPLICABLE CREDITS SPECIFIED IN A SERVICE PUBLICATION OR PRICING SCHEDULE, OR IF NO CREDITS ARE SPECIFIED, AN AMOUNT EQUIVALENT TO THE PROPORTIONATE CHARGE TO CUSTOMER FOR THE PERIOD OF SERVICE DURING WHICH SUCH MISTAKE, OMISSION, INTERRUPTION, DELAY, ERROR OR DEFECT IN THE SERVICES OCCURS AND CONTINUES. IN NO EVENT SHALL ANY OTHER LIABILITY ATTACH TO [VENDOR NAME REDACTED].
- (b) SECTION (a) WILL NOT APPLY TO:
  - (i) BODILY INJURY, DEATH, OR DAMAGE TO REAL OR TANGIBLE PROPERTY DIRECTLY CAUSED BY [VENDOR NAME REDACTED]’S NEGLIGENCE;
  - (ii) DAMAGES ARISING FROM [VENDOR NAME REDACTED]’S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT.
- (c) NEITHER PARTY WILL BE LIABLE TO THE OTHER PARTY FOR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL, PUNITIVE, RELIANCE, OR SPECIAL DAMAGES, INCLUDING, WITHOUT LIMITATION, DAMAGES FOR LOST PROFITS, ADVANTAGE, SAVINGS OR REVENUES, OR INCREASED COST OF OPERATIONS.

Disclaimer of Liability. [VENDOR NAME REDACTED] WILL NOT BE LIABLE FOR ANY DAMAGES, EXCEPT TO THE EXTENT CAUSED BY [VENDOR NAME REDACTED]’S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT, ARISING OUT OF OR RELATING TO: INTEROPERABILITY, ACCESS OR INTERCONNECTION OF THE SERVICES WITH APPLICATIONS, EQUIPMENT, SERVICES, CONTENT, OR NETWORKS PROVIDED BY CUSTOMER OR THIRD PARTIES; SERVICE DEFECTS, SERVICE LEVELS, DELAYS, OR INTERRUPTIONS (EXCEPT FOR LIABILITY FOR SUCH EXPLICITLY SET FORTH IN THIS CONTRACT); ANY INTERRUPTION OR ERROR IN ROUTING OR COMPLETING CALLS OR OTHER TRANSMISSIONS (INCLUDING 911 CALLS OR ANY SIMILAR EMERGENCY RESPONSE NUMBER); LOST OR ALTERED MESSAGES OR TRANSMISSIONS; OR UNAUTHORIZED ACCESS TO OR THEFT, ALTERATION, LOSS, OR DESTRUCTION OF CUSTOMER’S, ITS AFFILIATE’S, USERS’, OR THIRD PARTIES’ APPLICATIONS, CONTENT, DATA, PROGRAMS, CONFIDENTIAL INFORMATION, NETWORK, OR SYSTEMS.

Application and Survival. The disclaimer of warranties and limitations of liability set forth in this Contract will apply regardless of the form of action, whether in contract, equity, tort, strict liability or otherwise and whether damages were foreseeable, and will apply so as to limit the liability of each party and its Affiliates, and their respective employees, directors, subcontractors, and suppliers. The limitations of liability and disclaimers set out in this Section will survive failure of any exclusive remedies provided in this Contract.

## **EXHIBIT 1 – VENDOR’S RED-LINED CONTRACT**

### **THE ADDITIONAL FOLLOWING PROVISIONS TO BE ADDED TO THE CONTRACT:**

#### **DISCLAIMERS AND LIMITATIONS OF LIABILITY**

**\_\_1 Disclaimer of Warranties.** [VENDOR NAME REDACTED] MAKES NO REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED, AND SPECIFICALLY DISCLAIMS ANY REPRESENTATION OR WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, NON-INFRINGEMENT, OR ANY WARRANTY ARISING BY USAGE OF TRADE OR COURSE OF DEALING. FURTHER, [VENDOR NAME REDACTED] MAKES NO REPRESENTATION OR WARRANTY THAT TELEPHONE CALLS OR OTHER TRANSMISSIONS WILL BE ROUTED OR COMPLETED WITHOUT ERROR OR INTERRUPTION (INCLUDING CALLS TO 911 OR ANY SIMILAR EMERGENCY RESPONSE NUMBER), OR GUARANTEE REGARDING NETWORK SECURITY, THE ENCRYPTION EMPLOYED BY ANY SERVICE, THE INTEGRITY OF ANY DATA THAT IS SENT, BACKED UP, STORED OR SUBJECT TO LOAD BALANCING, OR THAT [VENDOR NAME REDACTED]'S SECURITY PROCEDURES WILL PREVENT THE LOSS OR ALTERATION OF, OR IMPROPER ACCESS TO, CUSTOMER'S DATA AND CONFIDENTIAL INFORMATION.

#### **THIRD PARTY CLAIMS**

**\_\_1 [VENDOR NAME REDACTED]'s Obligations.** [VENDOR NAME REDACTED] agrees at its expense to defend or settle any third-party claim against Customer, its Affiliates, and its and their respective employees and directors, and to pay all compensatory Damages that a court may finally award against such parties to the extent the claim alleges that a Service provided to Customer under this Agreement infringes any patent, trademark, copyright, or trade secret, but not in circumstances where the claimed infringement arises out of or results from: (a) Customer's, its Affiliate's or a User's content; (b) modifications to the Service by Customer, its Affiliates or third parties, or combinations of the Service with any services or products not provided by [VENDOR NAME REDACTED]; (c) [VENDOR NAME REDACTED]'s adherence to Customer's or its Affiliate's written requirements; or (d) use of the Service in violation of this Agreement.

**\_\_2 Customer's Obligations.** Customer agrees at its expense to defend or settle any third-party claim against [VENDOR NAME REDACTED], [VENDOR NAME REDACTED]'s Affiliates, and its and their respective employees, directors, subcontractors, and suppliers, and to pay all compensatory Damages that a court may finally award against such parties to the extent the claim: (a) arises out of Customer's, its Affiliate's, or a User's access to, or use of, the Services and the claim is not the responsibility of [VENDOR NAME REDACTED] under Section \_\_.1 above; (b) alleges that a Service infringes any patent, trademark, copyright or trade secret, and falls within the exceptions in Section \_\_.1 above; or (c) alleges a breach by Customer, its Affiliates, or Users of a software license agreement governing software provided in connection with the Services.

**\_\_3 Infringing Services.** Whenever [VENDOR NAME REDACTED] is liable under Section \_\_.1 above, [VENDOR NAME REDACTED] may at its option either procure the right for Customer to continue using, or may replace or modify, the alleged infringing Service so that the Service becomes non-infringing.

**\_\_4 Notice and Cooperation.** The party seeking defense or settlement of a third party claim under this Section will notify the other party promptly upon learning of any claim for which defense or settlement may be sought, but failure to do so will have no effect except to the extent the other party is prejudiced thereby. The party seeking defense or settlement will allow the other party to control the defense and settlement of the claim and will reasonably cooperate with the defense; but the defending party will use counsel reasonably experienced in the subject matter at issue, and will not settle a claim without the consent of the party being defended, which consent will not be unreasonably withheld or delayed, except that no consent will be required where relief on the claim is limited to monetary damages that are paid by the defending party under this Section.

#### **MISCELLANEOUS**

**\_\_1 Access Right.** Customer will in a timely manner allow [VENDOR NAME REDACTED] to access property and equipment that Customer controls as reasonably required to provide the Services, and Customer will obtain, at Customer's expense, timely access for [VENDOR NAME REDACTED] to property that Customer does not control (other than public property) as reasonably required to provide the Services. Access rights include the right to construct, install, repair, maintain, replace and remove access lines and network facilities, as well as to use ancillary equipment space within a building, as necessary for Customer's connection to [VENDOR NAME REDACTED]'s network. Customer must provide [VENDOR NAME REDACTED] timely information and access to Customer's facilities and equipment as [VENDOR NAME

## EXHIBIT 1 – VENDOR’S RED-LINED CONTRACT

REDACTED] reasonably requires to provide the Services, subject to Customer’s reasonable security policies. Customer will furnish any conduit, holes, wireways, wiring, plans, equipment, space, power/utilities, and other items reasonably required to perform installation of the Services, and obtain any necessary licenses, permits and consents (including easements and rights-of-way). Customer will have the Site ready for [VENDOR NAME REDACTED] to perform its work according to a mutually agreed schedule.

\_\_2 **Safe Working Environment.** Customer will ensure that the location at which [VENDOR NAME REDACTED] installs, maintains or provides Services is a suitable and safe working environment, free of Hazardous Materials. “Hazardous Materials” means any substance or material capable of posing an unreasonable risk to health, safety or property or whose use, transport, storage, handling, disposal, or release is regulated by any law related to pollution, protection of air, water, or soil, or health and safety. [VENDOR NAME REDACTED] does not handle, remove or dispose of Hazardous Materials, and [VENDOR NAME REDACTED] has no obligation to perform work at a location that is not a suitable and safe working environment. [VENDOR NAME REDACTED] will not be liable for any Hazardous Materials.

\_\_3 **Users.** “User” means anyone who uses or accesses any Service provided to Customer. Customer will cause Users to comply with this Agreement, and Customer agrees that Customer is responsible for Users’ use of any Services, unless expressly provided to the contrary in applicable Service Publications.

\_\_4 **Internet Services.** If a Service is provided over or accesses the Internet, Customer, Customer’s Affiliates, and Users must comply with the AUP.

\_\_5 **Resale of Services.** Customer may not resell the Services to third parties without [VENDOR NAME REDACTED]’s written consent. Where permitted under applicable law, Customer may resell the Services to Customer’s Affiliates without [VENDOR NAME REDACTED]’s consent.

\_\_6 **Overview of Documents.** The terms and conditions governing the Services that [VENDOR NAME REDACTED] provides to Customer are set forth in this Contract, the following additional documents, and any other documents executed by the parties and referencing this Contract (which documents together with this Contract are called “this Contract”):

- (a) **Pricing Schedules.** A Pricing Schedule (including related attachments) identifies the Services [VENDOR NAME REDACTED] may provide to Customer, the price (including discounts, if applicable) for each Service, and the term during which such prices are in effect (“Pricing Schedule Term”).
- (b) **Tariffs and Guidebooks.** “Tariffs” are documents containing the standard descriptions, pricing, and other terms and conditions for a Service that [VENDOR NAME REDACTED] files with regulatory commissions. “Guidebooks” are documents containing the standard descriptions, pricing, and other terms and conditions for a Service that were, but no longer are, filed with regulatory commissions. Tariffs and Guidebooks may be found at [VENDOR WEBSITE REDACTED] or other locations [VENDOR NAME REDACTED] may designate.
- (c) **Acceptable Use Policy.** [VENDOR NAME REDACTED]’s Acceptable Use Policy (“AUP”) applies to Services provided over or accessing the Internet. The AUP may be found at [VENDOR WEBSITE REDACTED], or other locations [VENDOR NAME REDACTED] may designate.
- (d) **Service Guides.** The description, pricing, and other terms and conditions for the Service not covered by a Tariff or Guidebook may be contained in a Service Guide, which may be found at [VENDOR WEBSITE REDACTED] or other locations [VENDOR NAME REDACTED] may designate.

IN WITNESS WHEREOF,

CONTRACTOR LEGAL ENTITY NAME:

CONTRACTOR  
SIGNATURE

DATE

***EXHIBIT 1 – VENDOR’S RED-LINED CONTRACT***

**PRINTED NAME AND TITLE OF CONTRACTOR SIGNATORY (above)**

**DEPARTMENT OF FINANCE AND ADMINISTRATION:**

**M. D. GOETZ, JR., COMMISSIONER**

**DATE**



STATE OF TENNESSEE  
DEPARTMENT OF FINANCE AND ADMINISTRATION

SOLICITATION # 31701-03028

PROFESSIONAL SERVICE SOLICITATION FOR  
ONE PLUS (1+) DIALING - Interstate

1. INTRODUCTION

The state intends to award a contract for statewide long distance calling services (1+ dialing) - Interstate.

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

The *Pro Forma* Contract (Solicitation Attachment 1) represents the contract document that the contractor selected by the state must sign.

3. PROCUREMENT SCHEDULE

The state reserves the right, at its sole discretion, to adjust the procurement schedule as necessary. The following table represents the best estimate of the schedule that will be followed.

EVENT	TIME (central time)	DATE
1. State Issues Solicitation		November 18, 2009
2. WRITTEN COMMENTS DEADLINE		November 30, 2009
3. State's Response To Written Comments		December 11, 2009
4. RESPONSE DEADLINE	2:00 p.m.	December 18, 2009
5. State Identifies Responsive & Responsible Solicitation Responses		January 4, 2010
6. State Identifies the Best, Responsive & Responsible Cost Offer		January 5, 2010
7. State Releases Award Notification	2:00 p.m.	January 7, 2010
8. Contract Signing		January 20, 2010
9. Contractor Signature Deadline	2:00 p.m.	January 27, 2010
<b>The state reserves the right, at its sole discretion, to amend or cancel this solicitation at any time.</b>		

3.a. WRITTEN COMMENTS

Each Offeror must carefully review this solicitation and all attachments, including but not limited to the *Pro Forma* contract, for comments, questions, defects, objections, or any other matter requiring clarification or correction (collectively called "comments"). Comments concerning procurement objections must be made in writing and received by the Procurement Coordinator identified in Section 5 no later than the Written Comments Deadline detailed in Section 3 above.

4. RESPONSE REQUIREMENTS

An offer in response to this solicitation must consist of two parts, *Qualifications Evidence* (including any supporting documentation) and *Cost Offer*, exactly as specified below.

- 4.1. **Qualifications Evidence.** The Qualification Evidence and supporting documentation must detail responses or provide documentation as required to address each of the following requirements (of the potential contractor or potential contractor's employees as applicable):
- a. Detail the name, e-mail address, mailing address, telephone number, and facsimile number of the contact person regarding the offer.
  - b. Submit a *Statement of Certifications and Assurances* document (Solicitation Attachment 2) completed and signed by an individual empowered to bind the Offeror to the provisions of this solicitation and any resulting contract. The document must be signed without exception or qualification.
  - c. Provide a statement, based upon reasonable inquiry, of whether the Offeror or any individual who shall perform work under a contract resulting from this solicitation has a possible conflict of interest (e.g., employment by the State of Tennessee) and, if so, the nature of that conflict.
  - d. Provide a statement confirming that the Offeror can provide all the long distance services required in the Scope of Services.

- 4.2. **Cost Offer.** The Cost Offer must be in the form of a completed, exact copy of the *Cost Offer* document (Attachment 3).

**DO NOT LEAVE AN OFFERED COST CELL "BLANK."** The State shall deem a *Cost Offer* with a "blank" cell as non-responsive and shall reject it.

The Proposed Rate Per Minute for each Cost Item Description must be a single rate. **DO NOT PROPOSE MORE THAN ONE RATE OR A RANGE OF RATES for each Offered Cost.**

The *Qualifications Evidence* must not include any pricing or cost information. If any pricing or cost information amounts of any type (even pricing relating to other projects) are included in any part of the *Qualifications Evidence*, the State will deem the offer to be non-responsive and reject it.

**NOTICE: The Cost Offer must incorporate ALL costs for services under the contract for the total contract period, and it must record the proposed price of the subject service exactly as required by the Cost Offer document and must NOT record any other rates, amounts, or information.**

**5. RESPONSE DELIVERY**

No later than the response deadline detailed in procurement schedule above, a potential contractor must deliver to the state ALL documentation required for both the *Qualifications Evidence* and the *Cost Offer* components of an offer in response to this solicitation. It must be delivered to:

Travis Johnson, Procurement Coordinator  
State of Tennessee  
Department of Finance and Administration  
Wm R. Snodgrass Tennessee Tower, 17<sup>th</sup> Floor  
312 Rosa L. Parks Avenue  
Nashville, TN 37243-1102  
Phone: 615-741-5727  
Email: [Travis.Johnson@tn.gov](mailto:Travis.Johnson@tn.gov)

- 5.1 An Offeror must submit the original *Qualifications Evidence* and *Cost Offer* components and copies as specified below:
- a. One (1) original *Qualifications Evidence* paper document labeled:  
**"PSS # 31701-03028 QUALIFICATIONS EVIDENCE ORIGINAL"**  
and four (4) paper copies of the *Qualifications Evidence* labeled:

**“PSS # 31701-03028 QUALIFICATIONS EVIDENCE COPY”**

- b. One (1) original *Cost Offer* paper document labeled:

**“PSS # 31701-03028 COST OFFER ORIGINAL”**

- 5.2. An Offeror must separate, seal, package, and label the documents for delivery as follows:

- a. The *Qualifications Evidence* original document and copies must be placed in a sealed package that is clearly labeled:

**“DO NOT OPEN... PSS # 31701-03028 QUALIFICATIONS EVIDENCE FROM [OFFEROR LEGAL ENTITY NAME]”**

- b. The *Cost Offer* original document must be placed in a separate, sealed package that is clearly labeled:

**“DO NOT OPEN... PSS # 31701-03028 COST OFFER FROM [OFFEROR LEGAL ENTITY NAME]”**

The separately, sealed *Qualifications Evidence* and *Cost Offer* components may be enclosed in a larger package for mailing or delivery, provided that the outermost package is clearly labeled:

**“PSS # 31701-03028 SEALED QUALIFICATIONS EVIDENCE & SEALED COST OFFER FROM [OFFEROR LEGAL ENTITY NAME]”**

**6. EVALUATION PROCESS**

A team of at least three procuring agency employees will review the *Qualifications Evidence* and any supporting documentation submitted with each offer. For an offer to be acceptable and eligible for contract award, the evaluators must determine that it documents that the Offeror meets minimum qualifications and requirements specified by the solicitation and is, at least, minimally acceptable as a contractor for the subject services. The procurement coordinator will review the *Cost Offer* submitted by each Offeror deemed acceptable for contract award by evaluators to assess whether it complies, without qualification, with solicitation instructions. The procurement coordinator will identify the responsive, responsible *Cost Offer* indicating the lowest cost to the state. The procuring agency will award the contract to the individual or entity making said offer indicating the lowest cost to the state.

**7. GENERAL INFORMATION**

- 7.1. **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 disability, age, race, color, religion, sex, national origin, or any other classification protected by federal, Tennessee state constitutional, or statutory law. The contractor pursuant to this solicitation shall, upon request, show proof of such nondiscrimination and shall post in conspicuous places, available to all employees and applicants, notices of nondiscrimination.

- 7.2. **Conflict of Interest.** For the purposes of applying these requirements, the state will deem an individual to be an employee or official of the State of Tennessee until such time as all compensation for salary, termination pay, and annual leave has been paid. This solicitation shall not result in a contract with:
- an individual who is, or within the past six months has been, an employee or official of the State of Tennessee;
  - a company, corporation, or any other contracting entity in which an ownership of two percent (2%) or more is held by an individual who is, or within the past six months has been, an employee or official of the State of Tennessee (this will not apply either to financial interests that have been placed into a “blind trust” arrangement pursuant to which the employee does not have knowledge of the retention or disposition of such interests or to the ownership of publicly traded stocks or bonds where such

ownership constitutes less than 2% of the total outstanding amount of the stocks or bonds of the issuing entity); or,

- a company, corporation, or any other contracting entity which employs an individual who is, or within the past six months has been, an employee or official of the State of Tennessee in a position that would allow the direct or indirect use or disclosure of information, which was obtained through or in connection with his or her employment and not made available to the general public, for the purpose of furthering the private interest or personal profit of any person.

7.3. **Disclosure of Response 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 the Procurement Schedule), the full contents and associated documents submitted in response to this solicitation will be open for review by the public. By submitting a response to this solicitation, a potential contractor acknowledges and accepts that the full contents and associated documents submitted in response to this solicitation will become open to public inspection.

**SOLICITATION # 31701-03028**  
**ATTACHMENT 1 –PRO FORMA CONTRACT**

**CONTRACT**  
**BETWEEN THE STATE OF TENNESSEE,**  
**DEPARTMENT OF FINANCE AND ADMINISTRATION**  
**AND**  
**CONTRACTOR NAME**

This Contract, by and between the State of Tennessee, Department of Finance and Administration, hereinafter referred to as the "State" and **CONTRACTOR LEGAL ENTITY NAME**, hereinafter referred to as the "Contractor," is for the provision of long distance calling services (one plus dialing) - Interstate, as further defined in the "SCOPE OF SERVICES."

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 Federal Employer Identification or Social Security Number: **ID NUMBER**

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

**A. SCOPE OF SERVICES:**

- A.1. The Contractor shall provide all service and deliverables as required, described, and detailed by this Scope of Services and shall meet all service and delivery timelines specified in the Scope of Services section or elsewhere in this Contract.
- A.2. The Contractor shall provide long distance calling services (one plus dialing) for the following types:
  - a. calls between LATAs where any portion of the LATA is within the state of Tennessee (InterLATA)
  - b. Interstate
  - c. Canada
  - d. Mexico
  - e. International Locations (other than Canada or Mexico)
- A.3. The Contractor may provide long distance calling services by two (2) methods of access, Dedicated Access and Switched Access.
  - a. Dedicated Access is defined as long distance calls that originate from the telephone numbers assigned or allocated to the State via a t1.5 or other broadband facility. The Contractor may provide Dedicated Access in locations mutually agreeable to the State and the Contractor. Currently, Dedicated Access will be probable in Nashville, where the access from the Contractor's point of presence (POP) will be terminated into AT&T's Centrex common block. The State may in the future, with agreement of the Contractor, install Dedicated Access at other locations in addition to Nashville.
  - b. Switched Access is defined as long distance calls that originate from the telephone numbers assigned or allocated to the State over the public switched network. The Contractor shall provide Switched Access where Dedicated Access is not mutually agreed upon by the State and the Contractor.
  - c. The Contractor shall provide sufficient capacity to assure a P.01 grade of service for Dedicated Access and Switched Access.

A.4. The Contractor shall add telephone numbers to or remove telephone numbers from the State's account within two (2) business days after written/e-mail notification from the State.

A.5. Technical Support Requirements.

- a. The Contractor shall provide technical support including, but not limited to, troubleshooting service problems and technical advice on service implementation, suitability or other requirements. These services shall be available via telephone twenty-four (24) hours a day, seven (7) days a week, three hundred sixty-five (365) days a year. The Contractor may also be required to provide on-site technical support during Normal Business Hours.
- b. The Office for Information Resources, Data Networking and Telecommunications Division (OIR DNT) or the OIR Integrated Help Desk (OIR IHD) will contact the Contractor when technical support is required.
- c. The Contractor will be required, when necessary and directed by the State, to work directly with the State's premise/Centrex Contractor and/or local carrier to solve service problems. The Contractor may also be required to work directly with State end users.
- d. The State uses Remedy to track trouble reporting incidents and resolution of these incidents. The State may expand this system to support service ordering and tracking of long distance calling service. This expansion for ordering and tracking will be Internet based.

A.6. Outages.

- a. The State shall designate outages as being either critical or non-critical and will be the sole determinant of whether an outage is critical or non-critical.
- b. A critical outage is an interruption in service where an emergency/urgent need exists. Technical support for a critical outage must be initialized within two (2) hours after notification regardless of the day of the week/year or time of day (twenty-four (24) hours a day, seven (7) days a week, three hundred sixty-five (365) days a year). The Contractor must provide a local Nashville, TN telephone number or toll-free telephone number for reporting critical outages after Normal Business Hours and on State holidays and/or Weekends. All critical outages shall be repaired no later than twenty-four (24) hours after notification from the State.
- c. A non-critical outage is an interruption in service where an urgent need does not exist. Technical support for a non-critical outage must be initialized within twenty-four (24) hours after notification. Repairs may be scheduled or performed at the time the request is made by the State. Repairs may be accomplished, during the State's Normal Business Hours and must be completed to the satisfaction of the State.
- d. It is the Contractor's responsibility to collect the following minimum information upon receiving an outage notification from the State:
  - i. problem description
  - ii. on-site point of contact information (State end user)
  - iii. critical or non-critical outage designation

A.7. Technical Support Team.

- a. The Contractor's technical support team shall include a point of contact representative for each of the following titles. At a minimum, the contact information required will include name, e-mail address, telephone number (local Nashville, TN number or toll-free number), mobile/cell number and fax number. The State requires a single point of contact for each title and one (1) individual must not hold more than two (2) titles.

- i. Account Service Manager
  - ii. Contractor Telephone Technical Support
  - iii. Field Service Representative
- b. The Contractor's contact information for the technical support team must be provided to the State upon contract award. If any individual from the Contractor's team leaves the Contractor's employ or is removed by the Contractor, the Contractor must provide a replacement within five (5) business days.
- c. The Contractor must provide an escalation procedure such that technical support is available as requested in Contract Section A.5.a. if any or all of the point of contact individuals are not available. Escalation procedure staff must be certified to provide services required for the Contract.

A.8. Contract Transition and Implementation.

- a. If the current Contractor changes at the beginning of this contract, the following shall apply:
- i. The Contractor shall provide a detailed plan for the transition of all current users by March 1, 2010, including the Contractor's plans for Primary Interstate Carrier (PIC) changes with minimum service outage time, equipment delivery, and scheduling.
  - ii. The State will provide the Contractor with a list of possible dedicated locations and switched telephone numbers.
  - iii. The Contractor shall provide the service of transitioning all existing services from the current contract holder at no additional cost to the State. The winning Contractor will pay any PIC change charges billed by the Local Exchange Carrier (LEC).
- b. If the Contractor is not awarded the next contract, the following shall apply:
- i. The Contractor shall provide the service of transitioning all existing services awarded from this contract to the next contract holder at no additional cost to the State.
  - ii. The Contractor shall provide services during the transition period at contract prices on a month-to-month basis until the new contract holder is in place and all cutovers are completed. The transition period shall begin no more than ninety (90) days prior to the end of this contract.

A.9. Definitions of Time.

- a. All references made to time in this contract refer to local time within the time zone of the agency location (central standard time/daylight savings time or eastern standard time/daylight savings time).
- b. Normal Business Hours (State of Tennessee) – Monday through Friday 8:00 a.m. through 4:30 p.m., except State holidays.
- c. After Normal Business Hours (State of Tennessee) – Monday through Thursday 4:31 p.m. through 7:59 a.m., except State Holidays.
- d. Weekends (State of Tennessee) – 4:31 p.m. Friday through 7:59 a.m. Monday.
- e. State Holiday (State of Tennessee) – 8:00 a.m. - 7:59 a.m. the following day.

**B. CONTRACT TERM:**

This Contract shall be effective for the period commencing on February 1, 2010 and ending on January 31, 2015. The State shall have no obligation for services rendered by the Contractor which are not performed within the specified period.

**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)**. The payment rates in Section C.3 shall constitute the entire compensation due the Contractor for the Service and all of the Contractor's obligations hereunder regardless of the difficulty, materials or equipment required. The payment rates include, but are not limited to, all applicable taxes, fees, overheads, and all other direct and indirect costs incurred or to be incurred by the Contractor.

The Contractor is not entitled to be paid the maximum liability for any period under the Contract or any extensions of the Contract for work not requested by the State. The maximum liability represents available funds for payment to the Contractor and does not guarantee payment of any such funds to the Contractor under this Contract unless the State requests work and the Contractor performs said work. In which case, the Contractor shall be paid in accordance with the payment rates detailed in Section C.3. The State is under no obligation to request work from the Contractor in any specific dollar amounts or to request any work at all from the Contractor during any period of this Contract.

C.2. Compensation Firm. The payment rates and the maximum liability of the State under this Contract are firm for the duration of the Contract and are not subject to escalation for any reason unless amended.

C.3. Payment Methodology. The Contractor shall be compensated based on the payment rates herein for units of service authorized by the State in a total amount not to exceed the Contract Maximum Liability established in Section C.1.

- a. The Contractor's compensation shall be contingent upon the satisfactory completion of units, milestones, or increments of service defined in Section A.
- b. The Contractor shall be compensated for said units, milestones, or increments of service based upon the following payment rates:

<b>Service Description</b>	<b>Year 1 Amount</b> (per compensable increment)	<b>Year 2 Amount</b> (per compensable increment)	<b>Year 3 Amount</b> (per compensable increment)	<b>Year 4 Amount</b> (per compensable increment)	<b>Year 5 Amount</b> (per compensable increment)
InterLATA Dedicated Access	\$ NUMBER per minute	\$ NUMBER per minute	\$ NUMBER per minute	\$ NUMBER per minute	\$ NUMBER per minute
InterLATA Switched Access	\$ NUMBER per minute	\$ NUMBER per minute	\$ NUMBER per minute	\$ NUMBER per minute	\$ NUMBER per minute
Interstate Dedicated Access	\$ NUMBER per minute	\$ NUMBER per minute	\$ NUMBER per minute	\$ NUMBER per minute	\$ NUMBER per minute
Interstate Switched Access	\$ NUMBER per minute	\$ NUMBER per minute	\$ NUMBER per minute	\$ NUMBER per minute	\$ NUMBER per minute
Canada Dedicated Access	\$ NUMBER per minute	\$ NUMBER per minute	\$ NUMBER per minute	\$ NUMBER per minute	\$ NUMBER per minute
Canada	\$ NUMBER	\$ NUMBER	\$ NUMBER	\$ NUMBER	\$ NUMBER

<b>Service Description</b>	<b>Year 1 Amount</b> (per compensable increment)	<b>Year 2 Amount</b> (per compensable increment)	<b>Year 3 Amount</b> (per compensable increment)	<b>Year 4 Amount</b> (per compensable increment)	<b>Year 5 Amount</b> (per compensable increment)
Switched Access	per minute	per minute	per minute	per minute	per minute
Mexico Dedicated Access	\$ NUMBER per minute	\$ NUMBER per minute	\$ NUMBER per minute	\$ NUMBER per minute	\$ NUMBER per minute
Mexico Switched Access	\$ NUMBER per minute	\$ NUMBER per minute	\$ NUMBER per minute	\$ NUMBER per minute	\$ NUMBER per minute
International Locations Dedicated Access	\$ NUMBER per minute	\$ NUMBER per minute	\$ NUMBER per minute	\$ NUMBER per minute	\$ NUMBER per minute
International Locations Switched Access	\$ NUMBER per minute	\$ NUMBER per minute	\$ NUMBER per minute	\$ NUMBER per minute	\$ NUMBER per minute

- c. Each call is to be billed to the nearest tenth of a minute or less. There will be no rounding up to the next whole minute.
  - d. The rate per minute for Dedicated Access and Switched Access shall be all inclusive including the Universal Service Fee and the addition or removal of telephone numbers.
  - e. The State shall pay no fees other than the contracted rates per minute for Switched Access.
  - f. The cost of Dedicated Access will be borne by the Contractor and be included in the rate per minute. The State will pay the cost of any terminating hardware required for the termination in the Centrex or PBX. Any one time/installation or other equipment cost other than the Centrex or PBX terminating equipment will be the responsibility of the Contractor.
  - g. The rate per minute for International Locations (calls using country codes) shall be a maximum rate per minute for all countries. The invoiced rate per minute may not exceed the maximum rate per minute; however, the invoiced rate per minute may be less.
- C.4. Travel Compensation. The Contractor shall not be compensated or reimbursed for travel, meals, or lodging.
- C.5. Invoice Requirements. The Contractor shall invoice the State only for completed increments of service and for the amount stipulated in Section C.3, above, and as required below prior to any payment.
- C.5.a. Electronic Billing Requirements:
- i. The State requires three (3) CD's (1 original and 2 duplicates) (or other type of Electronic billing approved by Billing Services) to be provided as invoicing to the Department of Finance and Administration, Billing Services) by the 10th of the month at no additional charge to the State. The method of billing provided must be compatible for use with computer equipment (hardware and software) used by the State and must be operational.
  - ii. Billing Services will assist in the formatting of such Electronic invoicing to insure the proper information is in place. The Electronic invoicing shall be delivered each month in lieu of paper invoicing covering the service on the contract.

- iii. The Electronic invoicing must provide all billing information of all usage associated with each request for service. The billing information on the Electronic invoice shall be matched with the contract line commodity codes or NIGP codes used by the State.
- iv. All charges based on the appropriate line commodity code or NIGP codes shall be presented on the Electronic invoicing and billed to the appropriate Request for Service (RFS) number and/or telephone number that incurred said charges.
- v. The format of the Electronic billing must be provided to Billing Services, in writing, within thirty (30) days of award of contract. Format of the Electronic invoicing is required to be in the following billing records format for call charges. The format is not inclusive and additional fields or records may be required as determined by the State.

Format of call records must include:

- 1) Account Number
- 2) Billing Number
- 3) Call Date
- 4) Time of Call
- 5) Duration of Call
- 6) Call to City
- 7) Call to State
- 8) Call to Number
- 9) Call Charges
- 10) Commodity Code

- vi. At the bottom of the billing records, a summary record must be provided that summarizes the billing by commodity code/NIGP code and the amount billed to each commodity code/NIGP code.
- vii. Records that do not conform to the above criteria shall be rejected from the Electronic Billing received and must be credited to the State's account no later than the second consecutive month after the date of rejection.
- viii. Rejected records can be resubmitted after correction no later than sixty (60) calendar days from the date of rejection by adding to the current month's Electronic invoice. The State will not accept corrections after June 30 (the State's fiscal year end) of any year. The corrected rejected charges must be identified as being previously rejected on a prior month.
- ix. An operational sample of the Electronic Billing must be provided and approved by Billing Services as functional within ninety (90) calendar days of contract award.

C.5.b. Billing/Invoices.

- i. Invoices are to be sent to:
 

State of Tennessee  
 Department of Finance and Administration  
 Billing Services  
 20th floor, WRS Tennessee Tower  
 312 Rosa L. Parks Avenue  
 Nashville, TN 37243-1102
- ii. If at anytime the Contractor is unable to submit accurate invoice information in the required format, Billing Services may, at its sole option, refuse payment of the Vendor's invoice, or may delay payments without penalty.

- iii. All requests for credits made ten (10) calendar days or more before the close of a billing cycle must be reflected on the next invoice. If the Contractor does not include the credits requested and due on the invoice, the State will deduct a like amount from future bills.

C.5.c. Contractor Invoicing Contact.

Name: [NAME]  
Title: [TITLE]  
Address: [ADDRESS]

Telephone number: [TELEPHONE NUMBER]  
(including area code) local Nashville, TN or toll free  
Fax telephone number: [FAX TELEPHONE NUMBER]  
(including area code) local Nashville, TN or toll free  
Email address: [EMAIL ADDRESS]

- i. This information shall be updated with Billing Services, when changes in personnel occur during the contract term.

C.5.d. Billing Acceptance.

- i. Upon satisfactory completion of a ninety (90) calendar day billing acceptance period, the State shall issue written notification of billing acceptance. If the Contractor fails to gain Billing Service's acceptance within ninety (90) calendar days from contract award effective date, the State may terminate the contract.

C.5.e. Remedies.

- i. The Contractor will be imposed a penalty of One Thousand Dollars (\$1,000.00) if a readable Electronic Invoice for billing purposes is not delivered, after the initial ninety (90) day award period, by the 10th day of the following month. An additional charge of One Hundred Dollars (\$100.00) a day will be imposed on the Contractor for each additional day of the contract that the Contractor does not have a readable Electronic billing.

C.5.f. The Contractor understands and agrees that an invoice to the State under this Contract shall:

- (1) include only charges for service described in Contract Section A and in accordance with payment terms and conditions set forth in Contract Section C;
- (2) not include any future work but will only be submitted for completed service; and
- (3) not include sales tax or shipping charges.

- i. The Contractor agrees that timeframe for payment (and any discounts) begins when the State is in receipt of each invoice meeting the minimum requirements above.

- ii. The Contractor shall complete and sign a "Substitute W-9 Form" provided to the Contractor by the State. The taxpayer identification number contained in the Substitute W-9 submitted to the State shall agree to the Federal Employer Identification Number or Social Security Number referenced in this Contract for the Contractor. The Contractor shall not invoice the State for services until the State has received this completed form.

C.5.g. The Contractor shall provide compiled traffic statistics and operational reports (usage detail reports) as required by Billing Services. The information shall be provided monthly by Electronic means approved by Billing Services at no cost to the State. The Contractor shall provide eight (8) hours of training to designated State personnel on the use of the software used to establish the Electronic information. The Contractor is required to provide support pertaining to this software via telephone during the State's normal business hours throughout the term of the contract.

- C.6. Payment of Invoice. The payment of the invoice by the State shall not prejudice the State's right to object to or question any invoice or matter in relation thereto. Such payment by the State shall neither be construed as acceptance of any part of the work or service provided nor as an approval of any of the amounts invoiced therein.
- C.7. Invoice Reductions. The Contractor's invoice shall be subject to reduction for amounts included in any invoice or payment theretofore made which are determined by the State, on the basis of audits conducted in accordance with the terms of this Contract, not to constitute proper remuneration for compensable services.
- 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 which are or shall become due and payable to the State of Tennessee by the Contractor.
- C.9. Automatic Deposits. The Contractor shall complete and sign an "Authorization Agreement for Automatic Deposit (ACH Credits) Form." This form shall be provided to the Contractor by the State. Once this form has been completed and submitted to the State by the Contractor all payments to the Contractor, under this or any other Contract the Contractor has with the State of Tennessee shall be made by Automated Clearing House (ACH). The Contractor shall not invoice the State for services until the Contractor has completed this form and submitted it to the State.

**D. STANDARD TERMS AND CONDITIONS:**

- D.1. Required Approvals. The State is not bound by this Contract until it is approved by the appropriate State officials in accordance with applicable Tennessee State laws and regulations.
- D.2. Modification and Amendment. This Contract may be modified only by a written amendment executed by all parties hereto and approved by the appropriate Tennessee State officials in accordance with applicable Tennessee State laws and regulations.
- D.3. Termination for Convenience. The State may terminate this Contract without cause for any reason. Said termination shall not be deemed a Breach of Contract by the State. The State shall give the Contractor at least thirty (30) days written notice before the effective termination date. The Contractor shall be entitled to receive compensation for satisfactory, authorized service completed as of the termination date, but in no event shall the State be liable to the Contractor for compensation for any service which has not been rendered. Upon such termination, the Contractor shall have no right to any actual general, special, incidental, consequential, or any other damages whatsoever of any description or amount.
- D.4. 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 violates any terms of this Contract, the State shall have the right to immediately terminate the Contract and withhold payments in excess of fair compensation for completed services. Notwithstanding the above, the Contractor shall not be relieved of liability to the State for damages sustained by virtue of any breach of this Contract by the Contractor.
- D.5. Subcontracting. The Contractor shall not assign this Contract or enter into a subcontract for any of the services performed under this Contract without obtaining the prior written approval of the State. If such subcontracts are approved by the State, they shall contain, at a minimum, sections of this Contract below pertaining to "Conflicts of Interest," "Nondiscrimination," and "Records" (as identified by the section headings). Notwithstanding any use of approved subcontractors, the Contractor shall be the prime contractor and shall be responsible for all work performed.
- D.6. Conflicts of Interest. The Contractor warrants that no part of the total Contract 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 Contractor in connection with any work contemplated or performed relative to this Contract.

- D.7. 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 disability, age, race, color, religion, sex, national origin, or any other classification protected by Federal, Tennessee State constitutional, or statutory law. The Contractor shall, upon request, show proof of such nondiscrimination and shall post in conspicuous places, available to all employees and applicants, notices of nondiscrimination.
- D.8. Prohibition of Illegal Immigrants. The requirements of Public Acts of 2006, Chapter Number 878, of the state of Tennessee, 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 hereby attests, certifies, warrants, and assures 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, hereto, semi-annually during the period of this Contract. Such 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 period of this Contract, 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 relative to this Contract and shall not knowingly utilize the services of any subcontractor who will utilize the services of an illegal immigrant to perform work relative to this Contract. Attestations obtained from such 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. Said 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 Public Chapter 878 of 2006 for acts or omissions occurring after its effective date. This law requires the Commissioner of Finance and Administration to prohibit a contractor from contracting with, or submitting an offer, proposal, or bid to contract with the State of Tennessee to supply goods or services for a period of one year after a contractor is discovered to have knowingly used the services of illegal immigrants during the performance of this Contract.
  - e. For purposes of this Contract, "illegal immigrant" shall be defined as any person who is not either a United States citizen, a Lawful Permanent Resident, or a person whose physical presence in the United States is authorized or allowed by the federal Department of Homeland Security and who, under federal immigration laws and/or regulations, is authorized to be employed in the U.S. or is otherwise authorized to provide services under the Contract.
- D.9. Records. The Contractor shall maintain documentation for all charges under this Contract. The books, records, and documents of the Contractor, insofar as they relate to work performed or money received under this Contract, shall be maintained for a period of three (3) 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.10. Prevailing Wage Rates. All contracts for construction, erection, or demolition or to install goods or materials that involve the expenditure of any funds derived from the State require compliance with the prevailing wage laws as provided in *Tennessee Code Annotated*, Section 12-4-401 *et seq.*
- D.11. 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.12. Progress Reports. The Contractor shall submit brief, periodic, progress reports to the State as requested.
- D.13. Strict Performance. Failure by any party to this Contract to insist in any one or more cases upon 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 such 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 hereto.
- D.14. Independent Contractor. The parties hereto, in the performance of this Contract, shall not act as employees, partners, joint venturers, or associates of one another. It is expressly acknowledged by the parties hereto that such parties are independent contracting entities and that nothing in this Contract shall be construed to create an employer/employee relationship or to allow either 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 shall not be deemed or construed to be the employees or agents of the other party for any purpose whatsoever.
- The Contractor, being an independent contractor and not an employee of the State, agrees to carry adequate public liability and other appropriate forms of insurance, including adequate public liability and other appropriate forms of insurance on the Contractor's employees, and to pay all applicable taxes incident to this Contract.
- D.15. State Liability. The State shall have no liability except as specifically provided in this Contract.
- D.16. Force Majeure. The obligations of the parties to this Contract are subject to prevention by causes beyond the parties' control that could not be avoided by the exercise of due care including, but not limited to, natural disasters, riots, wars, epidemics, or any other similar cause.
- D.17. State and Federal Compliance. The Contractor shall comply with all applicable State and Federal laws and regulations in the performance of this Contract.
- D.18. Governing Law. This Contract shall be governed by and construed in accordance with the laws of the State of Tennessee. The Contractor agrees that it will be subject to the exclusive jurisdiction of the courts of the State of Tennessee in actions that may arise under this Contract. The Contractor acknowledges and agrees that any rights or claims against the State of Tennessee or its employees hereunder, and any remedies arising therefrom, shall be subject to and limited to those rights and remedies, if any, available under *Tennessee Code Annotated*, Sections 9-8-101 through 9-8-407.
- D.19. Completeness. This Contract is complete and contains the entire understanding between the parties relating to the subject matter contained herein, 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 relating hereto, whether written or oral.

- D.20. 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 hereof shall not be affected thereby and shall remain in full force and effect. To this end, the terms and conditions of this Contract are declared severable.
- D.21. Headings. Section headings of this Contract are for reference purposes only and shall not be construed as part of this Contract.

**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, these special terms and conditions shall control.
- E.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. Any such communications, regardless of method of transmission, shall be addressed to the respective party at the appropriate mailing address, facsimile number, or EMAIL address as set forth below or to that of such other party or address, as may be hereafter specified by written notice.

The State:

Mr. Roger Pelham, Director  
Data Networking and Telecommunications (DNT)  
Department of Finance and Administration  
312 Rosa L. Parks Avenue  
Nashville, TN 37243-1102  
Roger.Pelham@tn.gov  
Telephone # 615-253-5094  
FAX # 615-741-6414

The Contractor:

**NAME & TITLE OF CONTRACTOR CONTACT PERSON**  
**CONTRACTOR NAME**  
**ADDRESS**  
**EMAIL ADDRESS**  
Telephone # **NUMBER**  
FAX # **NUMBER**

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

- E.3. Subject to Funds Availability. The Contract is subject to the appropriation and availability of State and/or Federal funds. In the event that the funds are not appropriated or are otherwise unavailable, the State reserves the right to terminate the Contract upon written notice to the Contractor. Said termination shall not be deemed a breach of Contract by the State. Upon receipt of the written notice, the Contractor shall cease all work associated with the Contract. Should such an event occur, the Contractor shall be entitled to compensation for all satisfactory and authorized services completed as of the termination date. Upon such termination, the Contractor shall have no right to recover from the State any actual, general, special, incidental, consequential, or any other damages whatsoever of any description or amount.

- E.4. Tennessee Consolidated Retirement System. The Contractor acknowledges and understands that, subject to statutory exceptions contained in *Tennessee Code Annotated*, Section 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 pursuant to *Tennessee Code Annotated*, Title 8, Chapter 35, Part 3 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 may be required to repay to TCRS the amount of retirement benefits the Contractor received from TCRS during the period of this Contract.
- E.5. Voluntary Buyout Program. The Contractor acknowledges and understands that, for a period of two years beginning August 16, 2008, restrictions are imposed on former state employees who received a State of Tennessee Voluntary Buyout Program (VBP) severance payment with regard to contracts with state agencies that participated in the VBP.
- a. The State will not contract with either a former state employee who received a VBP severance payment or an entity in which a former state employee who received a VBP severance payment or the spouse of such an individual holds a controlling financial interest.
  - b. The State may contract with an entity with which a former state employee who received a VBP severance payment is an employee or an independent contractor. Notwithstanding the foregoing, the Contractor understands and agrees that there may be unique business circumstances under which a return to work by a former state employee who received a VBP severance payment as an employee or an independent contractor of a State contractor would not be appropriate, and in such cases the State may refuse Contractor personnel. Inasmuch, it shall be the responsibility of the State to review Contractor personnel to identify any such issues.
  - c. With reference to either subsection a. or b. above, a contractor may submit a written request for a waiver of the VBP restrictions regarding a former state employee and a contract with a state agency that participated in the VBP. Any such request must be submitted to the State in the form of the *VBP Contracting Restriction Waiver Request* format available from the State and the Internet at: [www.state.tn.us/finance/rds/ocr/waiver.html](http://www.state.tn.us/finance/rds/ocr/waiver.html). The determination on such a request shall be at the sole discretion of the head of the state agency that is a Party to this Contract, the Commissioner of Finance and Administration, and the Commissioner of Human Resources.
- E.6. Insurance. The Contractor shall carry adequate liability and other appropriate forms of insurance.
- a. The Contractor shall maintain, at minimum, the following insurance coverage:
    - (1) Workers' Compensation/ Employers' Liability (including all states coverage) with a limit not less than the relevant statutory amount or one million dollars (\$1,000,000) per occurrence for employers' liability whichever is greater.
    - (2) Comprehensive Commercial General Liability (including personal injury & property damage, premises/operations, independent contractor, contractual liability and completed operations/products) with a bodily injury/property damage combined single limit not less than one million dollars (\$1,000,000) per occurrence and two million dollars (\$2,000,000) aggregate.

b. At any time State may require the Contractor to provide a valid Certificate of Insurance detailing Coverage Description; Insurance Company & Policy Number; Exceptions and Exclusions; Policy Effective Date; Policy Expiration Date; Limit(s) of Liability; and Name and Address of Insured. Failure to provide required evidence of insurance coverage shall be a material breach of this Contract

E.7. Limitation of Liability. The parties agree that the Contractor's liability 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 intentional torts, criminal acts, or fraudulent conduct.

**IN WITNESS WHEREOF,**

**CONTRACTOR LEGAL ENTITY NAME:**

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**CONTRACTOR SIGNATURE**

**DATE**

---

**PRINTED NAME AND TITLE OF CONTRACTOR SIGNATORY (above)**

**DEPARTMENT OF FINANCE AND ADMINISTRATION:**

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**M. D. GOETZ, JR., COMMISSIONER**

**DATE**

**ATTESTATION RE PERSONNEL USED IN CONTRACT PERFORMANCE**

<b>SUBJECT CONTRACT NUMBER:</b>	
<b>CONTRACTOR LEGAL ENTITY NAME:</b>	
<b>FEDERAL EMPLOYER IDENTIFICATION NUMBER:</b> (or Social Security 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.**

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**CONTRACTOR SIGNATURE**

NOTICE: This attestation MUST be signed by an individual empowered to contractually bind the Contractor. If said individual is not the chief executive or president, this document shall attach evidence showing the individual's authority to contractually bind the Contractor.

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**PRINTED NAME AND TITLE OF SIGNATORY**

---

**DATE OF ATTESTATION**

**SOLICITATION # 31701-03028**  
**ATTACHMENT 2 – STATEMENT OF CERTIFICATIONS AND ASSURANCES**

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

1. The Offeror will provide all services as defined in the of the solicitation's *pro forma* contract scope of services for the total contract period.
2. The Offeror accepts and agrees to all terms and conditions set out in the solicitation's *pro forma* contract.
3. The Offeror acknowledges and agrees that a contract resulting from the solicitation may incorporate, by reference, all information provided in response to the solicitation as a part of the contract.
4. The Offeror will comply with:
  - (a) the laws of the State of Tennessee;
  - (b) Title VI of the federal Civil Rights Act of 1964;
  - (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; and,
  - (e) the Americans with Disabilities Act of 1990 and the regulations issued there under by the federal government.
5. To the knowledge of the undersigned, the information detailed within the information submitted in response to the solicitation is accurate.
6. The information submitted in response to the solicitation was independently prepared, without collusion, under penalty of perjury.
7. 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 Offeror in connection with the solicitation or any resulting contract.

**By signing this Statement of Certifications and Assurances, below, the signatory also certifies legal authority to bind the Offeror to any contract awarded pursuant to the solicitation. If the signatory is not the Offeror (if an individual) or the Offeror's President or Chief Executive Officer, this document must attach evidence showing the individual's authority to bind the Offeror.**

<b>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</b>
---

**OFFEROR SIGNATURE:**

\_\_\_\_\_

**PRINTED NAME & TITLE:**

\_\_\_\_\_

**DATE:**

\_\_\_\_\_

**OFFEROR LEGAL ENTITY NAME:**

\_\_\_\_\_

**OFFEROR FEDERAL EMPLOYER IDENTIFICATION NUMBER (or SSN):**

\_\_\_\_\_

**SOLICITATION # 31701-03028**  
**ATTACHMENT 3 – COST OFFER**

**NOTICE: This Cost Offer MUST be completed EXACTLY as required.**

The Cost Offer, detailed below, shall indicate the proposed price for providing all services as defined in the *Pro Forma Contract Scope of Services* for the total contract period.

**DO NOT LEAVE AN OFFERED COST CELL “BLANK.”** The State shall deem a Cost Offer with a “blank” cell as non-responsive and shall reject it.

The Proposed Rate Per Minute for each Cost Item Description below must be a single rate. **DO NOT PROPOSE MORE THAN ONE RATE OR A RANGE OF RATES for each Offered Cost.**

<b>OFFEROR SIGNATURE:</b>	
<b>PRINTED NAME &amp; TITLE:</b>	
<b>DATE:</b>	
<b>OFFEROR LEGAL ENTITY NAME:</b>	

NOTE: This document must be signed, in the space above, by an individual empowered to bind the Offeror to the provisions of any contract awarded pursuant to this solicitation.

	Offered Cost					State Use Only
	Year 1 Amount (per compensable increment)	Year 2 Amount (per compensable increment)	Year 3 Amount (per compensable increment)	Year 4 Amount (per compensable increment)	Year 5 Amount (per compensable increment)	
InterLATA Dedicated Access	\$ NUMBER	\$ NUMBER	\$ NUMBER	\$ NUMBER	\$ NUMBER	
InterLATA Switched Access	\$ NUMBER	\$ NUMBER	\$ NUMBER	\$ NUMBER	\$ NUMBER	
Interstate Dedicated Access	\$ NUMBER	\$ NUMBER	\$ NUMBER	\$ NUMBER	\$ NUMBER	
Interstate Switched Access	\$ NUMBER	\$ NUMBER	\$ NUMBER	\$ NUMBER	\$ NUMBER	
Canada Dedicated Access	\$ NUMBER	\$ NUMBER	\$ NUMBER	\$ NUMBER	\$ NUMBER	
Canada Switched Access	\$ NUMBER	\$ NUMBER	\$ NUMBER	\$ NUMBER	\$ NUMBER	
Mexico Dedicated Access	\$ NUMBER	\$ NUMBER	\$ NUMBER	\$ NUMBER	\$ NUMBER	
Mexico Switched Access	\$ NUMBER	\$ NUMBER	\$ NUMBER	\$ NUMBER	\$ NUMBER	
International Locations Dedicated Access	\$ NUMBER	\$ NUMBER	\$ NUMBER	\$ NUMBER	\$ NUMBER	
International Locations Switched Access	\$ NUMBER	\$ NUMBER	\$ NUMBER	\$ NUMBER	\$ NUMBER	

*The state will use this sum to determine the Cost Offer reflecting the lowest cost to the state. All calculations will use and result in numbers rounded to two (2) places to the right of the decimal point.*

**Evaluation Cost Amount:**  
*(sum of all weighted cost amounts above)*

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*State Use – Procurement Coordinator Signature, Printed Name and Date:*

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