



STATE OF TENNESSEE
CENTRAL PROCUREMENT OFFICE

**REQUEST FOR QUALIFICATIONS # 33104-00116
AMENDMENT # 2
FOR TENNESSEE EDUCATION BROADBAND
CONSORTIUM E-RATE GOODS AND SERVICES**

DATE: January 13, 2016

RFQ # 33104-00116 IS AMENDED AS FOLLOWS:

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

EVENT		TIME (Central Time Zone)	DATE (all dates are State business days)
1.	RFQ Issued		December 11, 2015
2.	Disability Accommodation Request Deadline	2:00 p.m.	December 17, 2015
3.	Pre-Response Conference	1:00 p.m.	December 18, 2015
4.	Notice of Intent to Respond Deadline	2:00 p.m.	December 21, 2015
5.	Written "Questions & Comments" Deadline	2:00 p.m.	January 11, 2016
6.	State response to written "Questions & Comments"		January 19, 2016
7.	RFQ Technical Response Deadline	2:00 p.m.	January 28, 2016
8.	State Notice of Qualified Respondents Released		January 29, 2016
9.	RFQ Cost Proposal Deadline (ONLY for Qualified Respondents)	2:00 p.m.	February 2, 2016
10.	RFQ Negotiations		February 3 -4, 2016
11.	State Evaluation Notice Released		February 5, 2016
12.	Solicitation Files Opened for Public Inspection		February 5, 2016
13.	Respondent Contract Signature Deadline	2:00 p.m.	February 12, 2016
14.	Anticipated Contract Start Date (anticipated date for contract to be fully executed and vendor to begin work)		February 18, 2016

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



STATE OF TENNESSEE
CENTRAL PROCUREMENT OFFICE

**REQUEST FOR QUALIFICATIONS # 33104-00116
AMENDMENT # 1
FOR TENNESSEE EDUCATION BROADBAND
CONSORTIUM E-RATE GOODS AND SERVICES**

DATE: December 28, 2015

RFQ # 33104-00116 IS AMENDED AS FOLLOWS:

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

EVENT		TIME (Central Time Zone)	DATE (all dates are State business days)
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6.	State response to written "Questions & Comments"		January 13, 2016
7.	RFQ Technical Response Deadline	2:00 p.m.	January 22, 2016
8.	State Notice of Qualified Respondents Released		January 25, 2016
9.	RFQ Cost Proposal Deadline (ONLY for Qualified Respondents)	2:00 p.m.	January 27, 2016
10.	RFQ Negotiations		January 28 – 29, 2016
11.	State Evaluation Notice Released		February 1, 2016
12.	Solicitation Files Opened for Public Inspection		February 2, 2016
13.	Respondent Contract Signature Deadline	2:00 p.m.	February 12, 2016
14.	Performance Bond Deadline	4:30 p.m.	February 16, 2016
15.	Anticipated Contract Start Date (anticipated date for contract to be fully executed and vendor to begin work)		February 18, 2016

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

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

QUESTION / COMMENT	STATE RESPONSE
1 I represent a manufacturer and would it be acceptable for us to respond directly even though the actual fulfillment of our products is done through resellers? Idea would be that we could potentially get on the contract then	Vendors that are awarded contracts will contract directly with the State and must respond to the mini-bids at the local level, therefore, the scenario you have described is not allowable.

QUESTION / COMMENT	STATE RESPONSE
<p>allow the districts to choose from a specific number of qualified resellers. We are a manufacturer that sells only through our authorized resellers. We would like to respond to this contract to be the main contract holder, with our authorized resellers acting as assigned fulfillment partners. The listed fulfillment partners would be responsible for contracting directly with the state/local entities that wish to utilize the resulting contract from this RFQ, including quotes, orders, billing, etc. This would also include our authorized resellers being the listed SPIN on any E-Rate Form 471 applications local schools/libraries file, that wish to utilize the state's Controlling Form 470 and the resulting contract from this RFP.</p>	

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



**STATE OF TENNESSEE
CENTRAL PROCUREMENT OFFICE**

**REQUEST FOR QUALIFICATIONS
FOR
TENNESSEE EDUCATION BROADBAND CONSORTIUM E-RATE GOODS AND SERVICES**

RFQ # 33104-00116

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1. INTRODUCTION

The State of Tennessee, Central Procurement Office, hereinafter referred to as “the State,” has issued this Request for Qualifications (“RFQ”) to define mandatory goods or services requirements; solicit responses; detail response requirements; and, outline the State’s process for evaluating responses and selecting a Respondent for contract award to provide the needed goods or services.

Through this RFQ, or any subsequent mini-bids, the State seeks to create a procurement vehicle through which the State, LEAs, individual schools and non-instructional facilities within the jurisdiction of each LEA, charter schools, state special schools, the Achievement School District, and public libraries (hereinafter collectively referred to as “Service Recipients”) may buy the requested goods or services at the most favorable, competitive prices and to give ALL qualified businesses, including those that are owned by minorities, women, Tennessee service-disabled veterans, and small business enterprises, the opportunity to do business with the state as contractors or subcontractors.

1.1. Statement of Procurement Purpose

The Tennessee Department of Education (an agency of the State), in support of Service Recipients seeks to establish a cohort of qualified vendors to provide goods and services defined in the Category 1 and Category 2 sections of the Eligible Service List as adopted by the Federal Communications Commission.

All statistical and fiscal information contained in this RFQ and its exhibits, including amendments and modifications thereto, are provided “as is”, without warranty as to the accuracy or adequacy of the data or information so provided, and reflect the department’s best understanding based on information or belief available to the department at the time of RFQ preparation. No inaccuracies in such data or information shall be a basis for delay in performance or a basis for legal recovery of damages, actual, consequential or punitive.

1.1.1 Qualifying Process

The State’s primary goal is to create a procurement founded in the tenants of process transparency, cost effectiveness, competitive disposition, and Service Recipient choice. Service Recipient choice will be facilitated by the multi-vendor approach of this process. This procurement will be achieved in two distinct processes to assure that the most cost effective solution is provided to Service Recipients. The first process will be a qualifying round, overseen by the State to establish a cohort of vendors capable of providing high quality and cost effective goods and services in some or all of the focus areas defined below. While multiple factors will be evaluated during this qualifying round, the cost of E-rate eligible goods and services will be the most heavily weighted factor. This is consistent with the Universal Service Administrative Company’s (USAC) direction regarding cost effectiveness (see <http://www.usac.org/sl/applicants/step02/default.aspx>) and in accordance with CFR Title 47, Part 54, §54.511 (Ordering Services). The product of this process will be a group of statewide master contacts available for use by Service Recipients. The vendors identified in this round will qualify for participation in the mini bid process.

1.1.2 Mini-bid Process

In instances where there are multiple vendors qualified to provide the requested products or services, Service Recipients will conduct a mini-bid process to select vendors from the cohort selected in the qualifying process that will provide specific work within their facilities. The mini-bid is a locally-driven process using various criteria within the guidelines provided by USAC. The mini-bid will be conducted as part of the FCC Form 471 filing process. This process is described in detail in the “Mini-bids” section of <http://www.usac.org/sl/applicants/step02/state-master-contracts.aspx>. Just as in the qualifying process, the cost of E-rate eligible goods and services will be the most heavily weighted factor in the evaluation matrix. USAC guidance for conducting a bid

evaluation can be found at <http://www.usac.org/sl/applicants/step02/evaluation.aspx>. The bid evaluation must also follow local procurement regulations.

During the mini-bid, Service Recipients will seek bids/quotes from vendors from the cohort selected in the qualifying process for a specific set of E-rate eligible goods and/or services from any of the offerings made available as part of the State's RFQ process. The vendor earning the highest score in the mini bid process will be selected to provide the goods and services for that Service Recipient. The evaluation matrix can have as many evaluation criteria as deemed necessary by the Service Recipient to make the selection for the specific need; however it is important to note that just as in the qualifying process, the cost of the E-rate eligible goods and services must be the most heavily weighted factor in the evaluation.

1.1.3 Areas of Focus

This RFQ will have three (3) distinct areas of focus. Vendors may submit responses to all or subset of these areas. Each Area of Focus has its own Cost Proposal and Attachment C, Technical Qualifications, Experience, and Approach, and will be evaluated separately

1.1.3.1 Data Transmission Services and Internet Access and Voice Services

Reliable broadband connectivity (both WAN and Internet access) is vital to the daily operation of all Service Recipients as broadband demands increase due to new instructional and assessment activities and community access needs. Most of these activities involve the transmission of high quality video samples in single direction or two-way communication formats, complex instructional and assessment modules utilizing mixed-media formats for the purpose of presentation and student artifact submission, and general data transmission is necessary for the support of primary data and information systems.

The State has established an initial baseline of 50 kbps per student to adequately support current levels of technology-rich instruction and assessment as part of the state's assessment of online readiness. This baseline will increase over the coming years as we approach broadband recommendations by the State Educational Technology Directors Association (SETDA) and recently adopted by the FCC during the recent E-rate modernization orders.

The Order adopts, as bandwidth targets, the State Education Technology Directors Association's (SETDA) recommendation for Internet access for schools of at least 100 Mbps per 1,000 students and staff (users) in the short term and 1 Gbps Internet access per 1,000 users in the longer term. Internet connectivity will be measured at the district level for school districts and at the school level for schools that are not members of a district. With respect to libraries, the Order adopts as a bandwidth target the American Library Association's recommendation that all libraries that serve fewer than 50,000 people have broadband speeds of at least 100 Mbps and all libraries that serve 50,000 people or more have broadband speeds of at least 1 Gbps. To measure affordability, the FCC will track pricing as a function of bandwidth. (<https://www.fcc.gov/page/summary-e-rate-modernization-order>)

The State is seeking wired and wireless broadband connectivity solutions (not cellular/mobile data) to address this issue. Specifically, the RFQ seeks responses focused on symmetric data circuits within the speed ranges of 1.5 Mbps and 100 Gbps in support of LEA connectivity (WAN) and Internet egress. While most solutions will focus on fiber optic connections as the primary transmission media, the state will entertain a variety of proposals over eligible E-rate transmission technologies identified in the ESL.

Given the importance of the assessment and instructional activities that broadband services will support, the quality of service of these connections cannot be understated.

The State will require a Service Level / Quality of Service Agreement (SLA/QoSA) of a minimum service uptime of 99.9% during normal school hours, defined as; 7:30 AM to 5:00pm Monday to Friday and 98.75% outside of these hours.

In addition to the costs of the transport circuits and Internet access, the State seeks cost proposals for installation and configuration services as required for new service installations. Installation services include but are not limited to:

- installation of basic terminating equipment required to utilize the transport circuit and the services. Also referred to as eligible On-Premise equipment. See <http://www.usac.org/sl/applicants/beforeyoubegin/eligible-services/category-one.aspx>
- configuration of basic terminating equipment such as routers, CSU/DSUs, etc. to light the fiber and make the broadband service generally available to downstream distribution devices. Also referred to as eligible On-Premise equipment. See <http://www.usac.org/sl/applicants/beforeyoubegin/eligible-services/category-one.aspx>

The State seeks cost proposals for the one-time construction charges related to special construction of new broadband services. These charges should be presented as a maximum cost per linear foot. These charges can be revised during the competitive mini-bid process; however, the cost per linear foot for one-time special construction charges provided in response to a mini-bid cannot exceed the maximum cost per linear foot stated in the cost proposal for the initial qualifying process.

1.1.3.2 Eligible Broadband Internal Connections

Category 2 internal connections involve all goods and services required to bring Category 1 broadband connections from the “outside of the building into the classroom.” High-speed broadband connectivity becomes a tool only if it can be used directly in the classroom in support of assessment and instructional activities.

The State seeks qualified vendors with demonstrated certifications and expertise in local area and wireless local area networking to provide hardware, software and related installation and configuration services to schools and public libraries for such connections. The Tennessee Department of Education surveyed LEAs indicating an interest in joining the Tennessee Education Broadband Consortium (by submission of a letter of agency) to determine needs within this space in terms of types of equipment and brands of existing installations to determine compatibility needs.

Vendors responding to this focus area for one or more manufacturer lines/brands shall provide a discount percentage based upon a publicly published list in existence prior to the issuance of this RFQ. Examples of such publicly published sources include, but are not limited to, Manufacturer’s Suggested Retail Price (MSRP), Retail Price, Catalog Pricing, Online Store Pricing, List Price, Educational Pricing or other similar pricing available to the general public without predetermined login access. Respondents should be prepared to provide the public access URL within their cost proposal in response to this RFQ.

Equipment categories for this area include wireless access points, network switches, routers, equipment racks, uninterruptible power supplies / battery backup, wireless controller systems and installation of these products. Related components used for internal broadband connections such as antennas, cabling, and connectors are eligible for E-rate support. Note that a manufacturer’s multi-year warranty for a period of up to three (3) years that is provided as an integral part of an eligible component, without a separately identifiable cost, may be included in the cost of the component.

Firewall services and components are E-rate eligible as a Category 2 service when offered separate from basic firewall protection provided as a standard component of a vendor’s Internet access service. Software supporting Category 2 eligible equipment used to distribute high-speed broadband through school buildings and libraries is eligible for E-rate support. Functionalities listed in the Eligible Broadband Internal Connections section of the ESL which can be virtualized in the cloud, and equipment that combines eligible functionalities, like routing and switching, are also eligible.

Caching is defined as a method that stores recently accessed information. Caching stores information locally so that the information is accessible more quickly than if transmitted across a network from a distance. A caching service or equipment that provides caching, including servers necessary for the provision of caching, is eligible for funding.

1.1.3.3 Eligible Managed Internal Broadband Services (MIBS)

As mentioned in the Internal Connections area, broadband connectivity is instructionally useful only if the service is delivered to classroom and the student within that classroom. In the past, this was almost exclusively achieved by hard-wired connections to computer laboratories forcing students to the technology rather than technology being delivered to the students. In recent years and with the advancement of wireless LAN (WLAN) technologies, wireless connectivity is a norm for the classroom. New device procurements now focus primarily on wireless-native devices such as low profile laptops and tablets.

MIBS provides a service to LEAs that seek assistance in the management and maintenance of their LAN and WLAN access. In this service, a vendor assumes management responsibility for wireless networks within a facility for a flat-rate monthly fee. The vendor is also responsible for the maintenance of the equipment and connection materials required to operate the network, whether wired or wireless. The service has two iterations:

Model 1 (Leased Equipment):

In this model, the school or library leases all of the required equipment from the Vendor to provide the wired or wireless network. The Vendor assumes complete responsibility for all maintenance of hardware and software required to provide the service at a SLA of at least 99.99% uptime and 99.999% packet delivery.

Model 2 (Service Recipient Equipment):

In this model, the school or library owns all of the requirement equipment to provide the wired or wireless network. The Vendor assumes management responsibility for the network and all of its components as required to deliver the service for a flat-rate monthly fee. Basic maintenance and software upgrades for the equipment being managed are covered by the vendor as part of the monthly fee with the school or library procuring additional equipment as required for expansion.

Public libraries will be eligible to purchase services under these agreements as of Year 2 of the agreements and will be eligible to seek E-Rate discounts for the eligible services upon the posting of their own Form 470 and evaluating the pricing in this contract as response to said Form 470. Public libraries must follow all State, local and E-Rate rules when seeking E-Rate discounts for eligible services.

1.2. Pre-Response Conference

A Pre-Response Conference will be held at the time and date detailed in the RFQ Schedule of Events, RFQ § 2. Pre-Response Conference attendance is not mandatory, and potential Respondents may be limited to a maximum number of attendees depending upon overall attendance and space limitations. Please contact the Solicitation Coordinator to RSVP for the Pre-Response Conference. The Conference will be held at:

Central Procurement Office
312 Rosa L. Parks Avenue
Tennessee Tower, 3rd Floor
Conference Room A
Nashville, TN 37243

1.3. Notice of Intent to Respond

Before the Notice of Intent to Respond Deadline detailed in RFQ § 2, Schedule of Events, potential Respondents should submit to the Solicitation Coordinator a Notice of Intent to Respond in the form of a simple e-mail or other written communication. Such notice should include the following information: the business or individual's name (as appropriate), a contact person's name and title, the contact person's mailing address, telephone number, facsimile, number, and e-mail address. Filing a Notice of Intent to Respond is not a prerequisite for submitting a response; however, it is necessary to ensure receipt of notices and communications relating to this RFQ.

1.4. Definitions and Abbreviations

An exhaustive listing of terms related to the E-rate program can be found at <http://www.usac.org/res/documents/sl/pdf/handouts/SL-Glossary-of-Terms.pdf>.

TERM	DEFINITION
Organizations	
Achievement School District (ASD)	<p>An organizational unit of the department of education, established and administered by the commissioner for the purpose of providing oversight for the operation of schools assigned to or authorized by the ASD.</p> <p>The commissioner shall have the authority to directly operate or contract with one (1) or more individuals, governmental entities or nonprofit entities to manage the day-to-day operations of any or all schools placed in the ASD, including, but not limited to, providing direct services to students.</p> <p>The commissioner shall have the authority to assign any school or grade configuration within a school to the ASD at any time such school is designated to be in priority status pursuant to § 49-1-602.</p>
Federal Communications Commission (FCC)	An independent agency of the United States government created by Congress via the Communications Act of 1934 responsible for the regulation of interstate communications. The Wireline Competition Bureau of the FCC is responsible for the policy development for Schools and Libraries Program of the Universal Service Fund.
Local Education Agency (LEA)	Public School District
Schools and Libraries Division (SLD)	Division of USAC that administers the E-Rate Program
State Education Technology Directors Association (SETDA)	A 501(c)3 not-for-profit membership association launched by state education agency leaders in 2001 to serve, support and represent their emerging interests and needs with respect to the use of technology for teaching, learning, and school operations.
State Special Schools	The Tennessee School for the Blind, the Tennessee School for the Deaf, the West Tennessee School for the Deaf and the Alvin C. York Agricultural Institute administered by the Tennessee Department of Education on behalf of the Tennessee State Board of Education.
Universal Service Administration Company (USAC)	Created by the Telecommunications Act of 1996, is the independent American nonprofit corporation tasked to manage the contribution of revenue to and distribution of funding from the Universal Service Fund. The Schools and Libraries Program (E-rate) is managed by this

	group.
Programs	
Category 1	One of two service categories defined in the eligible services list (ESL); this category focuses on data transmission services and internet access, and voice services (how to get the pipes to the side of the building).
Category 2	One of two service categories defined in the ESL; this category focuses on internal connections, managed internal broadband services, and basic maintenance of internal connections (e.g., how to get the pipes into the classroom and students).
E-rate	The Schools and Libraries Program funded via the Universal Service Fund and administrated by USAC. The E-rate program is responsible for the discount funding provided to schools and libraries across the nation for procurement of broadband services to the building and into the classroom.
E-rate Productivity Center (EPC)	Per FCC rule, this is the portal that all Form 470(s) and related procurement documentation will be available. Respondents must register with USAC to obtain login credentials to access the online information. You can reach USAC at 888.203.8100.
Eligible Services List (ESL)	A list published by USAC, each funding year, providing guidance on the eligibility of products and services under E-rate.
FCC Registration Number (FCCRN)	Required to do business with the FCC. https://apps.fcc.gov/coresWeb/publicHome.do
FCC Forms	
FCC Forms	Forms required by the FCC for schools and libraries to make application to the E-rate program for discounted broadband services. (all descriptions and form information can be seen at http://www.usac.org/sl/tools/forms/default.aspx)
470	Description of Services Requested and Certification Form – opens a competitive bidding process for services requested on the form, may have a RFP associated with the filing.
471	Services Ordered and Certification Form – filed with USAC to request discounts on eligible services for eligible schools, libraries, and consortia of those entities under the E-rate program based upon a previously approve FCC Form 470.
472	Billed Entity Applicant Reimbursement (BEAR) Form - used by the Billed Entity that received a Funding Commitment Decision Letter (FCDL) from the fund administrator, the SLD of USAC, and filed an FCC Form 486, Receipt of Service Confirmation Form, indicating that the Billed Entity intended to submit to USAC an invoice for reimbursement of discounts on eligible services received on or after the effective date of discounts and already paid for by the applicant.
474	Service Provider Invoice (SPI) Form -to be completed and submitted by a service provider that has provided discounted eligible services to eligible schools and libraries, in order to seek universal service support in the amount of the discounts. The service provider must

	have provided the service and given a discounted bill to the applicant prior to submitting the FCC Form 474.
486	Receipt of Service Confirmation and Children's Internet Protection Act and Technology Plan Certification Form - notifies USAC that the billed entity and/or the eligible entities that it represents is receiving, or has received, service in the relevant funding year from the named service provider(s).
498	Service Provider Identification Number and General Contact Information Form - used to collect contact, remittance, and payment information for service providers that receive support from the federal universal service programs.
Technology	
Local Area Network (LAN)	Network that connects computers and other devices in a relatively small area, typically a single building or a group of buildings.
Internet	Worldwide network of interconnected computers and networks using the Internet Protocol (IP)
Network Operations Center (NOC)	A place from which administrators supervise, monitor, and maintain a telecommunications network.
Service Level Agreement (SLA)	Agreement between a service provider and the end user that defines the level of service expected from the service provider. SLAs are output-based in that their purpose is specifically to define with the customer will receive.
Wide Area Network (WAN)	A telecommunication network or computer network that extends over a large geographical distance.
Wireless Local Area Network (WLAN)	Wireless computer network that links two or more devices using a wireless distribution method within a limited area.

2. RFQ SCHEDULE OF EVENTS

The following schedule represents the State's best estimates for this RFQ; however, the State reserves the right, at its sole discretion, to adjust the schedule at any time, or cancel and reissue a similar solicitation. Nothing in this RFQ is intended by the State to create any property rights or expectations of a property right in any Respondent.

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3. RESPONSE REQUIREMENTS

3.1. **Response Contents:** A response to this RFQ should address the following:

- 3.1.1. **Mandatory Requirements:** This section details the mandatory technical, functional, and experience requirements that must be demonstrated in the response to this RFQ in order to be passed on to Phase II of the Technical Response evaluation. A Respondent must duplicate and use RFQ Attachment A as a guide to organize responses for the Mandatory Requirements of the RFQ response. The Respondent should reference the page location of the information within the response in the indicated column of the table. This section is included in the State's evaluation as to whether or not a Respondent meets mandatory qualifications (Phase I).
- 3.1.2. **General Qualifications & Experience:** This section is included in the State's evaluation of Phase II of the Technical Response Evaluation and details general information and qualifications that must be demonstrated in the response to this RFQ. A Respondent must duplicate and use RFQ Attachment B as a guide to organize responses for this portion of the RFQ response. The Respondent should reference the page location in the information within the response in the indicated column of the table.
- 3.1.3. **Technical Qualifications, Experience & Approach:** This section is also included in the State's evaluation of Phase II of the Technical Response Evaluation and details technical qualifications, experience, and approach items that must be demonstrated in the response to this RFQ. A Respondent must duplicate and use RFQ Attachment C as a guide to organize responses for this portion of the RFQ response. The Respondent should reference the page location in the information within the response in the indicated column of the table.
- 3.1.4. **Cost Proposal: *For Qualified Respondents only***
 - 3.1.4.1. This section only applies to those respondents identified as being Qualified. See RFQ § 2, Schedule of Events, "State Notice of Qualified Respondents Released."
 - 3.1.4.2. If included as part of this solicitation, then the Cost Proposal must be recorded on an exact duplicate of RFQ Attachment D, Cost Proposal & Evaluation Guide. Any response that does not follow the instructions included in RFQ Attachment D may be deemed nonresponsive.
 - 3.1.4.3. A Respondent must only record the proposed cost exactly as required by the RFQ Attachment D, Cost Proposal & Evaluation Guide and must NOT record any other rates, amounts, or information.
 - 3.1.4.4. The proposed cost shall incorporate ALL costs for services under the contract for the total contract period.
 - 3.1.4.5. A Respondent must sign and date the Cost Proposal.
 - 3.1.4.6. A Respondent must submit the Cost Proposal to the State in a sealed package separate from the Technical Response.

3.2. **Response Delivery Location**

A Respondent must ensure that the State receives a Response to this RFQ no later than the Response Deadline time and dates detailed in the RFQ § 2, Schedule of Events. All responses must be delivered to:

Kristen McKeever, Sourcing Account Specialist
 Central Procurement Office
 Tennessee Tower, 3rd Floor
 312 Rosa L. Parks Avenue

Nashville, TN 37243
 (615) 741-0935
Kristen.McKeever@tn.gov

3.3. Response Format

- 3.3.1. A Respondent must ensure that the original response meets all form and content requirements detailed within this RFQ.
- 3.3.2. A Respondent must submit original response documents and copies as specified below.

3.3.2.1. Technical Response

One (1) original Technical Response paper document clearly labeled:

“RFQ # 33104-00116 TECHNICAL RESPONSE ORIGINAL”

and fifteen (15) copies of the Technical Response each in the form of one (1) digital document in “PDF” format properly recorded on its own otherwise blank, USB flash drive labeled:

“RFQ # 33104-00116 TECHNICAL RESPONSE COPY”

The digital copies should not include copies of sealed customer references or cost information in the general and technical evaluation phase. However, any other discrepancy between the paper response document and digital copies may result in the State rejecting the response as nonresponsive.

3.3.2.2. Cost Proposal: *For Qualified Respondents only*

One (1) original Cost Proposal paper document labeled:

“RFQ # 33104-00116 COST PROPOSAL ORIGINAL”

and one (1) copy in the form of a digital document in “XLS” format properly recorded on a separate, blank, USB flash-drive labeled:

“RFQ # 33104-00116 COST PROPOSAL COPY”

In the event of a discrepancy between the original Cost Proposal document and the digital copy, the original, signed document will take precedence.

3.4. Response Prohibitions: A response to this RFQ shall not:

- 3.4.1. Restrict the rights of the State or otherwise qualify the response to this RFQ;
- 3.4.2. Include, for consideration in this procurement process or subsequent contract negotiations, incorrect information that the Respondent knew or should have known was materially incorrect;
- 3.4.3. Include more than one response, per Respondent, to this RFQ;
- 3.4.4. Include any information concerning costs (in specific dollars or numbers) associated with the Technical Response;
- 3.4.5. Include the respondent’s own contract terms and conditions (unless specifically requested by the RFQ); or
- 3.4.6. Include the respondent as a prime contractor while also permitting one or more other respondents to offer the respondent as a subcontractor in their own responses.

3.5. Response Errors & Revisions

A Respondent is responsible for any and all errors or omissions in its response to this RFQ. A Respondent will not be allowed to alter or revise its response after the Response Deadline time and dates as detailed in RFQ § 2, Schedule of Events, unless such is formally requested in writing by the State (e.g., through a request for clarification, etc.).

3.6. Response Withdrawal

A Respondent may withdraw a response at any time before the Response Deadline time and date as detailed in RFQ § 2, Schedule of Events, by submitting a written signed request by an authorized representative of the Respondent. After withdrawing a response, a Respondent may submit another Response at any time before the Response Deadline time and date as detailed in RFQ § 2, Schedule of Events.

3.7. Response Preparation Costs

The State will not pay any costs associated with the preparation, submittal, or presentation of any response. Each Respondent is solely responsible for the costs it incurs in responding to this RFQ.

4. GENERAL INFORMATION & REQUIREMENTS

4.1. Communications

- 4.1.1. Respondents shall reference RFQ # 33104-00116 in all communications relating to this solicitation, and direct any such communications to the following person designated as the Solicitation Coordinator:

Kristen McKeever, Sourcing Account Specialist
 Central Procurement Office
 Tennessee Tower, 3rd Floor
 312 Rosa L. Parks Avenue
 Nashville, TN 37243
 (615) 741-0935
Kristen.McKeever@tn.gov

The State will convey all official responses and communications related to this RFQ to the potential respondents from whom the State has received a Notice of Intent to Respond (refer to RFQ Section 1.3.). Additionally, all original and subsequent documents will be available on USAC's EPC portal in conjunction with the posting of the Form 470(s).

- 4.1.2. Potential respondents with a handicap or disability may receive accommodation relating to the communication of this RFQ and participating in the RFQ process. Potential respondents may contact the RFQ Coordinator to request such reasonable accommodation no later than the Disability Accommodation Request Deadline detailed in RFQ § 2, Schedule of Events.
- 4.1.3. **Unauthorized contact about this RFQ with other employees or officials of the State of Tennessee may result in disqualification from contract award consideration.**
- 4.1.4. Notwithstanding the foregoing, potential Respondents may also contact the following as appropriate:
- 4.1.4.1. Staff of the Governor's Office of Diversity Business Enterprise may be contacted for assistance with respect to available minority-owned, woman-owned, Tennessee service-disabled veteran-owned, and small business enterprises as well as general public information relating to this request; or
- 4.1.4.2. The following individual designated by the State to coordinate compliance with the nondiscrimination requirements of the State of Tennessee, Title VI of the Civil Rights Act of 1964, the Americans with Disabilities Act of 1990, and associated federal regulations:

Helen Crowley, Compliance Team Lead
 Central Procurement Office
 Department of General Services
 Tennessee Tower, 3rd Floor
 312 Rosa L. Parks Avenue
 Nashville, TN 37243
 (615) 741-3836
Helen.Crowley@tn.gov

4.2. 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 Vendor on the grounds of handicap or disability, age, race, color, religion (subject to *Tennessee Code Annotated*, Sections 4-21-401 and 405), sex, national origin,

or any other classification protected by federal, Tennessee state constitutional, or statutory law. The Vendor pursuant to this solicitation shall post in conspicuous places, available to all employees and applicants, notices of nondiscrimination.

4.3. **Conflict of Interest**

- 4.3.1. The State may not consider a proposal from an individual who is, or within the past six (6) months has been, a State employee. For these purposes,
- 4.3.1.1. An individual shall be deemed a State employee until such time as all compensation for salary, termination pay, and annual leave has been paid;
- 4.3.1.2. A contract with or a proposal from a company, corporation, or any other contracting entity in which a controlling interest is held by any State employee shall be considered to be a contract with or proposal from the employee; and
- 4.3.1.3. A contract with or a proposal from a company, corporation, or any other contracting entity that employs an individual who is, or within the past six months has been, a State employee shall not be considered a contract with or a proposal from the employee and shall not constitute a prohibited conflict of interest.
- 4.3.2. This RFQ is also subject to *Tennessee Code Annotated*, Section 12-4-101.

4.4. **Respondent Required Review & Waiver of Objections**

- 4.4.1. Each potential respondent must carefully review this RFQ, including but not limited to, attachments, the RFQ Attachment G, *pro forma* Contract, and any amendments for questions, comments, defects, objections, or any other matter requiring clarification or correction (collectively called "questions and comments").
- 4.4.2. Any potential respondent having questions and comments concerning this RFQ must provide such in writing to the State no later than the written "Questions & Comments Deadline" detailed in RFQ § 2, Schedule of Events.
- 4.4.3. Protests based on any objection shall be considered waived and invalid if the objection has not been brought to the attention of the State, in writing, by the written "Questions & Comments Deadline."

4.5. **Disclosure of Response Contents**

- 4.5.1. All materials submitted to the State in response to this solicitation become property of the State of Tennessee. Selection for award does not affect this right. By submitting a response, a Respondent acknowledges and accepts that the full contents and associated documents submitted in response to this request will become open to public inspection. Refer to RFQ § 2, Schedule of Events.
- 4.5.2. The RFQ responses will be available for public inspection only after the completion of evaluation of the RFQ or any resulting solicitation which this RFQ becomes a part of, whichever is later.

4.6. **Notice of Professional Licensure, Insurance, and Department of Revenue Registration Requirements**

- 4.6.1. All persons, agencies, firms or other entities that provide legal or financial opinions, which a Respondent provides for consideration and evaluation by the State as part of a response to this RFQ, shall be properly licensed to render such opinions.
- 4.6.2. Before the Contract resulting from this RFQ is signed, the apparent successful Respondent (and Respondent employees and subcontractors, as applicable) must hold all necessary, appropriate business and professional licenses to provide service as required. The State may require any Respondent to submit evidence of proper licensure.

- 4.6.3. Before the Contract resulting from this RFQ is signed, the apparent successful Respondent must provide a valid, Certificate of Insurance indicating current insurance coverage meeting minimum requirements as may be specified by the RFQ.
- 4.6.4. Before the Contract resulting from this RFP is signed, the apparent successful Respondent must be registered with the Department of Revenue for the collection of Tennessee sales and use tax. The State shall not approve a contract unless the Respondent provides proof of such registration. The foregoing is a mandatory requirement of an award of a contract pursuant to this solicitation.

4.7. **RFQ Amendments & Cancellation**

- 4.7.1. The State reserves the right to amend this RFQ at any time, provided that it is amended in writing. However, prior to any such amendment, the State will consider whether it would negatively impact the ability of potential respondents to meet the deadlines and revise the RFQ Schedule of Events if deemed appropriate. If a RFQ amendment is issued, the State will convey it to potential respondents who submitted a Notice of Intent to Respond (refer to RFQ § 1.3). A response must respond, as required, to the final RFQ (including its attachments) as may be amended.

The State reserves the right, at its sole discretion, to cancel or to cancel and reissue this RFQ in accordance with applicable laws and regulations.

4.8. **State Right of Rejection**

- 4.8.1. Subject to applicable laws and regulations, the State reserves the right to reject, at its sole discretion, any and all proposals.
- 4.8.2. The State may deem as nonresponsive and reject any proposal that does not comply with all terms, conditions, and performance requirements of this RFQ. Notwithstanding the foregoing, the State reserves the right to seek clarifications or to waive, at its sole discretion, a response's minor variances from full compliance with this RFQ. If the State waives variances in a response, such waiver shall not modify the RFQ requirements or excuse the Respondent from full compliance with such, and the State may hold any resulting vendor to strict compliance with this RFQ.
- 4.8.3. The State will review the response evaluation record and any other available information pertinent to whether or not each respondent is responsive and responsible. If the evaluation team identifies any respondent that appears not to meet the responsive and responsible thresholds such that the team would not recommend the respondent for potential contract award, this determination will be fully documented for the record. ("Responsive" is defined as submitting a response that conforms in all material respects to the RFQ. "Responsible" is defined as having the capacity in all respects to perform fully the contract requirements, and the integrity and reliability which will assure good faith performance.)

4.9. **Assignment & Subcontracting**

- 4.9.1. The vendor may not subcontract, transfer, or assign any portion of the Contract awarded as a result of this RFQ without prior approval of the State. The State reserves the right to refuse approval, at its sole discretion, of any subcontract, transfer, or assignment.
- 4.9.2. If a Respondent intends to use subcontractors, the response to this RFQ must specifically identify the scope and portions of the work each subcontractor will perform (refer to RFQ Attachment B, Item B.14.).
- 4.9.3. Subcontractors identified within a response to this RFQ will be deemed as approved by the State unless the State expressly disapproves one or more of the proposed subcontractors prior to signing the Contract.

- 4.9.4. The Contractor resulting from this RFQ may only substitute another subcontractor for a proposed subcontractor at the discretion of the State and with the State's prior, written approval.
- 4.9.5. Notwithstanding any State approval relating to subcontracts, the Contractor resulting from this RFQ will be the prime contractor and will be responsible for all work under the Contract.

5. PROCUREMENT PROCESS & CONTRACT AWARD

- 5.1. The vendor selection will be a two-part process: (1) Qualification of Technical Responses, and (2) Cost Proposals/Negotiations.
- 5.2. Qualification of Technical Responses: Technical Responses will be short-listed for further evaluation, analysis or negotiation if they are apparently responsive, responsible, and within the competitive range. A Technical Response will be deemed within the competitive range based on the following criterion:

Respondents that meet all Mandatory Requirements set forth in RFQ Attachment A will be considered qualified and will move on to Phase I and Phase II as listed below.

Phase I: The State will evaluate the Mandatory Requirements set forth in RFQ Attachment A on a pass/fail basis.

Phase II: Following the Phase I evaluation, the State will apply a standard equitable evaluation model, which will represent a qualitative assessment of each response. Each response will be scored by Evaluation Team members according to the Technical Response & Evaluation Guides (See RFQ Attachments B & C).

The Solicitation Coordinator will total the average score from the evaluation team for each responsive and responsible Respondent's Technical Response Points for RFQ Attachments B & C.

The Solicitation Coordinator will open the Cost Proposal of each Qualified Respondent and calculate and record each Cost Proposal score in accordance with the RFQ Attachment D., Cost Proposal & Scoring Guide.

- 5.3. Cost Proposals: If included as part of this solicitation then only Qualified Respondents, that are responsive and responsible and in the competitive range, will continue onto Part Two, Cost Proposals/Negotiations.
- 5.4. Clarifications and Negotiations: The State reserves the right to award a contract on the basis of initial responses received; therefore, each response should contain the respondent's best terms from a technical and cost standpoint. However, the State reserves the right to conduct clarifications or negotiations with respondents. All communications, clarifications, and negotiations shall be conducted in a manner that supports fairness in response improvement.
- 5.4.1. Clarifications: The State may identify areas of a response that may require further clarification or areas in which it is apparent that there may have been miscommunications or misunderstandings as to the State's specifications or requirements. The State may seek to clarify those issues identified during one or multiple clarification round(s). Each clarification sought by the State may be unique to an individual respondent.
- 5.4.2. Negotiations: The State may elect to negotiate with Qualified Respondents, within the competitive range, by requesting revised responses, negotiating costs, or finalizing contract terms and conditions. The State reserves the right to conduct multiple negotiation rounds
- 5.4.2.1. Cost Negotiations: All responsive respondents within the competitive range will be given equivalent information with respect to cost negotiations. All cost negotiations will be documented for the procurement file. Additionally, the State may conduct target pricing and other goods or services level negotiations. Target pricing may be based on considerations such as current pricing, market considerations, benchmarks, budget availability, or other

methods that do not reveal individual respondent pricing. During target price negotiations, respondents are not obligated to meet or beat target prices, but will not be allowed to increase prices.

- 5.4.2.2. If the State determines costs and contract finalization discussions and negotiations are not productive, the State reserves the right to bypass the apparent best evaluated Respondent and enter into contract negotiations with the next apparent best evaluated Respondent.

5.5. Evaluation Guide

The State will consider qualifications, experience, technical approach, and cost (if applicable) in the evaluation of responses and award points in each of the categories detailed below. The maximum evaluation points possible for each category are detailed below.

Evaluation Category	Maximum Points Possible = 100 points
Mandatory Requirements (refer to RFQ Attachment A)	Pass/Fail
General Qualifications, Experience, Technical Qualifications, Experience & Approach (refer to RFQ Attachment B)	30 points
Technical Qualifications, Experience & Approach (refer to RFQ Attachment C)	30 points
Cost Proposal (refer to RFQ Attachment D)	40 points

5.6. Contract Award

- 5.6.1. The State shall award contracts to all Qualified Respondents with an overall score of 50 or more and have had successful negotiations.
- 5.6.2. The Solicitation Coordinator will submit the Evaluation Team determinations and response scores to the head of the contracting agency, or the agency head's designee, for consideration along with any other relevant information that might be available and pertinent to contract award.
- 5.6.3. The contracting agency head, or the agency head's designee, will determine the apparent best evaluated responses.
- 5.6.4. The State reserves the right to make an award without further discussion of any response.
- 5.6.5. The State will issue an Evaluation Notice and make the RFQ files available for public inspection at the time and date specified in the RFQ § 2, Schedule of Events.

NOTICE: The Evaluation Notice shall not create rights, interests, or claims of entitlement in either the Respondent identified as the apparent best evaluated or any other Respondent.

- 5.6.6. The Respondent identified as offering the apparent best-evaluated must sign a contract drawn by the State pursuant to this RFQ. The contract shall be substantially the same as the RFQ Attachment G, *pro forma* contract. The Respondent must sign said contract no later than the Respondent Contract Signature Deadline detailed in RFQ § 2, Schedule of Events. If the Respondent fails to provide the signed contract by the deadline, the State may determine the Respondent is non-responsive to this RFQ and reject the response.
- 5.6.7. Notwithstanding the foregoing, the State may, at its sole discretion, entertain limited negotiation prior to contract signing and, as a result, revise the pro forma contract terms and conditions or performance requirements in the State's best interests, PROVIDED THAT such revision of terms and conditions or performance requirements shall NOT

materially affect the basis of response evaluation or negatively impact the competitive nature of the RFQ and vendor selection process.

- 5.6.8. If the State determines that a response is nonresponsive and rejects it after opening Cost Proposals, the Solicitation Coordinator will re-calculate scores for each remaining responsive Cost Proposal to determine (or re-determine) the apparent best-evaluated response.

TECHNICAL RESPONSE & EVALUATION GUIDE

All Respondents must address all items detailed below and provide, in sequence, the information and documentation as required (referenced with the associated item references). All Respondents must also detail the response page number for each item in the appropriate space below.

The Solicitation Coordinator will review all responses to determine if the Mandatory Requirement Items are addressed as required and mark each with pass or fail. For each item that is not addressed as required, the Evaluation Team must review the responses and attach a written determination. In addition to the Mandatory Requirement Items, the Solicitation Coordinator will review each response for compliance with all RFQ requirements.

RESPONDENT LEGAL ENTITY NAME:			
Response Page # (Respondent completes)	Item Ref.	Section A— Mandatory Requirement Items	Pass/Fail
		The Technical Response must be delivered to the State no later than the Technical Response Deadline specified in the RFQ § 2, Schedule of Events.	
		The Technical Response must not contain cost or pricing information of any type.	
		The Technical Response must not contain any restrictions of the rights of the State or other qualification of the response.	
		A Respondent must not submit alternate responses.	
		A Respondent must not submit multiple responses in different forms (as a prime and a subcontractor).	
	A.1.	Provide the Statement of Certifications and Assurances (RFQ Attachment E) completed and signed by an individual empowered to bind the Respondent to the provisions of this RFQ and any resulting contract. The document must be signed without exception or qualification.	
	A.2.	Provide a statement, based upon reasonable inquiry, of whether the Respondent or any individual who shall perform work under the contract has a possible conflict of interest (<i>e.g.</i> , employment by the State of Tennessee) and, if so, the nature of that conflict. NOTE: Any questions of conflict of interest shall be solely within the discretion of the State, and the State reserves the right to cancel any award.	
	A.3.	Provide a current bank reference indicating that the Respondent's business relationship with the financial institution is in positive standing. Such reference must be written in the form of a standard business letter, signed, and dated within the past three (3) months.	
	A.4.	Provide two current positive credit references from vendors with which the Respondent has done business written in the form of standard business letters, signed, and dated within the past three (3) months.	
	A.5.	Provide an official document or letter from an accredited credit bureau,	

RESPONDENT LEGAL ENTITY NAME:			
Response Page # (Respondent completes)	Item Ref.	Section A— Mandatory Requirement Items	Pass/Fail
		verified and dated within the last three (3) months and indicating a positive credit rating for the Respondent (NOTE: A credit bureau report number without the full report is insufficient and will <u>not</u> be considered responsive.)	
	A.6.	Provide a statement confirming that, if awarded a contract pursuant to this RFQ, the Respondent shall deliver a Performance Bond to the State in accordance with the requirements of this RFQ. The statement must be signed by an individual with legal authority to bind the proposing entity to the provisions of this RFQ and any contract awarded pursuant to it.	
	A.7.	Provide a valid, Certificate of Insurance that is verified and dated within the last six (6) months and which details <u>all</u> of the following: (a) Insurance Company (b) Respondent's Name and Address as the Insured (c) Policy Number (d) The following minimum insurance coverage: (i) Workers' Compensation/ Employers' Liability (including all states coverage) with a limit not less than the relevant statutory amount or One Million Dollars (\$1,000,000.00) per occurrence for employers' liability; (ii) 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 (\$1,000,000.00) per occurrence and Two Million Dollars (\$2,000,000.00) aggregate; (iii) Automobile Coverage (including owned, leased, hired, and non-owned vehicles) with a bodily injury/property damage combined single limit not less than One Million Dollars (\$1,000,000.00) per occurrence; and (e) The following information applicable to each type of insurance coverage: (i) Coverage Description, (ii) Exceptions and Exclusions, (iii) Policy Effective Date, (iv) Policy Expiration Date, and (v) Limit(s) of Liability.	
	A.8.	Provide evidence of a service provider identification number assignment. Respondents must have a Service Provider Identification Number (SPIN) assigned to their company by SLD by filing FCC Form 498.	
	A.9.	Provide a statement of agreement to bill and receive a portion of the payment for the provisions of goods and services described herein directly from USAC via the Form 474 Service Provider Invoice (SPI).	
	A.10.	Provide a statement of agreement to submit to the SLD annually, a	

RESPONDENT LEGAL ENTITY NAME:			
Response Page # (Respondent completes)	Item Ref.	Section A— Mandatory Requirement Items	Pass/Fail
		completed Form 473, Service Provider Annual Certification Form, which is a program requirement.	
	A.11.	Provide a statement of agreement to maintain all records of services provided under the resulting contract for a period of no less than 10 years from the last date of service in the fiscal year in which a contract is in place in accordance with FCC regulations as outlined at http://www.usac.org/sl/tools/document-retention.aspx .	
	A.12.	Provide a statement of agreement to fully cooperate with a Service Recipient and SLD / USAC during audit exercises by providing documentation about services provided and related invoicing information including details of calculations used to produce said invoices. These audit programs are described at http://www.usac.org/sl/about/program-integrity/default.aspx .	
	A.13.	<p>Provide a statement of agreement to the following assertion:</p> <p>The annual E-rate Funding Year begins on July 1 and expires on June 30 of each calendar year. Regardless of the contract “effective date”, E-rate eligible goods and/or services requested in this RFP shall be delivered no earlier than the start of the 2016 funding year (July 1, 2016). If Category 1 services (Telecommunication Services and Internet access) will begin on or shortly after July 1 of a funding year, the service provider, in some cases, may need to undertake some construction and installation work prior to the beginning of that funding year. Within the limitations indicated below, the infrastructure costs of a service provider can be deemed to be delivered at the same time that the associated Category 1 services begin. That is, if services begin on July 1, then the delivery of service provider infrastructure necessary for those services can be considered as also delivered on July 1. The term of the service will be for up to 5 years or 60 months.</p> <p>EARLY FUNDING CONDITIONS</p> <p>Category 1</p> <p>There are four conditions that must be met in order for USAC to provide support in a funding year for Category 1 infrastructure costs incurred prior to that funding year.</p> <ul style="list-style-type: none"> • Initiation of installation cannot take place before selection of the service provider pursuant to a posted Form 470 and in any event no earlier than six months prior to July 1 of the funding year. • The Category 1 service must depend on the installation of the infrastructure. • The underlying Category 1 service cannot have a service start date prior to July 1 of the funding year. • No invoices can be submitted to USAC for reimbursement prior to July 1 of the funding year. <p>For more information, please refer to the FCC Order involving the Nassau County Board of Cooperative Educational Services (DA 02-3365, released December 6, 2002). This FCC decision only applies to Priority 1 services (telecommunications services and Internet access).</p>	

RESPONDENT LEGAL ENTITY NAME:			
Response Page # (Respondent completes)	Item Ref.	Section A— Mandatory Requirement Items	Pass/Fail
		The complete text can be found at the following URL: http://www.usac.org/sl/applicants/step05/installation.aspx	
	A.14.	Provide evidence of registration with the FCC and has obtained a FCC registration number. See https://apps.fcc.gov/coresWeb/publicHome.do for more information about this requirement.	
	A.15.	Provide evidence of good standing with the FCC via a PDF of the report produced by https://apps.fcc.gov/redlight/login.cfm showing no debts outstanding that is owed to the FCC and that the Vendor is not on Red Light Status.	
	A.16.	Provide statement of agreement to comply with the FCC's Lowest Corresponding Price (LCP) rule and not charge a price above the LCP for E-rate eligible services. See 47 C.F.R. Section 54.511 and 47 CFR Section 54.500(f). The Vendor is obligated to provide the LCP not just in this bid response, but throughout the course of the contract. Vendors may refer to USAC guidance at http://www.usac.org/sl/service-providers/step02/lowest-corresponding-price.aspx for additional information.	
	A.17.	Please provide information on investments you have made in TN to promote or provide employment in this state or to otherwise benefit the TN populace.	
	A.18.	Identify all Areas of Focus which the Respondent is submitting a Technical Response.	
<i>State Use – RFQ Coordinator Signature, Printed Name & Date:</i>			

TECHNICAL RESPONSE & EVALUATION GUIDE

SECTION B: GENERAL QUALIFICATIONS & EXPERIENCE. The Respondent must address all items detailed below and provide, in sequence, the information and documentation as required (referenced with the associated item references). The Respondent must also detail the response page number for each item in the appropriate space below. Evaluation Team members will independently evaluate and assign one score for all responses to Section B—General Qualifications & Experience Items.

RESPONDENT LEGAL ENTITY NAME:		
Response Page # (Respondent completes)	Item Ref.	Section B— General Qualifications & Experience Items
	B.1.	Detail the name, e-mail address, mailing address, telephone number, and facsimile number of the person the State should contact regarding the response.
	B.2.	Describe the Respondent's form of business (<i>i.e.</i> , individual, sole proprietor, corporation, non-profit corporation, partnership, limited liability company) and business location (physical location or domicile).
	B.3.	Detail the number of years the Respondent has been in business.
	B.4.	Briefly describe how long the Respondent has been performing the goods or services required by this RFQ.
	B.5.	Describe the Respondent's number of employees, client base, and location of offices.
	B.6.	Provide a statement of whether there have been any mergers, acquisitions, or sales of the Respondent within the last ten (10) years. If so, include an explanation providing relevant details.
	B.7.	Provide a statement of whether the Respondent or, to the Respondent's knowledge, any of the Respondent's employees, agents, independent contractors, or subcontractors, proposed to provide work on a contract pursuant to this RFQ, have been convicted of, pled guilty to, or pled <i>nolo contendere</i> to any felony. If so, include an explanation providing relevant details.
	B.8.	Provide a statement of whether, in the last ten (10) years, the Respondent has filed (or had filed against it) any bankruptcy or insolvency proceeding, whether voluntary or involuntary, or undergone the appointment of a receiver, trustee, or assignee for the benefit of creditors. If so, include an explanation providing relevant details.
	B.9.	Provide a statement of whether there is any material, pending litigation against the Respondent that the Respondent should reasonably believe could adversely affect its ability to meet contract requirements pursuant to this RFQ or is likely to have a material adverse effect on the Respondent's financial condition. If such exists, list each separately, explain the relevant details, and attach the opinion of counsel addressing whether and to what extent it would impair the Respondent's performance in a contract pursuant to this RFQ. NOTE: All persons, agencies, firms, or other entities that provide legal opinions regarding the Respondent must be properly licensed to render such opinions. The State may require the Respondent to submit proof of such licensure detailing the state of licensure and licensure number for each person or entity that renders such opinions.
	B.10.	Provide a statement of whether there is any pending or in progress Securities Exchange Commission investigations involving the Respondent. If such exists, list each separately,

RESPONDENT LEGAL ENTITY NAME:		
Response Page # (Respondent completes)	Item Ref.	Section B— General Qualifications & Experience Items
		<p>explain the relevant details, and attach the opinion of counsel addressing whether and to what extent it will impair the Respondent's performance in a contract pursuant to this RFQ.</p> <p>NOTE: All persons, agencies, firms, or other entities that provide legal opinions regarding the Respondent must be properly licensed to render such opinions. The State may require the Respondent to submit proof of such licensure detailing the state of licensure and licensure number for each person or entity that renders such opinions.</p>
	B.11.	Provide a brief, descriptive statement detailing evidence of the Respondent's ability to deliver the goods or services sought under this RFQ (e.g., prior experience, training, certifications, resources, program and quality management systems, etc.).
	B.12.	Provide a narrative description of the proposed contract team, its members, and organizational structure along with an organizational chart identifying the key people who will be assigned to provide the goods or services required by this RFQ, illustrating the lines of authority, and designating the individual responsible for the completion of each task and deliverable of the RFQ.
	B.13.	Provide a personnel roster listing the names of key people who the Respondent will assign to perform tasks required by this RFQ along with the estimated number of hours that each individual will devote to the required tasks. Follow the personnel roster with a resume for each of the people listed. The resumes must detail the individual's title, education, current position with the Respondent, and employment history.
	B.14.	<p>Provide a statement of whether the Respondent intends to use subcontractors to accomplish the work required by this RFQ, and if so, detail:</p> <p>(a) the names of the subcontractors along with the contact person, mailing address, telephone number, and e-mail address for each;</p> <p>(b) a description of the scope and portions of the work each subcontractor will perform; <u>and</u></p> <p>(c) a statement specifying that each proposed subcontractor has expressly assented to being proposed as a subcontractor in the Respondent's response to this RFQ.</p>
	B.15.	<p>Provide documentation of the Respondent's commitment to diversity as represented by the following:</p> <p>(a) <u>Business Strategy</u>. Provide a description of the Respondent's existing programs and procedures designed to encourage and foster commerce with business enterprises owned by minorities, women, Tennessee service-disabled veterans, and small business enterprises. Please also include a list of the Respondent's certifications as a diversity business, if applicable.</p> <p>(b) <u>Business Relationships</u>. Provide a listing of the Respondent's current contracts with business enterprises owned by minorities, women, Tennessee service-disabled veterans and small business enterprises. Please include the following information:</p> <p>(i) contract description;</p> <p>(ii) contractor name and ownership characteristics (i.e., ethnicity, gender, Tennessee service-disabled); and</p> <p>(iii) contractor contact name and telephone number.</p> <p>(c) <u>Estimated Participation</u>. Provide an estimated level of participation by business enterprises owned by minorities, women, Tennessee service-disabled veterans, and small business enterprises if a contract is awarded to the Respondent pursuant to this RFP. Please include the following information:</p> <p>(i) a percentage (%) indicating the participation estimate. (Express the estimated</p>

RESPONDENT LEGAL ENTITY NAME:		
Response Page # (Respondent completes)	Item Ref.	Section B— General Qualifications & Experience Items
		<p>participation number as a percentage of the total estimated contract value that will be dedicated to business with subcontractors and supply contractors having such ownership characteristics only and DO NOT INCLUDE DOLLAR AMOUNTS);</p> <p>(ii) anticipated goods or services contract descriptions;</p> <p>(iii) names and ownership characteristics (i.e., ethnicity, gender, Tennessee service-disabled veterans) of anticipated subcontractors and supply contractors.</p> <p>NOTE: In order to claim status as a Diversity Business Enterprise under this contract, businesses must be certified by the Governor's Office of Diversity Business Enterprise (Go-DBE). Please visit the Go-DBE website at https://tn.diversitysoftware.com/FrontEnd/StartCertification.asp?TN=tn&XID=9810 for more information.</p> <p>(d) <u>Workforce</u>. Provide the percentage of the Respondent's total current employees by ethnicity and gender.</p> <p>NOTE: Respondents that demonstrate a commitment to diversity will advance State efforts to expand opportunity to do business with the State as contractors and subcontractors. Response evaluations will recognize the positive qualifications and experience of a Respondent that does business with enterprises owned by minorities, women, Tennessee service-disabled veterans and small business enterprises and who offer a diverse workforce.</p>
	B.16.	<p>Provide a statement of whether or not the Respondent has any current contracts with the State of Tennessee or has completed any contracts with the State of Tennessee within the previous five-year period. If so, provide the following information for all current and completed contracts:</p> <p>(a) the name, title, telephone number and e-mail address of the State contact responsible for the contract at issue;</p> <p>(b) the name of the procuring State agency;</p> <p>(c) a brief description of the contract's specification for goods or scope of services;</p> <p>(d) the contract term; and</p> <p>(e) the contract number.</p> <p>NOTES:</p> <ul style="list-style-type: none"> ▪ Current or prior contracts with the State are <u>not</u> a prerequisite and are <u>not</u> required for the maximum evaluation score, and the existence of such contracts with the State will <u>not</u> automatically result in the addition or deduction of evaluation points. ▪ Each evaluator will generally consider the results of inquiries by the State regarding all contracts responsive to Section B.16 of this RFQ.
	B.17.	<p>Provide customer references from individuals who are <u>not</u> current or former State employees for projects similar to the goods or services sought under this RFQ and which represent:</p> <ul style="list-style-type: none"> ▪ two (2) accounts Respondent currently services that are similar in size to the State; <u>and</u> ▪ three (3) completed projects. <p>References from at least three (3) different individuals are required to satisfy the requirements above, e.g., an individual may provide a reference about a completed project and another reference about a currently serviced account. The standard reference questionnaire, which <u>must</u> be used and completed is provided at RFQ Attachment F. References that are not completed as required may be deemed nonresponsive and may not be considered.</p> <p>The Respondent will be <u>solely</u> responsible for obtaining fully completed reference questionnaires and including them in the sealed Technical Response. In order to obtain and</p>

RESPONDENT LEGAL ENTITY NAME:		
Response Page # (Respondent completes)	Item Ref.	Section B— General Qualifications & Experience Items
		<p>submit the completed reference questionnaires, follow the process below:</p> <p>(a) Add the Respondent's name to the standard reference questionnaire at Attachment F, and make a copy for each reference.</p> <p>(b) Send a reference questionnaire and a new, standard #10 envelope to each reference.</p> <p>(c) Instruct the reference to:</p> <p>(i) complete the reference questionnaire;</p> <p>(ii) sign <u>and</u> date the completed reference questionnaire;</p> <p>(iii) seal the completed, signed, and dated reference questionnaire within the envelope provided;</p> <p>(iv) sign his or her name in ink across the sealed portion of the envelope; and</p> <p>(v) return the sealed envelope directly to the Respondent (the Respondent may wish to give each reference a deadline, such that the Respondent will be able to collect all required references in time to include them within the sealed Technical Response).</p> <p>(d) <u>Do NOT open the sealed references upon receipt.</u></p> <p>(e) Enclose all <u>sealed</u> reference envelopes within a larger, labeled envelope for inclusion in the Technical Response as required.</p> <p>NOTES:</p> <ul style="list-style-type: none"> ▪ The State will not accept late references or references submitted by any means other than that which is described above, and each reference questionnaire submitted must be completed as required. ▪ The State will not review more than the number of required references indicated above. ▪ While the State will base its reference check on the contents of the sealed reference envelopes included in the Technical Response package, the State reserves the right to confirm and clarify information detailed in the completed reference questionnaires, and may consider clarification responses in the evaluation of references. ▪ The State is under <u>no</u> obligation to clarify any reference information.
	B.18.	<p>Provide a statement and any relevant details addressing whether the Respondent is any of the following:</p> <p>(a) is presently debarred, suspended, proposed for debarment, or voluntarily excluded from covered transactions by any federal or state department or agency;</p> <p>(b) has within the past three (3) years, been convicted of, or had a civil judgment rendered against the contracting party from commission of fraud, or a criminal offence in connection with obtaining, attempting to obtain, or performing a public (federal, state, or local) transaction or grant under a public transaction; violation of federal or state antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;</p> <p>(c) is presently indicted or otherwise criminally or civilly charged by a government entity (federal, state, or local) with commission of any of the offenses detailed above; and</p> <ul style="list-style-type: none"> ▪ has within a three (3) year period preceding the contract had one or more public transactions (federal, state, or local) terminated for cause or default.
	B.19.	<p>Respondents must identify personnel with manufacturer and/or industry certifications, when applicable, to demonstrate a level of technical rigor in the application area for which a response is being provided.</p>

RESPONDENT LEGAL ENTITY NAME:		
Response Page # (Respondent completes)	Item Ref.	Section B— General Qualifications & Experience Items
	B.20.	Respondents must describe past and current experiences working in the K-12 education sector and demonstrate an understanding of the technology landscape in this sector and its requirements.
SCORE (for <u>all</u> Section B— Qualifications & Experience Items above): (maximum possible score = 30)		
<i>State Use – Evaluator Identification:</i>		

ATTACHMENT C

AREA OF FOCUS 1: DATA TRANSMISSION SERVICES AND INTERNET ACCESS AND VOICE SERVICES

TECHNICAL RESPONSE & EVALUATION GUIDE

SECTION C: TECHNICAL QUALIFICATIONS, EXPERIENCE & APPROACH. The Respondent should explain its approach to providing goods or services to the State. The items listed below represent specific questions the State would request you answer in your response. For ease of review, please annotate your explanation so that it contains references to the items listed below where they are addressed. Respondent should not feel constrained to answer only the specific questions listed below in its explanation and should feel free to provide attachments if necessary in an effort to provide a more thorough response.

The Evaluation Team, made up of three (3) or more State and LEA employees and consultants, will independently evaluate and score the response to each item. Each evaluator will use the following whole number, raw point scale for scoring each item:

0 = little value 1 = poor 2 = fair 3 = satisfactory 4 = good 5 = excellent

The Solicitation Coordinator will multiply the Item Score by the associated Evaluation Factor (indicating the relative emphasis of the item in the overall evaluation). The resulting product will be the item's raw, weighted score for purposes of calculating the section scores as indicated.

RESPONDENT LEGAL ENTITY NAME:					
Response Page # (Respondent completes)	Item Ref.	Section C— Technical Qualifications, Experience & Approach Items	Item Score	Evaluation Factor	Raw Weighted Score
	C.1.	<p>Understanding of e-Rate</p> <p>The federal e-Rate program is regulated through complex rulings, requirements and guidelines which can evolve year over year. Failure to comply fully with any e-Rate criterion can result in lost funding to service recipients or delayed payments to service providers. The State wishes to eliminate adverse audit findings and rulings related to e-Rate in the 2016 funding year and beyond.</p> <p>a) Please describe how your organization manages e-Rate expertise internally and stays abreast of changing e-Rate conditions. Your response should include a description of how your internal e-Rate expertise will be leveraged in your response to this RFQ and any 10 specific actions you will take to help the State meet its goal of zero adverse audit findings.</p>		10	
	C.2.	<p>Understanding of Network Topologies currently in use in TN</p> <p>The State does not impose a single standard for the configuration and topology of wide area networks in TN school LEAs and consequently there are several different topologies in use today to interconnect school facilities within an LEA and to provide Internet connectivity. It is important that Respondents fully</p>		5	

RESPONDENT LEGAL ENTITY NAME:					
Response Page # (Respondent completes)	Item Ref.	Section C— Technical Qualifications, Experience & Approach Items	Item Score	Evaluation Factor	Raw Weighted Score
		<p>understand the configurations in use today in TN LEAs.</p> <p>a) Please provide technical diagrams to describe your understanding of the three (3) most common topologies in use today in TN for Internet connectivity across an LEA.</p>			
	C.3.	<p>Proposed Network Topologies</p> <p>We would like to understand the specific network topology or topologies you propose to employ in the delivery of eligible services. You are not required to adhere to one of the topologies outlined above; however you may choose to do so.</p> <p>a) Please provide technical diagrams to describe your proposed network topology for each service you are bidding on in the Area of Focus 1 Cost Proposal and provide the circumstances by which different topologies might be required or selected by service recipients.</p>		5	
	C.4.	<p>Quality of Service</p> <p>Internet connectivity in TN schools is becoming increasingly critical to the success of high-stakes education processes, such as; TCAP and TNReady. As the importance of Internet connectivity increases the State must make certain that the quality and reliability of services offered is commensurate with that importance.</p> <p>a) Please provide your proposed SLA for each service you have included in your Area of Focus 1 Cost Proposal. Note that Area of Focus 1 Pro Forma Contract Scope of Services provides some additional guidelines on SLA requirements.</p> <p>b) Please provide us with technical information on how you will meet that proposed SLA at all points in the connection from the Internet to the termination point(s) and data link(s) of your service at physical location(s). Your response should address considerations such as; intrinsic QoS, redundancy/fall back, monitoring, diagnostics and other capabilities, particularly those that might be considered proprietary or differentiating in nature.</p>		10	
	C.5.	<p>Capacity Planning</p> <p>Demands on bandwidth vary dramatically at different times throughout the school year. For example; during online assessment windows concurrent demand for bandwidth across the State will run many times higher than average usage patterns outside of these windows. Additionally, as the State promotes increased use of Internet connectivity with improved</p>		5	

RESPONDENT LEGAL ENTITY NAME:					
Response Page # (Respondent completes)	Item Ref.	Section C— Technical Qualifications, Experience & Approach Items	Item Score	Evaluation Factor	Raw Weighted Score
		<p>device to student ratios and increased emphasis on the use of media-rich digital content, demand for bandwidth in individual schools, LEAs or across the State may increase by significant increments with little warning. We would like to understand your procedures for pro-actively planning and managing network capacity to meet both increasing and transient demands for higher bandwidth and capacity.</p> <p>a) Please provide an explanation of your capacity planning process, real time monitoring, policies related to circuit headroom and the ability of your network to support bursting or other mechanisms to address unexpected usage spikes. You may also include other information that you deem relevant to this topic.</p>			
	C.6.	<p>Network Performance</p> <p>Internet Connectivity in education is increasingly being used for real-time teaching applications and processes that must occur during short, finite windows of time. Bottlenecks or unpredictability of performance during these windows can have more significant impact on the success of the process and an end-user's perception of the quality of a network than in many other commercial applications. This pattern of usage also results in identical actions and content being accessed simultaneously by multiple users, for example; a class of students all viewing an interactive multi-media presentation at the same time. It should also be noted that the State is moving increasingly to Software as a Service applications (SaaS) which can be delay-sensitive and bandwidth-intensive, and online collaborative systems, multicasting video and other bandwidth intensive activities. While the performance of a system overall is a function of many factors and not just the wide area network, the State considers a high performance WAN to be more than simply a high bandwidth network and wishes to understand how network performance and promised speeds will be delivered in consideration of the somewhat unique and evolving patterns associated with Internet usage in a K-12 institution.</p> <p>a) Please describe the technologies and approaches you employ to deliver a high performance network that is always consistent with promised bandwidth speeds. Your response should discuss caching and additional characteristics, such as the capability to reserve network resources in advance and to guarantee performance to match specific qualities of service. You may reference your responses to other questions, such as; C.4 and C.5 in your response to this question.</p>		10	

RESPONDENT LEGAL ENTITY NAME:					
Response Page # (Respondent completes)	Item Ref.	Section C— Technical Qualifications, Experience & Approach Items	Item Score	Evaluation Factor	Raw Weighted Score
	C.7.	<p>Service Area</p> <p>Identify which of the grand divisions (East, Middle, and/or West) in which the Respondent can provide Category 1 services. Respondents can service one (1), two (2), or all three (3) divisions.</p>		20	
	C.8.	<p>Maintenance and Technical Support</p> <p>The Category 1 Eligible Services list provides for maintenance and technical support services to be an e-Ratable cost provided that service is provided as a component of one of the eligible connectivity services. The Area of Focus 1 Cost Proposal will include provision for your eligible maintenance and technical support services. The State places importance on the quality and completeness of maintenance and technical support services and wishes to fully understand your services in this regard.</p> <p>a) Please provide complete details of the standard inclusions, exclusions and proposed SLA for each e-Rate Eligible maintenance and technical support service you have included in your Area of Focus 1 Cost Proposal.</p> <p>b) Please provide complete details of the standard inclusions, exclusions and proposed SLA for maintenance and technical support services (if any) that are included in each service you have bid on and which have no cost to the service recipient and with no cost component, either bundled, billed or amortized, reflected in the Area of Focus 1 Cost Proposal.</p> <p>c) Please provide complete details of the standard inclusions, exclusions, proposed SLA and pricing table for any ineligible maintenance and technical support services (if any) that a service recipient may optionally purchase at additional cost without e-Rate benefit and that is not reflected in your Area of Focus 1 Cost Proposal.</p> <p>d) Please provide details of how service recipients will request and follow up on the status of requests for technical support. Your response should include information on; help desk software, online systems, including; self-monitoring and analytics tools, availability of live operators, service hours, access to technicians and a description of your support escalation process.</p> <p>e) Please provide information on the number, geographic location, qualifications and percentage allocation of technical support engineers as it relates to grand divisions you have listed in your response to</p>		5	

RESPONDENT LEGAL ENTITY NAME:					
Response Page # (Respondent completes)	Item Ref.	Section C— Technical Qualifications, Experience & Approach Items	Item Score	Evaluation Factor	Raw Weighted Score
		<p>Item Reference C.7. You may also discuss remote support capabilities in this response.</p> <p>f) Please provide your typical / historical maintenance schedule for each service you have included in your Area of Focus 1 Cost Proposal and describe your process for advance notification of maintenance requirements.</p>			
	C.9.	<p>Security and Privacy</p> <p>The protection of student's engaging in online activities, staff and student identities, and data stored in online data systems is of paramount importance to the State. By necessity, Education is a publically accountable industry that is regulated at multiple levels and subject to some of the strictest federal and state laws related to the disclosure of personally identifiable information (PII), such as; FERPA and the National School Lunch Act. While security of a system and protection of sensitive data involves many aspects, the wide area network is both a source of vulnerability and a source of defense. We would like to understand any specific technologies, configurations or processes that you employ to help ensure the safety and privacy of data and the online activities of our students.</p> <p>a) The e-Rate Category 1 Eligible Services list permits delivery of basic firewall services if provided as a standard component of an eligible Internet service. Please describe the firewall capabilities of your Internet services, including; a diagram illustrating the physical location of firewall capabilities relative to the network topology, a discussion on how the capability is enabled (i.e. appliance, network feature, software) and how the firewall rules are configured and customized.</p> <p>b) It is not uncommon for an education institution to be compelled to respond to a Request for Information, notification of a data breach or other security incident. In these cases time is of the essence and data logged by the Internet service provider will often be critical to an investigation. Please provide an overview of your process for responding to a mandatory security related incident or request for information, including an overview of the data related to access and traffic that you log as part of your standard service operations.</p> <p>c) Please describe your organization's internal security policy as it relates to a K-12 customer and the strict requirements of federal and state laws such as FERPA. Your response should discuss limiting access to network equipment and visibility to data flows, physical location/data center security, tamper</p>		5	

RESPONDENT LEGAL ENTITY NAME:					
Response Page # (Respondent completes)	Item Ref.	Section C— Technical Qualifications, Experience & Approach Items	Item Score	Evaluation Factor	Raw Weighted Score
		prevention for network components, intruder detection / network authentication, personnel screening, support for the prevention of malicious actions, such as; “Man in the Middle” and “Denial of Service” exploits and any other information you deem relevant to this topic.			
	C.10..	<p>Network Metrics and Usage Analytics</p> <p>As the TDOE moves increasingly toward cloud-based solutions and Software as a Service (SaaS) application delivery models, the ability to perform network analytics and view metrics beyond data volumes and QoS metrics becomes increasingly important for activities such as; holding online vendors accountable to SLA’s, tuning products, performing online readiness assessments in schools, reacting rapidly to issues impacting critical online processes, performing timely upgrades and maintenance, and performing advanced web-analytics around student engagement online with specific applications. While it is common for this type of measurement to occur at the LAN level there is also value in the data that can be collected at the WAN level.</p> <p>a) Please provide an overview of the network metrics and usage analytics data that you can provide to help support all or part of the activities described above. Please include a description of how this data will be provided or made available on demand.</p>		5	
	C.11.	<p>Execution Strategy</p> <p>It is of paramount importance to the State that a respondent has the necessary processes and execution ability to deliver services to all customers specified in that respondent’s Area of Focus 1 Cost Proposal as described and in sufficient time to meet the beginning of the 2016 school year. For this reason we are asking respondents to be very intentional about the LEAs and schools nominated in their Area of Focus 1 Cost Proposal for each Area of Focus 1 Scope of Service item the respondent is bidding on. The State is looking for confirmation that a respondent can be meticulous in their planning and flawless in their execution of service commencement.</p> <p>a) Please provide information on the survey and assessment process you followed down to school level to determine if service is available, can be delivered on time and as specified in your Area of Focus 1 Cost Proposal.</p> <p>b) Please provide an overview of your project management, scheduling and resource allocation processes used to ensure successful service</p>		25	

RESPONDENT LEGAL ENTITY NAME:					
Response Page # (Respondent completes)	Item Ref.	Section C— Technical Qualifications, Experience & Approach Items	Item Score	Evaluation Factor	Raw Weighted Score
		<p>deployment outcomes. Please also include a proposal for engagement with the State to provide regular communications and updates on project status.</p> <p>c) It is possible that some LEAs and/or schools may switch to your service from another service provider for the 2016 school year. Please provide information on the switching process and how you will manage the change, including; coordination between customer and other vendors, down time minimization, cut over logistics, DNS, MX and other configuration changes. Please also include details of any other considerations not already detailed in your Area of Focus 1 Cost Proposal that may impact price, timing or quality of service relating to a switch of service provider.</p> <p>d) It is possible that some LEAs and/or schools may switch away from your service to another provider for the 2016 school year. Please provide information on your policies and process for supporting a switch away from your service, including; commitment to responsiveness, notification times and transfer of data/registrations if applicable.</p> <p>e) LEAs and schools that will require some form of physical infrastructure or upgrade in order to consume your service, such as; fiber deployment, tails, carrier equipment upgrades, pole attach agreements etc. will have the longest lead times and carry the greatest risk. You will be asked in your Area of Focus 1 Cost Proposal to clearly identify all LEAs and schools that will require some form of physical infrastructure or upgrade. Please provide specific information on how you will undertake these upgrades and include any factors not already provided in your Area of Focus 1 Cost Proposal that may impact cost or timeframe for service delivery.</p> <p>f) Please provide your requirements of the State, LEAs and schools for lead times and notification of service decisions subsequent to contract awards for each of the following circumstances; selecting your service without the need for any infrastructure changes, moving to your service from another carrier, moving away from your service or requiring infrastructure changes (and applicable categories of change) in order to consume your service in a timely manner.</p>			
	C.12.	<p>Commitment to Tennessee</p> <p>Please provide information on any programs or strategies in place to help provide Internet services to rural and low socio-economic regions of the state, including; using of funding such as CAF2, partnering</p>		5	

RESPONDENT LEGAL ENTITY NAME:					
Response Page # (Respondent completes)	Item Ref.	Section C— Technical Qualifications, Experience & Approach Items	Item Score	Evaluation Factor	Raw Weighted Score
		with local carriers and municipalities, and other strategies.			
	C.13.	<p>Commitment to Cost and Performance Targets</p> <p>The FCC has set aggressive targets nationwide for Internet connectivity and affordability. These targets include; 1 Mbps of bandwidth per student by 2018 and a cost of \$3 per 1 Mbps of bandwidth (with limited definition).</p> <p>a) Please provide an overview of your organization's strategies to help TN to achieve these goals over time in a commercially responsible manner for all parties. You should include discussions on innovation and commitment to research and development, and how the State can partner with you towards this goal. Do not list cost information in your response.</p>		5	
	C.14.	<p>Service Catalogue</p> <p>Please provide a copy of your complete Service Catalog without pricing. You may include service offerings that are not subject to e-Rate support.</p>		0 (This response will not be scored)	
<i>The Solicitation Coordinator will use this sum and the formula below to calculate the section score. All calculations will use and result in numbers rounded to two (2) places to the right of the decimal point.</i>			Total Raw Weighted Score: <i>(sum of Raw Weighted Scores above)</i>		
$\frac{\text{Total Raw Weighted Score}}{\text{Maximum Possible Raw Weighted Score}}$ <i>(i.e., 5 x the sum of item weights above)</i>			X 30 <i>(maximum possible score)</i>		= SCORE:
<i>State Use – Evaluator Identification:</i>					
<i>State Use – Solicitation Coordinator Signature, Printed Name & Date:</i>					

AREA OF FOCUS 2: ELIGIBLE BROADBAND INTERNAL CONNECTIONS**TECHNICAL RESPONSE & EVALUATION GUIDE**

SECTION C: TECHNICAL QUALIFICATIONS, EXPERIENCE & APPROACH. The Respondent should explain its approach to providing goods or services to the State. The items listed below represent specific questions the State would request you answer in your response. For ease of review, please annotate your explanation so that it contains references to the items listed below where they are addressed. Respondent should not feel constrained to answer only the specific questions listed below in its explanation and should feel free to provide attachments if necessary in an effort to provide a more thorough response.

The Evaluation Team, made up of three (3) or more State and LEA employees and consultants, will independently evaluate and score the response to each item. Each evaluator will use the following whole number, raw point scale for scoring each item:

0 = little value 1 = poor 2 = fair 3 = satisfactory 4 = good 5 = excellent

The Solicitation Coordinator will multiply the Item Score by the associated Evaluation Factor (indicating the relative emphasis of the item in the overall evaluation). The resulting product will be the item's raw, weighted score for purposes of calculating the section scores as indicated.

RESPONDENT LEGAL ENTITY NAME:					
Response Page # (Respondent completes)	Item Ref.	Section C— Technical Qualifications, Experience & Approach Items	Item Score	Evaluation Factor	Raw Weighted Score
	C.1.	<p>Understanding of e-Rate</p> <p>The federal e-Rate program is regulated through complex rulings, requirements and guidelines which can evolve year over year. Failure to comply fully with any e-Rate criterion can result in lost funding to service recipients or delayed payments to service providers. The State wishes to eliminate adverse audit findings and rulings related to e-Rate in the 2016 funding year and beyond.</p> <p>Describe how your organization manages e-Rate expertise internally and stays abreast of changing e-Rate conditions. Your response should include a description of how your internal e-Rate expertise will be leveraged in your response to this RFQ and any 10 specific actions you will take to help the State meet its goal of zero adverse audit findings.</p>		10	
	C.2.	<p>Quality of Service</p> <p>Internet connectivity, and the goods and services that support it, in TN schools is becoming increasingly critical to the success of high-stakes education processes, such as; TCAP and TNReady. As the importance of Internet connectivity increases the State must make certain that the quality and reliability of services offered is commensurate with that importance.</p> <p>Provide a detailed listing of Respondent's minimum</p>		20	

RESPONDENT LEGAL ENTITY NAME:					
Response Page # (Respondent completes)	Item Ref.	Section C— Technical Qualifications, Experience & Approach Items	Item Score	Evaluation Factor	Raw Weighted Score
		<p>response times to service outage incidents at multiple severity levels as it relates to the failure of warranted equipment procured from the Respondent using a contract resulting from this RFQ.</p> <p>Provide reasonable details of internal processes used to assure that service outages are addressed within these timelines.</p>			
	C.3.	<p>Service Area</p> <p>Identify which of the grand divisions (East, Middle, and/or West) in which the Respondent can provide Category 2 goods and services. Respondents can service one (1), two (2), or all three (3) divisions.</p>		20	
	C.4.	<p>Team Member Credentials</p> <p>Provide resumes and proof of credentials for all Vendor team members with relevant certifications from a manufacturer or well-known standards organization providing evidence of expertise with regard to the configuration, deployment, implementation, and maintenance of the devices and supporting software for internal connections as defined in the Category 2 section of the 2016 ESL.</p>		10	
	C.5.	<p>Execution Strategy</p> <p>It is of paramount importance to the State that a respondent has the necessary processes and execution ability to deliver goods and services to all customers specified in that respondent's cost proposal as described and in sufficient time to meet the beginning of the 2016 school year. For this reason we are asking respondents to be very intentional about the service areas nominated in their response. The State is looking for confirmation that a respondent can be meticulous in their planning and flawless in their execution of service commencement.</p> <p>Please provide an overview of your project management, scheduling and resource allocation processes used to ensure successful goods and services deployment outcomes. Please also include a proposal for engagement with the State to provide regular communications and updates on project status.</p>		35	
	C.6.	<p>Service Catalog</p> <p>Please provide a copy of your complete Service Catalog without pricing. You may include service offerings that are not subject to e-Rate support.</p>		0 (This response will not be scored)	

RESPONDENT LEGAL ENTITY NAME:					
Response Page # (Respondent completes)	Item Ref.	Section C— Technical Qualifications, Experience & Approach Items	Item Score	Evaluation Factor	Raw Weighted Score
<i>The Solicitation Coordinator will use this sum and the formula below to calculate the section score. All calculations will use and result in numbers rounded to two (2) places to the right of the decimal point.</i>				Total Raw Weighted Score: <i>(sum of Raw Weighted Scores above)</i>	
Total Raw Weighted Score			X 30 <i>(maximum possible score)</i>		= SCORE:
Maximum Possible Raw Weighted Score <i>(i.e., 5 x the sum of item weights above)</i>					
<i>State Use – Evaluator Identification:</i>					
<i>State Use – Solicitation Coordinator Signature, Printed Name & Date:</i>					

AREA OF FOCUS 3: ELIGIBLE MANAGED BROADBAND SERVICES

TECHNICAL RESPONSE & EVALUATION GUIDE

SECTION C: TECHNICAL QUALIFICATIONS, EXPERIENCE & APPROACH. The Respondent should explain its approach to providing goods or services to the State. The items listed below represent specific questions the State would request you answer in your response. For ease of review, please annotate your explanation so that it contains references to the items listed below where they are addressed. Respondent should not feel constrained to answer only the specific questions listed below in its explanation and should feel free to provide attachments if necessary in an effort to provide a more thorough response.

The Evaluation Team, made up of three (3) or more State and LEA employees and consultants, will independently evaluate and score the response to each item. Each evaluator will use the following whole number, raw point scale for scoring each item:

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The Solicitation Coordinator will multiply the Item Score by the associated Evaluation Factor (indicating the relative emphasis of the item in the overall evaluation). The resulting product will be the item's raw, weighted score for purposes of calculating the section scores as indicated.

RESPONDENT LEGAL ENTITY NAME:					
Response Page # (Respondent completes)	Item Ref.	Section C— Technical Qualifications, Experience & Approach Items	Item Score	Evaluation Factor	Raw Weighted Score
	C.1.	<p>Understanding of e-Rate</p> <p>The federal e-Rate program is regulated through complex rulings, requirements and guidelines which can evolve year over year. Failure to comply fully with any e-Rate criterion can result in lost funding to service recipients or delayed payments to service providers. The State wishes to eliminate adverse audit findings and rulings related to e-Rate in the 2016 funding year and beyond.</p> <p>Describe how your organization manages e-Rate expertise internally and stays abreast of changing e-Rate conditions. Your response should include a description of how your internal e-Rate expertise will be leveraged in your response to this RFQ and any 10 specific actions you will take to help the State meet its goal of zero adverse audit findings.</p>		10	
	C.2.	<p>Quality of Service</p> <p>Internet connectivity, and the goods and services that support it, in TN schools is becoming increasingly critical to the success of high-stakes education processes, such as; TCAP and TNReady. As the importance of Internet connectivity increases the State must make certain that the quality and reliability of services offered is commensurate with that importance.</p> <p>Provide a detailed listing of Respondent's minimum</p>		10	

RESPONDENT LEGAL ENTITY NAME:					
Response Page # (Respondent completes)	Item Ref.	Section C— Technical Qualifications, Experience & Approach Items	Item Score	Evaluation Factor	Raw Weighted Score
		<p>response times to service outage incidents at multiple severity levels as it relates to the failure of warranted equipment procured from the Respondent using a contract resulting from this RFQ.</p> <p>Provide reasonable details of internal processes used to assure that service outages are addressed within these timelines.</p>			
	C.3.	<p>Service Area</p> <p>Identify which of the grand divisions (East, Middle, and/or West) in which the Respondent can provide Category 2 goods and services. Respondents can service one (1), two (2), or all three (3) divisions.</p>		10	
	C.4.	<p>Team Member Credentials</p> <p>Provide resumes and proof of credentials for all Vendor team members with relevant certifications from a manufacturer or well-known standards organization providing evidence of expertise with regard to the configuration, deployment, implementation, and maintenance of the devices and supporting software for internal connections as defined in the Category 2 section of the 2016 ESL.</p>		10	
	C.5.	<p>Execution Strategy</p> <p>It is of paramount importance to the State that a respondent has the necessary processes and execution ability to deliver goods and services to all customers specified in that respondent's cost proposal as described and in sufficient time to meet the beginning of the 2016 school year. For this reason we are asking respondents to be very intentional about the service areas nominated in their response. The State is looking for confirmation that a respondent can be meticulous in their planning and flawless in their execution of service commencement.</p> <p>Please provide an overview of your project management, scheduling and resource allocation processes used to ensure successful goods and services deployment outcomes. Please also include a proposal for engagement with the State to provide regular communications and updates on project status.</p>		15	
	C.6.	<p>Leased Equipment Model</p> <p>Provide a maximum cost per student for a leased equipment model of eligible managed internal broadband services solutions as defined in the 2016 ESL. List the various manufacturers and equipment models your company is authorized to provide.</p>		20	

RESPONDENT LEGAL ENTITY NAME:					
Response Page # (Respondent completes)	Item Ref.	Section C— Technical Qualifications, Experience & Approach Items	Item Score	Evaluation Factor	Raw Weighted Score
	C.7.	Service Recipient-owned Equipment Model List the various manufacturers and equipment models your company is authorized to provide.		20	
	C.8.	Service Catalogue Please provide a copy of your complete Service Catalog without pricing. You may include service offerings that are not subject to e-Rate support.		0 (This response will not be scored)	
<i>The Solicitation Coordinator will use this sum and the formula below to calculate the section score. All calculations will use and result in numbers rounded to two (2) places to the right of the decimal point.</i>			Total Raw Weighted Score: <i>(sum of Raw Weighted Scores above)</i>		
$\frac{\text{Total Raw Weighted Score}}{\text{Maximum Possible Raw Weighted Score}}$ <i>(i.e., 5 x the sum of item weights above)</i>			$\times 30$ <i>(maximum possible score)</i>		= SCORE:
<i>State Use – Evaluator Identification:</i>					
<i>State Use – Solicitation Coordinator Signature, Printed Name & Date:</i>					

Cost Proposal & Evaluation Guide*For Qualified Respondents Only*

Cost Proposals/Negotiations will only be requested of Qualified Respondents in the competitive range. This is a place holder for the document that will be issued to Qualified Respondents at that part of the procurement process.

ATTACHMENT E**STATEMENT OF CERTIFICATIONS AND ASSURANCES**

An individual responding in his or her individual capacity or legally empowered to contractually bind the Respondent must complete and sign the Statement of Certifications and Assurances below as required, and this signed statement must be included with the response as required by the Request for Qualifications.

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

1. The Respondent will comply with all of the provisions and requirements of the RFQ.
2. The Respondent will provide all specified goods or services as required by the contract awarded pursuant to this RFQ.
3. The Respondent accepts and agrees to all terms and conditions set out in the contract awarded pursuant to this RFQ.
4. The Respondent acknowledges and agrees that a contract resulting from the RFQ shall incorporate, by reference, all Response responses as a part of the contract.
5. The Respondent will comply, as applicable, 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.
6. To the best of the undersigned's knowledge, information or belief, the information detailed within the Response to the RFQ is accurate.
7. The Response submitted to the RFQ was independently prepared, without collusion, and under penalty of perjury.
8. No amount shall be paid directly or indirectly to an employee or official of the State of Tennessee as wages, compensation, or gifts in exchange for acting as an officer, agent, employee, subcontractor, or consultant to the Respondent in connection with the request or any potential resulting contract.
9. The Response submitted in response to the RFQ shall remain valid for at least 120 days subsequent to the date of the Response opening and thereafter in accordance with any contract pursuant to the RFQ.

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

DO NOT SIGN THIS DOCUMENT IF YOU ARE NOT LEGALLY AUTHORIZED TO DO SO BY THE ENTITY RESPONDING TO THIS RFQ.

SIGNATURE & DATE:

PRINTED NAME & TITLE:

LEGAL ENTITY NAME:

FEIN or SSN:

REFERENCE QUESTIONNAIRE

The standard reference questionnaire provided on the following pages of this attachment MUST be completed by all individuals offering a reference for the Respondent.

The Respondent will be responsible for obtaining completed reference questionnaires as required (refer to RFQ Attachment B, General Qualifications & Experience Items, Item B.17.), and for enclosing the sealed reference envelopes within the Respondent's Technical Proposal.

RFQ # 33104-00116 REFERENCE QUESTIONNAIRE

RESPONDENT NAME: RESPONDENT NAME (completed by respondent before reference is requested)

The "respondent name" specified above, intends to submit a response to the State of Tennessee in response to the Request for Qualifications (RFQ) indicated. As a part of such response, the respondent must include a number of completed and sealed reference questionnaires (using this form).

Each individual responding to this reference questionnaire is asked to follow these instructions:

- complete this questionnaire (either using the form provided or an exact duplicate of this document);
- sign and date the completed questionnaire;
- seal the completed, signed, and dated questionnaire in a new standard #10 envelope;
- sign in ink across the sealed portion of the envelope; and
- return the sealed envelope containing the completed questionnaire directly to the respondent.

(1) **What is the name of the individual, company, organization, or entity responding to this reference questionnaire?**

(2) **Please provide the following information about the individual completing this reference questionnaire on behalf of the above-named individual, company, organization, or entity.**

NAME:	
TITLE:	
TELEPHONE #	
E-MAIL ADDRESS:	

(3) **What goods or services do/did the vendor provide to your company or organization?**

(4) **What is the level of your overall satisfaction with the vendor of the goods or services described above?**

Please respond by circling the appropriate number on the scale below.

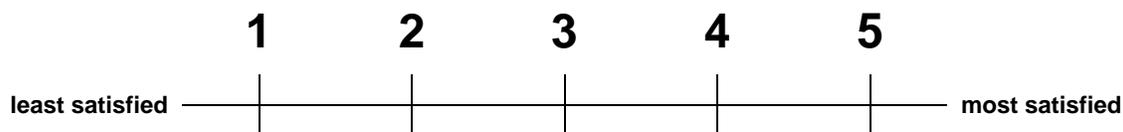
	1	2	3	4	5	
least satisfied						most satisfied

RFP # 33104-00116 PROPOSAL REFERENCE QUESTIONNAIRE — PAGE 2

If you circled 3 or less above, what could the vendor have done to improve that rating?

- (5) If the goods or services that the vendor provided to your company or organization are completed, were the goods or services completed in compliance with the terms of the contract, on time, and within budget? If not, please explain.
- (6) If the vendor is still providing goods or services to your company or organization, are these goods or services being provided in compliance with the terms of the contract, on time, and within budget? If not, please explain.
- (7) How satisfied are you with the vendor's ability to perform based on your expectations and according to the contractual arrangements?
- (8) In what areas of goods or service delivery do/did the vendor excel?
- (9) In what areas of goods or service delivery do/did the vendor fall short?
- (10) What is the level of your satisfaction with the vendor's project management structures, processes, and personnel?

Please respond by circling the appropriate number on the scale below.

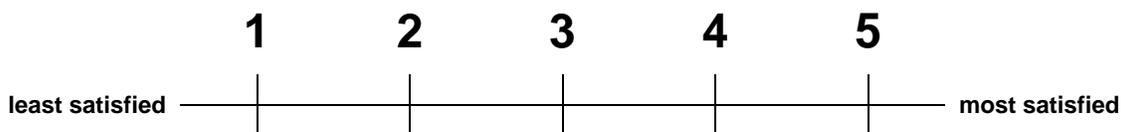


What, if any, comments do you have regarding the score selected above?

RFP # 33104-00116 PROPOSAL REFERENCE QUESTIONNAIRE — PAGE 3

(11) Considering the staff assigned by the vendor to deliver the goods or services described in response to question 3 above, how satisfied are you with the technical abilities, professionalism, and interpersonal skills of the individuals assigned?

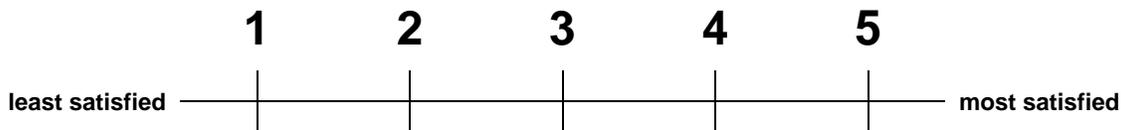
Please respond by circling the appropriate number on the scale below.



What, if any, comments do you have regarding the score selected above?

(12) Would you contract again with the vendor for the same or similar goods or services?

Please respond by circling the appropriate number on the scale below.



What, if any, comments do you have regarding the score selected above?

REFERENCE SIGNATURE:

(by the individual completing this request for reference information)

_____ (must be the same as the signature across the envelope seal)

DATE:

ATTACHMENT G**AREA OF FOCUS 1: DATA TRANSMISSION SERVICES & INTERNET ACCESS & VOICE SERVICES****RFQ # 33104-00116 PRO FORMA CONTRACT**

The *pro forma* contract detailed in following pages of this exhibit contains some “blanks” (signified by descriptions in capital letters) that will be completed with appropriate information in the final contract resulting from the RFQ.

**CONTRACT
BETWEEN THE STATE OF TENNESSEE,
CENTRAL PROCUREMENT OFFICE
AND
CONTRACTOR NAME**

This Contract, by and between the State of Tennessee, Central Procurement Office ("State") and **Contractor Legal Entity Name** ("Contractor"), is for the provision of Data Transmission and Internet Connectivity and Voice Services for **SPECIFY GRAND DIVISION(S)**, as further defined in the "SCOPE." State and Contractor may be referred to individually as a "Party" or collectively as the "Parties" to this Contract.

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

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

Contractor Edison Registration ID # **Number**

A. SCOPE:

- A.1. The Contractor shall provide all goods or services and deliverables as required, described, and detailed below and shall meet all service and delivery timelines as specified by this Contract.
- A.2. Basic Conduit Access. The Contractor shall provide Basic Conduit Access to the Internet, a service that provides point-to-point broadband connectivity between the Internet and a single eligible location without consideration to other affiliated locations or central offices. Non-Exhaustive Examples:
- a. Connecting a single, non-affiliated Charter school to the Internet.
 - b. Connecting each school in a small LEA directly to the Internet where that LEA does not require interconnectivity between schools or the centralization of services at an LEA office location.
 - c. Connecting a single school directly to the Internet in an LEA that is generally interconnected and centralized but where it is cost-prohibitive or impractical to connect that particular school to a centralized location or hub, for example; if there is excessive distance between the school and the office location.

Mandatory Service Component: The Contractor shall provide connection and enablement of a single eligible location to the Internet utilizing one of the eligible Category 1 broadband service types capable of delivering a consistent speed between 1.5Mbps and 100Gbps and is supported by a Service Level / Quality of Service Agreement (SLA/QoSA) acceptable to the State and reflecting a minimum service uptime of 99.9% during normal school hours, defined as; 7:30 AM to 5:00pm Monday to Friday and 98.75% outside of these hours.

Optional Service Components:

- a. Upfront and one off special construction, installation and upgrades, such as; fiber provisioning, tails and termination equipment as needed on a location by location basis to implement the Contractor's services to that location in accordance with allowable e-Rate installation services. NOTE: These services shall not be accepted unless it is deemed essential to the delivery of the mandatory component of this service and all other acceptable transmission options that do not require special construction have been proposed for that location if available.
- b. Basic rules-based firewall capable of blocking inbound or outbound data packets between the Internet and the eligible location.
- c. DNS, DHCP and other common configurations applicable at the carrier level needed to enable Internet connectivity to the eligible location.

A.3. Internet Access for Affiliated Locations. The Contractor shall provide Access to the Internet for Clusters of Affiliated Locations, a service that interconnects multiple affiliated locations into a secure, physical or virtual private network and connects that private network to the Internet in a manner that enables centralized management of that network, configurations and resources. Non-Exhaustive Examples:

- a. All schools in an LEA are interconnected via a virtual private network (VPN) implemented at the network carrier level and with broadband Internet access enabled for all schools.
- b. All schools in an LEA are interconnected via a virtual private network (VPN) implemented at a central office location (non-carrier) and with broadband Internet access enabled for all schools.
- c. All schools in an LEA connected via physical data links to a central office location with broadband Internet access enabled to that office and appropriately routed to all schools.

Mandatory Service Component: Connection and enablement to the Internet for all schools and eligible locations in an LEA or other affiliated school cluster in a private, secure and centrally manageable manner, implemented using;

- a. Physical data links from eligible locations to a hub location that is connected to the Internet, and utilizing an eligible Category 1 broadband service type as appropriate for both the connection to the Internet and data links from eligible locations to the hub location. OR
- b. An individual Internet connection for each eligible location utilizing one of the eligible Category 1 broadband service types as appropriate for each location and configured into a virtual private network maintained at either the carrier level or within a centralized location. OR
- c. A hybrid approach to a) and b) above OR
- d. An alternate model that clearly demonstrates cost effectivity, quality of service and 100% compliance with e-Rate guidelines for Category 1 Eligible Services, excluding; dark fiber and self-managed network proposals.

AND End-to-end connectivity between all eligible locations and the Internet, immaterial of the routing method, offering a consistent speed between 1.5Mbps and 100Gbps, and supported by a Service Level / Quality of Service Agreement (SLA/QoS) acceptable to the State, and reflecting a minimum service uptime of 99.9% during normal school hours, defined as; 7:30 AM to 5:00pm Monday to Friday and 98.75% outside of these hours.

NOTE: The Contractor must be able to provide services to all eligible locations within that LEA or cluster. However, the connection methodology and speed offered may differ depending on the specific circumstances of each location. Additionally, the connection methodology between Internet connections and data links may differ, providing in all cases methodologies comply with the e-Rate Category 1 Eligible Services list and the mix results in the most cost effective overall solution for the LEA or cluster. All services and components shall be consistent with specific descriptions and declarations made by the Contractor in its technical qualifications disclosure in the qualifying round.

Optional Service Components:

- a. Upfront and one off special construction, installation and upgrades, such as; fiber provisioning, tails and termination equipment as needed on a location by location basis within the LEA or school cluster as needed to implement the respondent's services in that entity, including; connection to the Internet and data links between locations, in accordance with allowable e-Rate installation services. NOTE: This service will only be accepted if it is deemed essential to the delivery of the mandatory component of this service offering and all other acceptable transmission options that do not require special construction if available have been proposed for that location.
- b. Configuration of virtual private network software and/or devices located within eligible locations or at carrier locations in accordance with allowable e-Rate services for enablement of service. NOTE: Configuration of data links from locations to a central hub is implicit in option a) of the mandatory service component of this item.

- c. Basic rules-based firewall capable of blocking inbound or outbound data packets between the Internet and locations within the private network.
- d. DNS, DHCP and other common configurations applicable at the carrier level needed to enable Internet connectivity to the private network and interconnected locations.

A.4. Voice Services. The Contractor shall provide Voice Services to a service recipient with the Contractor's identified service area for such a service. The service shall provide wired or wireless voice telephony capabilities to eligible locations and individuals with clear segmentation from data services.

The Contractor is notified that the FCC deprecated voice as an eligible e-Rate service beginning in the 2015 funding year and plans to phase voice support out over the next several funding years. Non-Exhaustive Examples:

- a. A single, eligible facility requires a land-line telephone connection.
- b. An LEA or school provides staff with a cellular, voice communications plan to ensure staff are contactable at all times.
- c. An LEA implements an LEA-wide telephony service using voice over IP (VOIP) technology with many extensions across the LEA and physical locations, controlled via a PABX system.

Mandatory Service Components: Voice telephony capabilities provisioned and enabled for eligible locations and / or individuals and providing local call capabilities, excluding; data, text, multi-media text, location services and other features not directly related to voice communications, and delivered via:

- a. Non-cellular wireless technologies such as; Centrex, ISDN, VOIP or POTS provided to a single location, with or without multiple extensions in that location and without the need for either a software or hardware multiplexing device or equivalent component. OR
- b. Non-cellular wireless technologies such as; Centrex, ISDN, VOIP or POTS provided to multiple locations in an LEA or affiliated school cluster in an interconnected manner via a wired or wireless communications link(s) or Internet connection(s) and with or without a software or hardware multiplexing system, controller or equivalent component. OR
- c. Cellular voice technology. OR
- d. Satellite voice technology in situations where the eligible location does not have cellular coverage from any cellular communications vendor and a landline is not possible due to terrain, proximity to infrastructure, cost prohibitive-ness or other justifiable reason.
- e. AND Supported by a Service Level / Quality of Service Agreement (SLA/QoSA) acceptable to the State. All services and components shall be consistent with specific descriptions and declarations made by the Contractor in its technical qualifications disclosure in the qualifying round.

Optional Service Components:

- a. 800 and toll-free calling.
- b. Long distance calling within the United States.
- c. International long distance calling.

A.5. Warranty. Contractor represents and warrants that the term of the warranty ("Warranty Period") shall be the greater of the Term of this Contract or any other warranty general offered by Contractor, its suppliers, or manufacturers to customers of its goods or services. The goods or services provided under this Contract shall conform to the terms and conditions of this Contract throughout the Warranty Period. Any nonconformance of the goods or services to the terms and conditions of this Contract shall constitute a "Defect" and shall be considered "Defective." If Contractor receives notice of a Defect during the Warranty Period, then Contractor shall correct the Defect, at no additional charge.

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

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

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

- A.6. Inspection and Acceptance. The Service Recipients shall have the right to inspect all goods or services provided by Contractor under this Contract. If, upon inspection, the State determines that the goods or services are Defective, the Service Recipient shall notify Contractor, and Contractor shall re-deliver the goods or provide the services at no additional cost to the Service Recipient. If after a period of thirty (30) days following delivery of goods or performance of services the Service Recipient does not provide a notice of any Defects, the goods or services shall be deemed to have been accepted by the Service Recipient.
- A.7. Mini-Bid Process. LEAs shall institute and qualified contractors shall participate in a mini-bid process, as described on USAC's website, as part of the LEA's FCC Form 471 filing.
- a. Costs submitted during the mini-bid on individual items shall not exceed the costs published in this Contract. Published costs will be an upper limit or ceiling. Costs can be submitted during the mini-bid processes that are lower than the published costs.
 - b. In accordance with FCC regulations and USAC guidance, cost will be the most heavily-weighted factor in the mini-bid evaluation matrix.
 - c. Schools and libraries shall develop an evaluation matrix based upon local requirements with the understanding that if a conflict exists between local procurement regulations and USAC guidance, the most restrictive of the regulations prevail.
- A.8. Records Retention. Contractor shall maintain all records of services provided under the resulting contract for a period of no less than 10 years from the last date of service in the fiscal year in which a contract is in place in accordance with FCC regulations. This documentation shall be digitally archived and be made available at the request of the State or LEA.

B. TERM OF CONTRACT:

- B.1. This Contract shall be effective on February 18, 2016 ("Effective Date") and extend for a period of thirty-six (36) months after the Effective Date ("Term"). The State shall have no obligation for goods or services provided by the Contractor prior to the Effective Date.
- B.2. Renewal Options. This Contract may be renewed upon satisfactory completion of the Term. The State reserves the right to execute up to two (2) renewal options under the same terms and conditions for a period not to exceed twelve (12) months each by the State, at the State's sole option. In no event, however, shall the maximum Term, including all renewals or extensions, exceed a total of sixty (60) months.

C. PAYMENT TERMS AND CONDITIONS:

- C.1. Estimated Liability. The total purchases of any goods or services under the Contract are not known. The State estimates the purchases during the Term shall be **written number (\$number)** ("Estimated Liability"). This Contract does not grant the Contractor any exclusive rights. The State does not guarantee that it will buy any minimum quantity of goods or services under this Contract.

Subject to the terms and conditions of this Contract, the Contractor will only be paid for goods or services provided under this Contract after a purchase order is issued to Contractor by the State or as otherwise specified by this Contract.

- C.2. Compensation Firm. The payment methodology in Section C.3. of this Contract shall constitute the entire compensation due the Contractor for all goods or services provided under this Contract regardless of the difficulty, materials or equipment required. The payment methodology includes all applicable taxes, fees, overhead, and all other direct and indirect costs incurred or to be incurred by the Contractor.
- C.3. Payment Methodology. The Contractor shall be compensated based on the payment methodology for goods or services authorized by the State in a total amount as set forth in Section C.1.
 - a. The Contractor’s compensation shall be contingent upon the satisfactory provision of goods or services as set forth in Section A.
 - b. The Contractor shall be compensated based upon the following payment methodology:

Goods or Services Description	Amount (per compensable increment)
This is a place holder for the information that will be inserted to the contract based on the contractor’s final cost.	\$ Number

- C.4. Travel Compensation. The Contractor shall not be compensated or reimbursed for travel time, travel expenses, meals, or lodging.
- C.5. Invoice Requirements. The Contractor shall invoice the Service Recipient only for goods delivered and accepted by the State or services satisfactorily provided at the amounts stipulated in Section C.3., above, and present said invoices monthly, with all necessary supporting documentation. The invoice must be submitted electronically (Comma Delimited Format and Portable Document Format) and on paper, to the email and billing address provided by the Service Recipient.
 - a. Each invoice, on Contractor’s letterhead, shall clearly and accurately detail all of the following information (calculations must be extended and totaled correctly):
 - (1) Invoice number (assigned by the Contractor);
 - (2) Invoice date;
 - (3) Contract number (assigned by the State);
 - (4) Customer account name;
 - (5) Customer account number (assigned by the Contractor to the above-referenced Customer);
 - (6) Contractor name;
 - (7) Contractor Tennessee Edison registration ID number;
 - (8) Contractor contact for invoice questions (name, phone, or email);
 - (9) Contractor remittance address;
 - (10) Description of delivered goods or services provided and invoiced, including identifying information as applicable;
 - (11) Number of delivered or completed units, increments, hours, or days as applicable, of each good or service invoiced;
 - (12) Applicable payment methodology (as stipulated in Section C.3.) of each good or service invoiced;
 - (13) Amount due for each compensable unit of good or service; and
 - (14) Total amount due for the invoice period.
 - b. Contractor’s invoices shall:

- (1) Only include charges for goods delivered or services provided as described in Section A and in accordance with payment terms and conditions set forth in Section C;
 - (2) Only be submitted for goods delivered or services completed and shall not include any charge for future goods to be delivered or services to be performed;
 - (3) Not include Contractor's taxes, which includes without limitation Contractor's sales and use tax, excise taxes, franchise taxes, real or personal property taxes, or income taxes; and
 - (4) Include shipping or delivery charges only as authorized in this Contract.
 - (5) Separately itemize the cost of E-rate eligible and ineligible products and/or services.
- c. The timeframe for payment (or any discounts) begins only when the State is in receipt of an invoice that meets the minimum requirements of this Section C.5.
 - d. Contractor agrees to bill and receive a portion of the payment for the provisions of goods and services described herein directly from USAC via the Form 474 Service Provider Invoice (SPI). Service Recipient shall only be responsible for paying their non-discounted share of costs and do not intend to use the BEAR process (Form 472), the maximum percentage the Service Recipient will be liable for is the pre-discount amount minus the funded amount as shown on the FCC Form 471 Funding Request(s) and any identified ineligible costs. Alternately, should a Service Recipient decide that it is in their best interest to utilize Form 472; the Service Recipient will inform the Service Provider of its intent.
 - e. All credit adjustments must have sufficient detail to allow for proper crediting to occur. Requested credits/billing disputes must be resolved or credit issued within one month.
 - f. Partial month's billing shall be prorated from date of activation and upon the date of notice for deactivation.
 - g. Accurately list the names and addresses. The Contractor shall make any corrections to location names and addresses within 30 days of receiving such requests.
- C.6. Payment of Invoice. A payment by the State shall not prejudice the State's right to object to or question any payment, invoice, or other matter. A payment by the State shall not be construed as acceptance of goods delivered, any part of the services provided, or as approval of any amount invoiced.
- C.7. Invoice Reductions. The Contractor's invoice shall be subject to reduction for amounts included in any invoice or payment that is determined by the State, on the basis of audits conducted in accordance with the terms of this Contract, to not constitute proper compensation for goods delivered or services provided.
- C.8. Deductions. The State reserves the right to deduct from amounts, which are or shall become due and payable to the Contractor under this or any contract between the Contractor and the State of Tennessee, any amounts that are or shall become due and payable to the State of Tennessee by the Contractor.
- C.9. Prerequisite Documentation. The Contractor shall not invoice the State under this Contract until the State has received the following, properly completed documentation.
- a. The Contractor shall complete, sign, and present to the State the "Authorization Agreement for Automatic Deposit Form" provided by the State. By doing so, the Contractor acknowledges and agrees that, once this form is received by the State, payments to the Contractor, under this or any other contract the Contractor has with the State of Tennessee, may be made by ACH; and
 - b. The Contractor shall complete, sign, and return to the State the State-provided W-9 form. The taxpayer identification number on the W-9 form must be the same as the Contractor's Federal Employer Identification Number or Social Security Number referenced in the Contractor's Edison registration information.

D. MANDATORY TERMS AND CONDITIONS:

D.1. Required Approvals. The State is not bound by this Contract until it is duly approved by the Parties and all appropriate State officials in accordance with applicable Tennessee laws and regulations. Depending upon the specifics of this Contract, this may include approvals by the Commissioner of Finance and Administration, the Commissioner of Human Resources, the Comptroller of the Treasury, and the Chief Procurement Officer. Approvals shall be evidenced by a signature or electronic approval.

D.2. Communications and Contacts. All instructions, notices, consents, demands, or other communications required or contemplated by this Contract shall be in writing and shall be made by certified, first class mail, return receipt requested and postage prepaid, by overnight courier service with an asset tracking system, or by email or facsimile transmission with recipient confirmation. All communications, regardless of method of transmission, shall be addressed to the respective Party at the appropriate mailing address, facsimile number, or email address as stated below or any other address provided in writing by a Party.

The State:

State Contact Name & Title
 State Agency Name
 Address
 Email Address
 Telephone # Number
 FAX # Number

The Contractor:

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

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

D.3. Modification and Amendment. This Contract may be modified only by a written amendment signed by all Parties and approved by all applicable State officials.

D.4. Subject to Funds Availability. The Contract is subject to the appropriation and availability of State or federal funds. In the event that the funds are not appropriated or are otherwise unavailable, the State reserves the right to terminate this Contract upon written notice to the Contractor. The State's exercise of its right to terminate this Contract shall not constitute a breach of Contract by the State. Upon receipt of the written notice, the Contractor shall cease all work associated with the Contract. If the State terminates this Contract due to lack of funds availability, the Contractor shall be entitled to compensation for all conforming goods requested and accepted by the State and for all satisfactory and authorized services completed as of the termination date. Should the State exercise its right to terminate this Contract due to unavailability of funds, the Contractor shall have no right to recover from the State any actual, general, special, incidental, consequential, or any other damages of any description or amount.

D.5. Termination for Convenience. The State may terminate this Contract for convenience without cause and for any reason. The State shall give the Contractor at least thirty (30) days written notice before the termination date. The Contractor shall be entitled to compensation for all conforming goods delivered and accepted by the State or for satisfactory, authorized services completed as of the termination date. In no event shall the State be liable to the Contractor for compensation for any goods neither requested nor accepted by the State or for any services

neither requested by the State nor satisfactorily performed by the Contractor. In no event shall the State's exercise of its right to terminate this Contract for convenience relieve the Contractor of any liability to the State for any damages or claims arising under this Contract.

- D.6. Termination for Cause. If the Contractor fails to properly perform its obligations under this Contract in a timely or proper manner, or if the Contractor materially violates any terms of this Contract ("Breach Condition"), the State shall have the right to immediately terminate the Contract and withhold payments in excess of compensation for completed services or provided goods. Notwithstanding the above, the Contractor shall not be relieved of liability to the State for damages sustained by virtue of any Breach Condition and the State may seek other remedies allowed at law or in equity for breach of this Contract.
- D.7. Assignment and Subcontracting. The Contractor shall not assign this Contract or enter into a subcontract for any of the goods or services provided under this Contract without the prior written approval of the State. Notwithstanding any use of the approved subcontractors, the Contractor shall be the prime contractor and responsible for compliance with all terms and conditions of this Contract. The State reserves the right to request additional information or impose additional terms and conditions before approving an assignment of this Contract in whole or in part or the use of subcontractors in fulfilling the Contractor's obligations under this Contract.
- D.8. Conflicts of Interest. The Contractor warrants that no part of the Contractor's compensation shall be paid directly or indirectly to an employee or official of the State of Tennessee as wages, compensation, or gifts in exchange for acting as an officer, agent, employee, subcontractor, or consultant to the Contractor in connection with any work contemplated or performed under this Contract.

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

- D.9. Nondiscrimination. The Contractor hereby agrees, warrants, and assures that no person shall be excluded from participation in, be denied benefits of, or be otherwise subjected to discrimination in the performance of this Contract or in the employment practices of the Contractor on the grounds of handicap or disability, age, race, creed, color, religion, sex, national origin, or any other classification protected by federal or state law. The Contractor shall, upon request, show proof of nondiscrimination and shall post in conspicuous places, available to all employees and applicants, notices of nondiscrimination.
- D.10. Prohibition of Illegal Immigrants. The requirements of Tenn. Code Ann. § 12-3-309 addressing the use of illegal immigrants in the performance of any contract to supply goods or services to the state of Tennessee, shall be a material provision of this Contract, a breach of which shall be grounds for monetary and other penalties, up to and including termination of this Contract.
- a. The Contractor agrees that the Contractor shall not knowingly utilize the services of an illegal immigrant in the performance of this Contract and shall not knowingly utilize the services of any subcontractor who will utilize the services of an illegal immigrant in the performance of this Contract. The Contractor shall reaffirm this attestation, in writing, by submitting to the State a completed and signed copy of the document at Attachment 1, semi-annually during the Term. If the Contractor is a party to more than one contract with the State, the Contractor may submit one attestation that applies to all contracts with the State. All Contractor attestations shall be maintained by the Contractor and made available to State officials upon request.
 - b. Prior to the use of any subcontractor in the performance of this Contract, and semi-annually thereafter, during the Term, the Contractor shall obtain and retain a current, written attestation that the subcontractor shall not knowingly utilize the services of an illegal immigrant to perform work under this Contract and shall not knowingly utilize the services of any subcontractor who will utilize the services of an illegal immigrant to

perform work under this Contract. Attestations obtained from subcontractors shall be maintained by the Contractor and made available to State officials upon request.

- c. The Contractor shall maintain records for all personnel used in the performance of this Contract. Contractor's records shall be subject to review and random inspection at any reasonable time upon reasonable notice by the State.
 - d. The Contractor understands and agrees that failure to comply with this section will be subject to the sanctions of Tenn. Code Ann. § 12-3-309 for acts or omissions occurring after its effective date.
 - e. For purposes of this Contract, "illegal immigrant" shall be defined as any person who is not: (i) a United States citizen; (ii) a Lawful Permanent Resident; (iii) a person whose physical presence in the United States is authorized; (iv) allowed by the federal Department of Homeland Security and who, under federal immigration laws or regulations, is authorized to be employed in the U.S.; or (v) is otherwise authorized to provide services under the Contract.
- D.11. Records. The Contractor shall maintain documentation for all charges under this Contract. The books, records, and documents of the Contractor, for work performed or money received under this Contract, shall be maintained for a period of ten (10) full years from the date of the final payment and shall be subject to audit at any reasonable time and upon reasonable notice by the State, the Comptroller of the Treasury, or their duly appointed representatives. The financial statements shall be prepared in accordance with generally accepted accounting principles.
- D.12. Monitoring. The Contractor's activities conducted and records maintained pursuant to this Contract shall be subject to monitoring and evaluation by the State, the Comptroller of the Treasury, or their duly appointed representatives.
- D.13. Progress Reports. The Contractor shall submit brief, periodic, progress reports to the State as requested.
- D.14. Strict Performance. Failure by any Party to this Contract to require, in any one or more cases, the strict performance of any of the terms, covenants, conditions, or provisions of this Contract shall not be construed as a waiver or relinquishment of any term, covenant, condition, or provision. No term or condition of this Contract shall be held to be waived, modified, or deleted except by a written amendment signed by the Parties.
- D.15. Independent Contractor. The Parties shall not act as employees, partners, joint venturers, or associates of one another. The Parties are independent contracting entities. Nothing in this Contract shall be construed to create an employer/employee relationship or to allow either Party to exercise control or direction over the manner or method by which the other transacts its business affairs or provides its usual services. The employees or agents of one Party are not employees or agents of the other Party.
- D.16. Patient Protection and Affordable Care Act. The Contractor agrees that it will be responsible for compliance with the Patient Protection and Affordable Care Act ("PPACA") with respect to itself and its employees, including any obligation to report health insurance coverage, provide health insurance coverage, or pay any financial assessment, tax, or penalty for not providing health insurance. The Contractor shall indemnify the State and hold it harmless for any costs to the State arising from Contractor's failure to fulfill its PPACA responsibilities for itself or its employees.
- D.17. Limitation of State's Liability. The State shall have no liability except as specifically provided in this Contract. In no event will the State be liable to the Contractor or any other party for any lost revenues, lost profits, loss of business, decrease in the value of any securities or cash position, time, money, goodwill, or any indirect, special, incidental, punitive, exemplary or consequential damages of any nature, whether based on warranty, contract, statute, regulation, tort (including but not limited to negligence), or any other legal theory that may arise under this Contract or

otherwise. The State's total liability under this Contract (including any exhibits, schedules, amendments or other attachments to the Contract) or otherwise shall under no circumstances exceed the Maximum Liability. This limitation of liability is cumulative and not per incident.

- D.18. Limitation of Contractor's Liability. In accordance with Tenn. Code Ann. § 12-3-701, the Contractor's liability for all claims arising under this Contract shall be limited to an amount equal to two (2) times the Maximum Liability amount detailed in Section C.1. and as may be amended, PROVIDED THAT in no event shall this Section limit the liability of the Contractor for: (i) intellectual property or any Contractor indemnity obligations for infringement for third-party intellectual property rights; (ii) any claims covered by any specific provision in the Contract providing for liquidated damages; or (iii) any claims for intentional torts, criminal acts, fraudulent conduct, or acts or omissions that result in personal injuries or death.
- D.19. Hold Harmless. The Contractor agrees to indemnify and hold harmless the State of Tennessee as well as its officers, agents, and employees from and against any and all claims, liabilities, losses, and causes of action which may arise, accrue, or result to any person, firm, corporation, or other entity which may be injured or damaged as a result of acts, omissions, or negligence on the part of the Contractor, its employees, or any person acting for or on its or their behalf relating to this Contract. The Contractor further agrees it shall be liable for the reasonable cost of attorneys for the State to enforce the terms of this Contract.

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

- D.20. HIPAA Compliance. The State and Contractor shall comply with obligations under the Health Insurance Portability and Accountability Act of 1996 ("HIPAA"), Health Information Technology for Economic and Clinical Health ("HITECH") Act and any other relevant laws and regulations regarding privacy (collectively the "Privacy Rules"). The obligations set forth in this Section shall survive the termination of this Contract.
- a. Contractor warrants to the State that it is familiar with the requirements of the Privacy Rules, and will comply with all applicable requirements in the course of this Contract.
 - b. Contractor warrants that it will cooperate with the State, including cooperation and coordination with State privacy officials and other compliance officers required by the Privacy Rules, in the course of performance of the Contract so that both parties will be in compliance with the Privacy Rules.
 - c. The State and the Contractor will sign documents, including but not limited to business associate agreements, as required by the Privacy Rules and that are reasonably necessary to keep the State and Contractor in compliance with the Privacy Rules. This provision shall not apply if information received or delivered by the parties under this Contract is NOT "protected health information" as defined by the Privacy Rules, or if the Privacy Rules permit the parties to receive or deliver the information without entering into a business associate agreement or signing another document.
 - d. The Contractor will indemnify the State and hold it harmless for any violation by the Contractor or its subcontractors of the Privacy Rules. This includes the costs of responding to a breach of protected health information, the costs of responding to a government enforcement action related to the breach, and any fines, penalties, or damages paid by the State because of the violation.

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

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

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

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

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

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

- D.25. State and Federal Compliance. The Contractor shall comply with all applicable state and federal laws and regulations in the performance of this Contract.
- D.26. Governing Law. This Contract shall be governed by and construed in accordance with the laws of the State of Tennessee. The Tennessee Claims Commission or the state or federal courts in Tennessee shall be the venue for all claims, disputes, or disagreements arising under this Contract. The Contractor acknowledges and agrees that any rights, claims, or remedies against the State of Tennessee or its employees arising under this Contract shall be subject to and limited to those rights and remedies available under Tenn. Code Ann. §§ 9-8-101 - 407.
- D.27. Entire Agreement. This Contract is complete and contains the entire understanding between the Parties relating to its subject matter, including all the terms and conditions of the Parties' agreement. This Contract supersedes any and all prior understandings, representations, negotiations, and agreements between the Parties, whether written or oral.
- D.28. Severability. If any terms and conditions of this Contract are held to be invalid or unenforceable as a matter of law, the other terms and conditions of this Contract shall not be affected and shall remain in full force and effect. The terms and conditions of this Contract are severable.
- D.29. Headings. Section headings of this Contract are for reference purposes only and shall not be construed as part of this Contract.
- D.30. Incorporation of Additional Documents. Each of the following documents is included as a part of this Contract by reference. In the event of a discrepancy or ambiguity regarding the Contractor's duties, responsibilities, and performance under this Contract, these items shall govern in order of precedence below:
- a. any amendment to this Contract, with the latter in time controlling over any earlier amendments;
 - b. this Contract with any attachments or exhibits (excluding the items listed at subsections c. through f., below), which includes Attachments 1, 2, and 3;
 - c. any clarifications of or addenda to the Contractor's proposal seeking this Contract;
 - d. the State solicitation, as may be amended, requesting responses in competition for this Contract;
 - e. any technical specifications provided to proposers during the procurement process to award this Contract; and
 - f. the Contractor's response seeking this Contract.
- D.31. Insurance. Contractor shall provide the State a certificate of insurance ("COI") evidencing the coverages and amounts specified below. The COI shall be provided ten (10) business days prior to the Effective Date and again upon renewal or replacement of coverages required by this Contract. If insurance expires during the Term, the State must receive a new COI at least thirty (30) calendar days prior to the insurance's expiration date. If the Contractor loses insurance coverage, does not renew coverage, or for any reason becomes uninsured during the Term, the Contractor shall notify the State immediately.

The COI shall be on a form approved by the Tennessee Department of Commerce and Insurance ("TDCI") and signed by an authorized representative of the insurer. The COI shall list each insurer's national association of insurance commissioners (also known as NAIC) number or federal employer identification number and list the State of Tennessee, Risk Manager, 312 Rosa L. Parks Ave., 3rd floor Central Procurement Office, Nashville, TN 37243 in the certificate holder section. At any time, the State may require the Contractor to provide a valid COI detailing coverage description; insurance company; policy number; exceptions; exclusions; policy effective date; policy expiration date; limits of liability; and the name and address of insured. The

Contractor's failure to maintain or submit evidence of insurance coverage is considered a material breach of this Contract.

If the Contractor desires to self-insure, then a COI will not be required to prove coverage. In place of the COI, the Contractor must provide a certificate of self-insurance or a letter on the Contractor's letterhead detailing its coverage, liability policy amounts, and proof of funds to reasonably cover such expenses. Compliance with Tenn. Code Ann. § 50-6-405 and the rules of the TDCI is required for the Contractor to self-insure workers' compensation.

All insurance companies must be: (a) acceptable to the State; (b) authorized by the TDCI to transact business in the State of Tennessee; and (c) rated A- VII or better by A. M. Best. The Contractor shall provide the State evidence that all subcontractors maintain the required insurance or that the subcontractors are included under the Contractor's policy.

The Contractor agrees to name the State as an additional insured on any insurance policies with the exception of workers' compensation (employer liability) and professional liability (errors and omissions) ("Professional Liability") insurance. Also, all policies shall contain an endorsement for a waiver of subrogation in favor of the State.

The deductible and any premiums are the Contractor's sole responsibility. Any deductible over fifty thousand dollars (\$50,000) must be approved by the State. The Contractor agrees that the insurance requirements specified in this Section do not reduce any liability the Contractor has assumed under this Contract including any indemnification or hold harmless requirements. The State agrees that it shall give written notice to the Contractor as soon as practicable after the State becomes aware of any claim asserted or made against the State, but in no event later than thirty (30) calendar days after the State becomes aware of such claim. The failure of the State to give notice shall only relieve the Contractor of its obligations under this Section to the extent that the Contractor can demonstrate actual prejudice arising from the failure to give notice. This Section shall not grant the Contractor or its insurer, through its attorneys, the right to represent the State in any legal matter, as the right to represent the State is governed by Tenn. Code Ann. § 8-6-106.

All coverage required shall be on a primary basis and noncontributory with any other insurance coverage or self-insurance carried by the State. The State reserves the right to amend or require additional endorsements, types of coverage, and higher or lower limits of coverage depending on the nature of the work. Purchases or contracts involving any hazardous activity or equipment, tenant, concessionaire and lease agreements, alcohol sales, cyber-liability risks, environmental risks, special motorized equipment, or property may require customized insurance requirements (e.g. umbrella liability insurance) in addition to the general requirements listed below.

a. Commercial General Liability Insurance

- 1) The Contractor shall maintain commercial general liability insurance, which shall be written on an Insurance Services Office, Inc. (also known as ISO) occurrence form (or a substitute form providing equivalent coverage) and shall cover liability arising from property damage, premises/operations, independent contractors, contractual liability, completed operations/products, personal and advertising injury, and liability assumed under an insured contract (including the tort liability of another assumed in a business contract).
- 2) The Contractor shall maintain bodily injury/property damage with a combined single limit not less than one million dollars (\$1,000,000) per occurrence and two million dollars (\$2,000,000) aggregate for bodily injury and property damage, including products and completed operations coverage with an aggregate limit of at least two million dollars (\$2,000,000).

b. Workers' Compensation and Employer Liability Insurance

- 1) For Contractors statutorily required to carry workers' compensation and employer liability insurance, the Contractor shall maintain:

- i. Workers' compensation and employer liability insurance in the amounts required by appropriate state statutes; or

- ii. In an amount not less than one million dollars (\$1,000,000) including employer liability of one million dollars (\$1,000,000) per accident for bodily injury by accident, one million dollars (\$1,000,000) policy limit by disease, and one million dollars (\$1,000,000) per employee for bodily injury by disease.
- 2) If the Contractor certifies that it is exempt from the requirements of Tenn. Code Ann. §§ 50-6-101 – 103, then the Contractor shall furnish written proof of such exemption for one or more of the following reasons:
 - i. The Contractor employees fewer than five (5) employees;
 - ii. The Contractor is a sole proprietor;
 - iii. The Contractor is in the construction business or trades with no employees;
 - iv. The Contractor is in the coal mining industry with no employees;
 - v. The Contractor is a state or local government; or
 - vi. The Contractor self-insures its workers' compensation and is in compliance with the TDCI rules and Tenn. Code Ann. § 50-6-405.
- c. Automobile Liability Insurance
 - 1) The Contractor shall maintain automobile liability insurance which shall cover liability arising out of any automobile (including owned, leased, hired, and non-owned automobiles).
 - 2) The Contractor shall maintain bodily injury/property damage with a limit not less than one million dollars (\$1,000,000) per occurrence or combined single limit.

E. SPECIAL TERMS AND CONDITIONS:

- E.1. Conflicting Terms and Conditions. Should any of these special terms and conditions conflict with any other terms and conditions of this Contract, the special terms and conditions shall be subordinate to the Contract's other terms and conditions.
- E.2. Confidentiality of Records. Strict standards of confidentiality of records and information shall be maintained in accordance with applicable state and federal law. All material and information, regardless of form, medium or method of communication, provided to the Contractor by the State or acquired by the Contractor on behalf of the State that is regarded as confidential under state or federal law shall be regarded as "Confidential Information." Nothing in this Section shall permit Contractor to disclose any Confidential Information, regardless of whether it has been disclosed or made available to the Contractor due to intentional or negligent actions or inactions of agents of the State or third parties. Confidential Information shall not be disclosed except as required or permitted under state or federal law. Contractor shall take all necessary steps to safeguard the confidentiality of such material or information in conformance with applicable state and federal law.

The obligations set forth in this Section shall survive the termination of this Contract.
- E.3. Extraneous Terms and Conditions. Contractor shall fill all orders submitted by the State under this Contract. No purchase order, invoice, or other documents associated with any sales, orders, or supply of any good or service under this Contract shall contain any terms or conditions other than as set forth in the Contract. Any such extraneous terms and conditions shall be void, invalid and unenforceable against the State. Any refusal by Contractor to supply any goods or services under this Contract conditioned upon the State submitting to any extraneous terms and conditions shall be a material breach of the Contract and constitute an act of bad faith by Contractor.

- E.4. State Furnished Property. The Contractor shall be responsible for the correct use, maintenance, and protection of all articles of nonexpendable, tangible personal property furnished by the State for the Contractor's use under this Contract. Upon termination of this Contract, all property furnished by the State shall be returned to the State in the same condition as when received, less reasonable wear and tear. Should the property be destroyed, lost, or stolen, the Contractor shall be responsible to the State for the fair market value of the property at the time of loss.
- E.5. Prohibited Advertising or Marketing. The Contractor shall not suggest or imply in advertising or marketing materials that Contractor's goods or services are endorsed by the State. The restrictions on Contractor advertising or marketing materials under this Section shall survive the termination of this Contract.
- E.6. Performance Bond. The Contractor shall provide to the State a performance bond guaranteeing full and faithful performance of all undertakings and obligations under this Contract, specifically faithful performance of the work in accordance with the plans, specifications, and contract documents. The performance bond shall be in an amount equal to one hundred percent (100%) of the Estimated Liability, **Written Dollar Amount (\$Number)**. The State reserves the right to review the bond amount and bonding requirements at any time during the Term. The Contractor shall submit the bond no later than the day immediately preceding the Effective Date and in the manner and form prescribed by the State at Attachment 2. The bond shall be issued by a company licensed to issue such a bond in the state of Tennessee. The performance bond shall guarantee full and faithful performance of all undertakings and obligations for the Term, as the Contract is extended or renewed.

Failure to provide to the State the performance bond(s) as required under this Contract may result in this Contract being terminated by the State. The performance bond required under this Contract shall not be reduced during the Term without the State of Tennessee Central Procurement Office's prior written approval.

- E.7. Payment Bond. The Contractor shall provide to the State a payment bond guaranteeing that the Contractor's subcontractors, laborers, and material suppliers will be paid for performance under this Contract with the additional obligation that such contractor shall promptly make payment of all taxes, licenses, assessments, contributions, penalties, and interest. The payment bond will be in an amount equal to twenty-five percent (25%) of the Maximum Liability Written Dollar Amount (**\$ Number**). The State reserves the right to review the bond amount and bonding requirements at any time during the Term. The Contractor shall submit the bond no later than the day immediately preceding the Effective Date and in the manner and form prescribed by the State at Attachment 3. The bond shall be issued by a company licensed to issue such a bond in the State of Tennessee. The payment bond shall guarantee that the Contractor's subcontractors, laborers, and material suppliers will be paid for performance during the Term and all extensions or renewals of the Contract.

Failure to provide to the State the payment bond as required under this Contract may result in this Contract being terminated by the State. The payment bond required under this Contract shall not be reduced during the Term without the State of Tennessee Central Procurement Office's prior written approval.

- E.8. Intellectual Property. The Contractor agrees to indemnify and hold harmless the State of Tennessee as well as its officers, agents, and employees from and against any and all claims or suits which may be brought against the State concerning or arising out of any claim of an alleged patent, copyright, trade secret or other intellectual property infringement. In any such claim or action brought against the State, the Contractor shall satisfy and indemnify the State for the amount of any settlement or final judgment, and the Contractor shall be responsible for all legal or other fees or expenses incurred by the State arising from any such claim. The State shall give the Contractor notice of any such claim or suit, however, the failure of the State to give such notice shall only relieve Contractor of its obligations under this Section to the extent Contractor can demonstrate actual prejudice arising from the State's failure to give notice. This Section shall not

grant the Contractor, through its attorneys, the right to represent the State of Tennessee in any legal matter, as provided in Tenn. Code Ann. § 8-6-106.

- E.9. Personally Identifiable Information. While performing its obligations under this Contract, Contractor may have access to Personally Identifiable Information held by the State ("PII"). For the purposes of this Contract, "PII" includes "Nonpublic Personal Information" as that term is defined in Title V of the Gramm-Leach-Bliley Act of 1999 or any successor federal statute, and the rules and regulations thereunder, all as may be amended or supplemented from time to time ("GLBA") and personally identifiable information and other data protected under any other applicable laws, rule or regulation of any jurisdiction relating to disclosure or use of personal information ("Privacy Laws"). Contractor agrees it shall not do or omit to do anything which would cause the State to be in breach of any Privacy Laws. Contractor shall, and shall cause its employees, agents and representatives to: (i) keep PII confidential and may use and disclose PII only as necessary to carry out those specific aspects of the purpose for which the PII was disclosed to Contractor and in accordance with this Contract, GLBA and Privacy Laws; and (ii) implement and maintain appropriate technical and organizational measures regarding information security to: (A) ensure the security and confidentiality of PII; (B) protect against any threats or hazards to the security or integrity of PII; and (C) prevent unauthorized access to or use of PII. Contractor shall immediately notify State: (1) of any disclosure or use of any PII by Contractor or any of its employees, agents and representatives in breach of this Contract; and (2) of any disclosure of any PII to Contractor or its employees, agents and representatives where the purpose of such disclosure is not known to Contractor or its employees, agents and representatives. The State reserves the right to review Contractor's policies and procedures used to maintain the security and confidentiality of PII and Contractor shall, and cause its employees, agents and representatives to, comply with all reasonable requests or directions from the State to enable the State to verify and/or procure that Contractor is in full compliance with its obligations under this Contract in relation to PII. Upon termination or expiration of the Contract or at the State's direction at any time in its sole discretion, whichever is earlier, Contractor shall immediately return to the State any and all PII which it has received under this Contract and shall destroy all records of such PII.

The Contractor shall report to the State any instances of unauthorized access to or potential disclosure of PII in the custody or control of Contractor ("Unauthorized Disclosure") that come to the Contractor's attention. Any such report shall be made by the Contractor within twenty-four (24) hours after the Unauthorized Disclosure has come to the attention of the Contractor. Contractor shall take all necessary measures to halt any further Unauthorized Disclosures. The Contractor, at the sole discretion of the State, shall provide no cost credit monitoring services for individuals whose PII was affected by the Unauthorized Disclosure. The Contractor shall bear the cost of notification to all individuals affected by the Unauthorized Disclosure, including individual letters and public notice. The remedies set forth in this Section are not exclusive and are in addition to any claims or remedies available to this State under this Contract or otherwise available at law.

- E.10. Federal Educational Rights and Privacy Act & Tennessee Data Accessibility, Transparency and Accountability Act. The Contractor shall comply with the Federal Educational Rights and Privacy Act of 1974 (20 U.S.C. 1232(g)) and its accompanying regulations (34 C.F.R. § 99) ("FERPA"). The Contractor warrants that the Contractor is familiar with FERPA requirements and that it will comply with these requirements in the performance of its duties under this Contract. The Contractor agrees to cooperate with the State, as required by FERPA, in the performance of its duties under this Contract. The Contractor agrees to maintain the confidentiality of all education records and student information. The Contractor shall only use such records and information for the exclusive purpose of performing its duties under this Contract.

The Contractor shall also comply with Tenn. Code Ann. § 49-1-701, *et seq.*, known as the "Data Accessibility, Transparency and Accountability Act," and any accompanying administrative rules or regulations (collectively "DATAA"). The Contractor agrees to maintain the confidentiality of all records containing student and de-identified data, as this term is defined in DATAA, in any

databases, to which the State has granted the Contractor access, and to only use such data for the exclusive purpose of performing its duties under this Contract.

Any instances of unauthorized disclosure of data containing personally identifiable information in violation of FERPA or DATAA that come to the attention of the Contractor shall be reported to the State within twenty-four (24) hours. Contractor shall indemnify and hold harmless State, its employees, agents and representatives, from and against any and all claims, liabilities, losses, or causes of action that may arise, accrue, or result to any person or entity that is injured or damaged as a result of Contractor's failure to comply with this section.

IN WITNESS WHEREOF,

CONTRACTOR LEGAL ENTITY NAME:

CONTRACTOR SIGNATURE

DATE

PRINTED NAME AND TITLE OF CONTRACTOR SIGNATORY (above)

CENTRAL PROCUREMENT OFFICE:

MICHAEL F. PERRY, CHIEF PROCUREMENT OFFICER

DATE

ATTACHMENT 1**ATTESTATION RE PERSONNEL USED IN CONTRACT PERFORMANCE**

SUBJECT CONTRACT NUMBER:	
CONTRACTOR LEGAL ENTITY NAME:	
FEDERAL EMPLOYER IDENTIFICATION NUMBER (or Social Security number)	

The Contractor, identified above, does hereby attest, certify, warrant, and assure that 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 Contractor. If said individual is not the chief executive or president, this document shall attach evidence showing the individual's authority to contractually bind Contractor.

PRINTED NAME AND TITLE OF SIGNATORY**DATE OF ATTESTATION**

ATTACHMENT 2
BOND NO. #

PERFORMANCE BOND

KNOW ALL MEN BY THESE PRESENTS: that We,

Contractor name
Contractor address
Contractor telephone

(hereinafter called the "Principal"), whose principal business address and telephone number is as stated above; and

Surety name
Surety address
Surety telephone

(hereinafter called the "Surety"), whose principal address and telephone number is as stated above, a surety insurer chartered and existing under the laws of the State of **state name** and authorized to do business in the State of Tennessee;

are held and firmly bound unto the State of Tennessee Department of General Services Central Procurement Office ("State"), whose principal address is 312 Rosa L. Parks Avenue, 3rd Floor, Nashville, TN 37243, and whose principal telephone number is 615-741-1035 in the penal sum of **written amount (\$ number)** for payment of which we bond ourselves, our heirs, our personal representatives, our successors and our assignees, jointly and severally.

WHEREAS, Principal has entered into a contract with State for **solicitation name** (Solicitation No. #) (the "Contract") in accordance with the scope of services and deliverables (the "Scope") set forth in Section **reference** of the Contract.

THE CONDITION OF THIS BOND is that if Principal:

1. Performs the Contract at the times and in the manner prescribed in the Contract; and
2. Pays State any and all losses, damages, costs and attorneys' fees, including appellate proceedings, that State sustains because of any default by Principal under the Contract, including, but not limited to, all delay damages, whether liquidated or actual, incurred by State; and
3. Performs, to the satisfaction of State the Scope under the Contract for the time specified in the Contract;

then this bond is void; otherwise it remains in full force.

The Surety, for value received, hereby stipulates and agrees that no changes, extensions of time, alterations or additions to the terms of the Contract or other work to be performed hereunder, or the specifications referred to in the Contract shall in anyway affect its obligation under this bond. The Surety waives notice of any such changes, extensions of time, alterations or additions to the terms of the Contract or to the Scope.

It is expressly understood the time provision under Tenn. Code Ann. § 12-3-502 shall apply to this bond. Bond must be received within fourteen (14) calendar days of receipt of request by the State or a Delegated State Agency.

By execution of this bond, the Surety acknowledges that it has read the Surety qualifications and obligations imposed by the Contract and hereby satisfies those conditions.

IN WITNESS WHEREOF, the above bounded parties have executed this instrument this _____ day of _____, 20____, the name of each party being affixed and these presents duly signed by its undersigned representative, pursuant to authority of its governing body.

Signed, sealed and delivered
In the presence of:

PRINCIPAL:

Contractor name

By: _____
(Contractor's authorized signatory)

(Printed name and title)

STATE OF TENNESSEE

COUNTY OF _____

On this _____ day of _____, 20 _____, before me personally appeared _____, to me known to be the person (or persons) described in and who executed the foregoing instrument, and acknowledged that such person (or persons) executed the same as such person (or person's) free act and deed.

Notary Public
Printed Name: _____
Commission Expires: _____

Signed, sealed and delivered
In the presence of:

SURETY:

Surety name

By: _____
(Surety's authorized signatory)

(Printed name and title)

STATE OF TENNESSEE

COUNTY OF _____

On this _____ day of _____, 20 _____, before me personally appeared _____, to me known to be the person (or persons) described in and who executed the foregoing instrument, and acknowledged that such person (or persons) executed the same as such person (or person's) free act and deed.

Notary Public
Printed Name: _____
Commission Expires: _____

ATTACHMENT 3**PAYMENT BOND FOR LABOR AND MATERIALS**

This bond (the "Bond") made **date**, by **contractor name** ("Principal"), a corporation organized under the laws of **name of state**, having its principal office at **contractor's address**, as principal, and **surety name** ("Surety"), a corporation organized under the laws of **name of state**, and licensed to transact a surety business in the State of Tennessee, having its principal office at **surety's address**, as surety.

OBLIGATION

WHEREAS, the parties are obligated to the State of Tennessee Department of General Services Central Procurement Office ("State"), whose principal address is 312 Rosa L. Parks Avenue, 3rd Floor, Nashville, TN 37243, as obligee, for the benefit of Claimants as defined below, in the amount of **written amount** (\$ **number**), for the payment of which Principal and Surety bind themselves, their heirs, representatives, successors and assigns, jointly and severally, firmly by this Bond.

WHEREAS, Principal has by written agreement, dated **date of agreement**, entered into a contract with State for **description of work** in accordance with the drawings and specifications prepared by **name of architect or engineer**, which contract is made a part of this Bond by this reference, and is referred to as the "Contract."

CONDITION

The condition of this obligation is such that if the Principal shall promptly make payment to all Claimants as defined in SECTION ONE of this Bond for all labor and materials used or reasonably required for use in the performance of the Contract, then this obligation shall be void; otherwise it shall remain in full force and effect.

AGREEMENT

For the reasons recited above, and in consideration of the parties' mutual covenants, the parties agree as follows:

SECTION ONE. CLAIMANT DEFINED

"Claimant" is defined as one having a direct contract with Principal or with a subcontractor of Principal for labor, materials, or both, used or reasonably required for use in the performance of the Contract, "labor and material" including that part of water, gas, power, light, heat, oil, gasoline, telephone service or rental of equipment directly applicable to the Contract.

SECTION TWO. ACTION ON SUMS DUE CLAIMANT

Principal and Surety jointly and severally agree with State that every Claimant who has not been paid in full before the expiration of a period of **sixty (60)** days after the date on which the last of such Claimant's work or labor was done or performed, or on which the last of such materials were furnished by Claimant, may sue on this Bond for the use of Claimant in the name of State, prosecute the suit to final judgment for such amount as may be justly due Claimant, and have execution, provided, however, that State shall not be liable for the payment of any costs or expenses of any such suit.

SECTION THREE. LIMITATIONS ON SUIT BY CLAIMANT

Any suit or action commenced under this Bond shall comply with Tenn. Code Ann. § 12-4-205. Claimant shall give written notice to any two of the following: Principal, State, or Surety, above named, within ninety (90) days after completion of the public work. The claim shall state with substantial accuracy the amount

claimed and the name of the party to whom materials were furnished, or for whom the work or labor was done or performed. Such notice shall be personally served or sent by certified mail, return receipt requested, in an envelope addressed to Principal, State, or Surety, at any place where an office is regularly maintained for the transaction of business.

SECTION FOUR. PAYMENTS MADE

The amount of this Bond shall be reduced by and to the extent of any payment or payments made in good faith under this Bond, inclusive of the payment by Surety of mechanics' liens which may be filed of record against the improvement, whether or not claim for the amount of such lien be presented under and against this Bond.

The parties have executed this Bond at **place of execution** the day and year first above written.

PRINCIPAL:

Contractor name

By: _____
Contractor's authorized signatory

Printed name and title

SURETY:

Surety Name

By: _____
Surety's authorized signatory

Printed name and title

AREA OF FOCUS 2: ELIGIBLE BROADBAND INTERNAL CONNECTIONS**RFQ # 33104-00116 PRO FORMA CONTRACT**

The *pro forma* contract detailed in following pages of this exhibit contains some “blanks” (signified by descriptions in capital letters) that will be completed with appropriate information in the final contract resulting from the RFQ.

**CONTRACT
BETWEEN THE STATE OF TENNESSEE,
CENTRAL PROCUREMENT OFFICE
AND
CONTRACTOR NAME**

This Contract, by and between the State of Tennessee, Central Procurement Office ("State") and **Contractor Legal Entity Name** ("Contractor"), is for the provision of Eligible Broadband Internal Connections for **SPECIFY GRAND DIVISION(S)**, as further defined in the "SCOPE." State and Contractor may be referred to individually as a "Party" or collectively as the "Parties" to this Contract.

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

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

Contractor Edison Registration ID # **Number**

A. SCOPE:

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

A.2. Definitions: An exhaustive listing of terms related to the E-rate program can be found at <http://www.usac.org/res/documents/sl/pdf/handouts/SL-Glossary-of-Terms.pdf>.

TERM	DEFINITION
Organizations	
Federal Communications Commission (FCC)	An independent agency of the United States government created by Congress via the Communications Act of 1934 responsible for the regulation of interstate communications. The Wireline Competition Bureau of the FCC is responsible for the policy development for Schools and Libraries Program of the Universal Service Fund.
Local Education Agency (LEA)	Public School District
Schools and Libraries Division (SLD)	Division of USAC that administers the E-Rate Program
Universal Service Administration Company (USAC)	Created by the Telecommunications Act of 1996, is the independent American nonprofit corporation tasked to manage the contribution of revenue to and distribution of funding from the Universal Service Fund. The Schools and Libraries Program (E-rate) is managed by this group.
Programs	
Category 1	One of two service categories defined in the eligible services list (ESL); this category focuses on data transmission services and internet access, and voice services (how to get the pipes to the side of the building).
Category 2	One of two service categories defined in the ESL; this category focuses on internal connections, managed internal broadband services, and basic maintenance of internal connections (how to get the pipes into the classroom and students).
E-rate	The Schools and Libraries Program funded via the Universal Service Fund and administrated by USAC. The E-rate program is responsible for the discount funding provided to schools and libraries across the nation for procurement of broadband services to the building and into the classroom.
E-rate Productivity Center (EPC)	Per FCC rule, this is the portal that all Form 470(s) and related procurement documentation will be available. Respondents must register with USAC to obtain login credentials to access the online information. You can reach USAC at 888.203.8100.
Eligible Services	A list published by USAC, each funding year, providing guidance on the

List (ESL)	eligibility of products and services under E-rate. The 2016 ESL is published at http://www.usac.org/_res/documents/sl/pdf/ESL_archive/EligibleServicesList-2016.pdf .
FCC Registration Number (FCCRN)	Required to do business with the FCC. https://apps.fcc.gov/coresWeb/publicHome.do
Managed Internal Broadband Services (MIBS)	A category of service on the Eligible Services List. Services provided by a third party for the operation, management, and monitoring of eligible broadband internal connections components. E-rate support is limited to eligible expenses or portions of expenses that directly support and are necessary for the broadband connectivity within schools and libraries.
FCC Forms	
FCC Forms	Forms required by the FCC for schools and libraries to make application to the E-rate program for discounted broadband services. (all descriptions and form information can be seen at http://www.usac.org/sl/tools/forms/default.aspx)
470	Description of Services Requested and Certification Form – opens a competitive bidding process for services requested on the form, may have a RFP associated with the filing.
471	Services Ordered and Certification Form – filed with USAC to request discounts on eligible services for eligible schools, libraries, and consortia of those entities under the E-rate program based upon a previously approve FCC Form 470.
472	Billed Entity Applicant Reimbursement (BEAR) Form - used by the Billed Entity that received a Funding Commitment Decision Letter (FCDL) from the fund administrator, the SLD of USAC, and filed an FCC Form 486, Receipt of Service Confirmation Form, indicating that the Billed Entity intended to submit to USAC an invoice for reimbursement of discounts on eligible services received on or after the effective date of discounts and already paid for by the applicant.
474	Service Provider Invoice (SPI) Form -to be completed and submitted by a service provider that has provided discounted eligible services to eligible schools and libraries, in order to seek universal service support in the amount of the discounts. The service provider must have provided the service and given a discounted bill to the applicant prior to submitting the FCC Form 474.
486	Receipt of Service Confirmation and Children’s Internet Protection Act and Technology Plan Certification Form - notifies USAC that the billed entity and/or the eligible entities that it represents is receiving, or has received, service in the relevant funding year from the named service provider(s).
498	Service Provider Identification Number and General Contact Information Form - used to collect contact, remittance, and payment information for service providers that receive support from the federal universal service programs.
Technology	
Local Area Network (LAN)	Network that connects computers and other devices in a relatively small area, typically a single building or a group of building.
Internet	Worldwide network of interconnected computers and networks using the Internet Protocol (IP)
Network Operations Center (NOC)	A place from which administrators supervise, monitor, and maintain a telecommunications network.
Service Level Agreement (SLA)	Agreement between a service provider and the end user that defines the level of service expected from the service provider. SLAs are output-based in that their purpose is specifically to define with the customer will receive.
Wide Area Network (WAN)	A telecommunication network or computer network that extends over a large geographical distance.

Wireless Local Area Network (WLAN)	Wireless computer network that links two or more devices using a wireless distribution method within a limited area.
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- A.3. Contractor Standing. The Contractor must be in good standing with the FCC, have no debts outstanding that are owed to the FCC and must not be on Red Light Status. The Contractor must immediately notify the State in any event that the Contractor is put on Red Light Status by the FCC and must take immediate measures to resolve and remove its Red Light Status. Contractor's Red Light Status may constitute a material breach of contract and the State reserves the right to cancel the Contract immediately and without incurring any termination charges. Red Light status can be checked via the Red Light Display System at <https://apps.fcc.gov/redlight/login.cfm>.
- A.4. Lowest Corresponding Price. Contractor shall comply with the FCC's Lowest Corresponding Price rule and not charge a price above the LCP for E-rate eligible services. See 47 C.F.R. Section 54.511 and 47 CFR Section 54.500(f). Contractor may refer to USAC guidance additional information.
- A.5. Mini-Bid Process. LEAs shall institute and qualified contractor shall participate in a mini-bid process, as described on USAC's website, as part of the LEA's FCC Form 471 application.
- a. Costs submitted during the mini-bid on individual items shall not exceed the costs published in this Contract. Published costs will be an upper limit or ceiling. Costs can be submitted during the mini-bid processes that are lower than the published costs.
 - b. In accordance to FCC regulations and USAC guidance, cost will be the most heavily-weighted factor in the mini-bid evaluation matrix.
 - c. Schools and libraries shall develop an evaluation matrix based upon local requirements with the understanding that if a conflict exists between local procurement regulations and USAC guidance, the most restrictive of the regulations prevail.
- A.6. Audit and Review Support. Contractor shall cooperate with LEA and SLD / USAC during audit exercises by providing documentation about services provided and related invoicing information including details of calculations used to produce said invoices.
- A.7. Contractor Registration. Contractor shall annually submit to the SLD, a completed Form 473, Service Provider Annual Certification Form, which is a program requirement. The Contractor shall provide a copy of the completed Form 473 to the State upon request.
- A.8. Records Retention. Contractor shall maintain all records of services provided under the resulting contract for a period of no less than 10 years from the last date of service in the fiscal year in which a contract is in place in accordance with FCC regulations. This documentation shall be digitally archived and be made available at the request of the State or LEA.
- A.9. On-Premise Security. All Contractor personnel assigned to this Contract shall be required to carry company picture ID's while on-site, and premise visits must be authorized by site contact. These steps must be consistent with modern security practices and those practices instituted by the LEA to ensure the safety of its students.
- A.10. The Contractor shall maintain compliance with all FCC policy and USAC procedures in regards to E-rate.
- A.11. Warranty. Contractor represents and warrants that the term of the warranty ("Warranty Period") shall be the greater of the Term of this Contract or any other warranty general offered by Contractor, its suppliers, or manufacturers to customers of its goods or services. The goods or services provided under this Contract shall conform to the terms and conditions of this Contract throughout the Warranty Period. Any nonconformance of the goods or services to the terms and conditions of this Contract shall constitute a "Defect" and shall be considered "Defective." If Contractor receives notice of a Defect during the Warranty Period, then Contractor shall correct the Defect, at no additional charge.

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

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

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

- A.12. Inspection and Acceptance. The Service Recipients shall have the right to inspect all goods or services provided by Contractor under this Contract. If, upon inspection, the State determines that the goods or services are Defective, the Service Recipient shall notify Contractor, and Contractor shall re-deliver the goods or provide the services at no additional cost to the Service Recipient. If after a period of thirty (30) days following delivery of goods or performance of services the Service Recipient does not provide a notice of any Defects, the goods or services shall be deemed to have been accepted by the Service Recipient.
- A.13. Products/Services. The Contractor will provide a discount percentage for one or more manufacturer lines/brands for one or more component areas identified below based upon a publicly published list already in existence prior to the issuance of this Contract for goods and services for which the Contractor was qualified to provide during the State's RFQ process. Examples of such publicly published sources include, but are not limited to, Manufacturer's Suggested Retail Price (MSRP), Retail Price, Catalog Pricing, Online Store Pricing, List Price, Educational Pricing or other similar pricing available to the general public without predetermined login access. The Contractor shall provide a permanent URL to this catalog resource.

Internal Connections Products/Services

1. The Contractor shall reply to mini-bids executed by LEAs and libraries as part of a FCC Form 471 application process seeking bids on one or more of the following component categories for one or more manufacturers for which the Contractor has been qualified by the State to provide:
 - a. Access points
 - b. Antennas, cabling, connectors, and related components providing connectivity paths for internal broadband connections
 - c. Caching devices and supporting software
 - d. Firewall Services and Components separate from basic firewall protection provided as a standard component of a vendor's Internet access service
 - e. Switches
 - f. Routers
 - g. Racks
 - h. Uninterruptible Power Supply (UPS) / Battery Backup
 - i. Wireless controller systems
 - j. Software supporting the eligible components used to distribute high-speed broadband throughout school buildings and libraries
 - k. Installation services
2. The Contractor shall be responsible for providing all training for facility personnel required to properly use the device and/or software as a daily service within the facility. This training shall include all information and procedures required to request support from the Contractor in the event of a component(s) or system failure.

A.14. Scope of Work (SOW). The Contractor shall provide a Scope of Work document outlining the costs and procedures to achieve the component solution in response to a mini-bid solicitation for a specific facility or group of facilities within a LEA or library system. LEAs and libraries may elect to provide services to part or all of their constituent facilities.

- a. The SOW shall clearly identify the total cost for the proposed solution via an itemized list of components and software and demonstrate that the overall solution does not exceed the maximum cost presented by the Contractor in the cost proposal provided during the qualifying round.
- b. The SOW shall clearly identify the timeline by which the goods and services will be delivered and/or installed and become fully functional.
- c. The SOW will clearly describe the escalation procedures to address service issues after deployment including a list of response times for multiple issue severity tiers.
- d. The SOW will have signatures from both the Contractor and authorized LEA or library personnel accepting the solution description and timeline for deployment.

B. TERM OF CONTRACT:

B.1. This Contract shall be effective on February 18, 2016 (“Effective Date”) and extend for a period of thirty-six (36) months after the Effective Date (“Term”). The State shall have no obligation for goods or services provided by the Contractor prior to the Effective Date.

B.2. Renewal Options. This Contract may be renewed upon satisfactory completion of the Term. The State reserves the right to execute up to two (2) renewal options under the same terms and conditions for a period not to exceed twelve (12) months each by the State, at the State's sole option. In no event, however, shall the maximum Term, including all renewals or extensions, exceed a total of sixty (60) months.

C. PAYMENT TERMS AND CONDITIONS:

C.1. Estimated Liability. The total purchases of any goods or services under the Contract are not known. The State estimates the purchases during the Term shall be **written number (\$number)** (“Estimated Liability”). This Contract does not grant the Contractor any exclusive rights. The State does not guarantee that it will buy any minimum quantity of goods or services under this Contract. Subject to the terms and conditions of this Contract, the Contractor will only be paid for goods or services provided under this Contract after a purchase order is issued to Contractor by the State or as otherwise specified by this Contract.

C.2. Compensation Firm. The payment methodology in Section C.3. of this Contract shall constitute the entire compensation due the Contractor for all goods or services provided under this Contract regardless of the difficulty, materials or equipment required. The payment methodology includes all applicable taxes, fees, overhead, and all other direct and indirect costs incurred or to be incurred by the Contractor.

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

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

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

Goods or Services Description	Amount (per compensable increment)
This is a place holder for the information that will be inserted to	\$ Number

the contract based on the contractor's final cost.	
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- C.4. Travel Compensation. The Contractor shall not be compensated or reimbursed for travel time, travel expenses, meals, or lodging.
- C.5. Invoice Requirements. The Contractor shall invoice the Service Recipient only for goods delivered and accepted by the State or services satisfactorily provided at the amounts stipulated in Section C.3., above, and present said invoices monthly, with all necessary supporting documentation. The invoice must be submitted electronically (Comma Delimited Format and Portable Document Format) and on paper, to the email and billing address provided by the Service Recipient.
- a. Each invoice, on Contractor's letterhead, shall clearly and accurately detail all of the following information (calculations must be extended and totaled correctly):
 - (1) Invoice number (assigned by the Contractor);
 - (2) Invoice date;
 - (3) Contract number (assigned by the State);
 - (4) Customer account name;
 - (5) Customer account number (assigned by the Contractor to the above-referenced Customer);
 - (6) Contractor name;
 - (7) Contractor Tennessee Edison registration ID number;
 - (8) Contractor contact for invoice questions (name, phone, or email);
 - (9) Contractor remittance address;
 - (10) Description of delivered goods or services provided and invoiced, including identifying information as applicable;
 - (11) Number of delivered or completed units, increments, hours, or days as applicable, of each good or service invoiced;
 - (12) Applicable payment methodology (as stipulated in Section C.3.) of each good or service invoiced;
 - (13) Amount due for each compensable unit of good or service; and
 - (14) Total amount due for the invoice period.
 - b. Contractor's invoices shall:
 - (1) Only include charges for goods delivered or services provided as described in Section A and in accordance with payment terms and conditions set forth in Section C;
 - (2) Only be submitted for goods delivered or services completed and shall not include any charge for future goods to be delivered or services to be performed;
 - (3) Not include Contractor's taxes, which includes without limitation Contractor's sales and use tax, excise taxes, franchise taxes, real or personal property taxes, or income taxes; and
 - (4) Include shipping or delivery charges only as authorized in this Contract.
 - (5) Separately itemize the cost of E-rate eligible and ineligible products and/or services.
 - c. The timeframe for payment (or any discounts) begins only when the State is in receipt of an invoice that meets the minimum requirements of this Section C.5.
 - d. Contractor agrees to bill and receive a portion of the payment for the provisions of goods and services described herein directly from USAC via the Form 474 Service Provider Invoice (SPI). Service Recipient shall only be responsible for paying their non-discounted share of costs and do not intend to use the BEAR process (Form 472), the maximum percentage the Service Recipient will be liable for is the pre-discount amount minus the funded amount as shown on the FCC Form 471 Funding Request(s) and any identified ineligible costs. Alternately, should a Service Recipient decide that it is in their best interest to utilize Form 472; the Service Recipient will inform the Service Provider of its intent.

- e. All credit adjustments must have sufficient detail to allow for proper crediting to occur. Requested credits/billing disputes must be resolved or credit issued within one month.
 - f. Partial month's billing shall be prorated from date of activation and upon the date of notice for deactivation.
 - g. Accurately list the names and addresses. The Contractor shall make any corrections to location names and addresses within 30 days of receiving such requests.
- C.6. Payment of Invoice. A payment by the State shall not prejudice the State's right to object to or question any payment, invoice, or other matter. A payment by the State shall not be construed as acceptance of goods delivered, any part of the services provided, or as approval of any amount invoiced.
- C.7. Invoice Reductions. The Contractor's invoice shall be subject to reduction for amounts included in any invoice or payment that is determined by the State, on the basis of audits conducted in accordance with the terms of this Contract, to not constitute proper compensation for goods delivered or services provided.
- C.8. Deductions. The State reserves the right to deduct from amounts, which are or shall become due and payable to the Contractor under this or any contract between the Contractor and the State of Tennessee, any amounts that are or shall become due and payable to the State of Tennessee by the Contractor.
- C.9. Prerequisite Documentation. The Contractor shall not invoice the State under this Contract until the State has received the following, properly completed documentation.
- a. The Contractor shall complete, sign, and present to the State the "Authorization Agreement for Automatic Deposit Form" provided by the State. By doing so, the Contractor acknowledges and agrees that, once this form is received by the State, payments to the Contractor, under this or any other contract the Contractor has with the State of Tennessee, may be made by ACH; and
 - b. The Contractor shall complete, sign, and return to the State the State-provided W-9 form. The taxpayer identification number on the W-9 form must be the same as the Contractor's Federal Employer Identification Number or Social Security Number referenced in the Contractor's Edison registration information.

D. MANDATORY TERMS AND CONDITIONS:

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

The State:

State Contact Name & Title
 State Agency Name
 Address
 Email Address

Telephone # **Number**
 FAX # **Number**

The Contractor:

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

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

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

consultant to the Contractor in connection with any work contemplated or performed under this Contract.

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

- D.9. Nondiscrimination. The Contractor hereby agrees, warrants, and assures that no person shall be excluded from participation in, be denied benefits of, or be otherwise subjected to discrimination in the performance of this Contract or in the employment practices of the Contractor on the grounds of handicap or disability, age, race, creed, color, religion, sex, national origin, or any other classification protected by federal or state law. The Contractor shall, upon request, show proof of nondiscrimination and shall post in conspicuous places, available to all employees and applicants, notices of nondiscrimination.
- D.10. Prohibition of Illegal Immigrants. The requirements of Tenn. Code Ann. § 12-3-309 addressing the use of illegal immigrants in the performance of any contract to supply goods or services to the state of Tennessee, shall be a material provision of this Contract, a breach of which shall be grounds for monetary and other penalties, up to and including termination of this Contract.
- a. The Contractor agrees that the Contractor shall not knowingly utilize the services of an illegal immigrant in the performance of this Contract and shall not knowingly utilize the services of any subcontractor who will utilize the services of an illegal immigrant in the performance of this Contract. The Contractor shall reaffirm this attestation, in writing, by submitting to the State a completed and signed copy of the document at Attachment 1, semi-annually during the Term. If the Contractor is a party to more than one contract with the State, the Contractor may submit one attestation that applies to all contracts with the State. All Contractor attestations shall be maintained by the Contractor and made available to State officials upon request.
 - b. Prior to the use of any subcontractor in the performance of this Contract, and semi-annually thereafter, during the Term, the Contractor shall obtain and retain a current, written attestation that the subcontractor shall not knowingly utilize the services of an illegal immigrant to perform work under this Contract and shall not knowingly utilize the services of any subcontractor who will utilize the services of an illegal immigrant to perform work under this Contract. Attestations obtained from subcontractors shall be maintained by the Contractor and made available to State officials upon request.
 - c. The Contractor shall maintain records for all personnel used in the performance of this Contract. Contractor's records shall be subject to review and random inspection at any reasonable time upon reasonable notice by the State.
 - d. The Contractor understands and agrees that failure to comply with this section will be subject to the sanctions of Tenn. Code Ann. § 12-3-309 for acts or omissions occurring after its effective date.
 - e. For purposes of this Contract, "illegal immigrant" shall be defined as any person who is not: (i) a United States citizen; (ii) a Lawful Permanent Resident; (iii) a person whose physical presence in the United States is authorized; (iv) allowed by the federal Department of Homeland Security and who, under federal immigration laws or regulations, is authorized to be employed in the U.S.; or (v) is otherwise authorized to provide services under the Contract.
- D.11. Records. The Contractor shall maintain documentation for all charges under this Contract. The books, records, and documents of the Contractor, for work performed or money received under this Contract, shall be maintained for a period of ten (10) full years from the date of the final payment and shall be subject to audit at any reasonable time and upon reasonable notice by the

- State, the Comptroller of the Treasury, or their duly appointed representatives. The financial statements shall be prepared in accordance with generally accepted accounting principles.
- D.12. Monitoring. The Contractor's activities conducted and records maintained pursuant to this Contract shall be subject to monitoring and evaluation by the State, the Comptroller of the Treasury, or their duly appointed representatives.
- D.13. Progress Reports. The Contractor shall submit brief, periodic, progress reports to the State as requested.
- D.14. Strict Performance. Failure by any Party to this Contract to require, in any one or more cases, the strict performance of any of the terms, covenants, conditions, or provisions of this Contract shall not be construed as a waiver or relinquishment of any term, covenant, condition, or provision. No term or condition of this Contract shall be held to be waived, modified, or deleted except by a written amendment signed by the Parties.
- D.15. Independent Contractor. The Parties shall not act as employees, partners, joint venturers, or associates of one another. The Parties are independent contracting entities. Nothing in this Contract shall be construed to create an employer/employee relationship or to allow either Party to exercise control or direction over the manner or method by which the other transacts its business affairs or provides its usual services. The employees or agents of one Party are not employees or agents of the other Party.
- D.16. Patient Protection and Affordable Care Act. The Contractor agrees that it will be responsible for compliance with the Patient Protection and Affordable Care Act ("PPACA") with respect to itself and its employees, including any obligation to report health insurance coverage, provide health insurance coverage, or pay any financial assessment, tax, or penalty for not providing health insurance. The Contractor shall indemnify the State and hold it harmless for any costs to the State arising from Contractor's failure to fulfill its PPACA responsibilities for itself or its employees.
- D.17. Limitation of State's Liability. The State shall have no liability except as specifically provided in this Contract. In no event will the State be liable to the Contractor or any other party for any lost revenues, lost profits, loss of business, decrease in the value of any securities or cash position, time, money, goodwill, or any indirect, special, incidental, punitive, exemplary or consequential damages of any nature, whether based on warranty, contract, statute, regulation, tort (including but not limited to negligence), or any other legal theory that may arise under this Contract or otherwise. The State's total liability under this Contract (including any exhibits, schedules, amendments or other attachments to the Contract) or otherwise shall under no circumstances exceed the Maximum Liability. This limitation of liability is cumulative and not per incident.
- D.18. Limitation of Contractor's Liability. In accordance with Tenn. Code Ann. § 12-3-701, the Contractor's liability for all claims arising under this Contract shall be limited to an amount equal to two (2) times the Maximum Liability amount detailed in Section C.1. and as may be amended, PROVIDED THAT in no event shall this Section limit the liability of the Contractor for: (i) intellectual property or any Contractor indemnity obligations for infringement for third-party intellectual property rights; (ii) any claims covered by any specific provision in the Contract providing for liquidated damages; or (iii) any claims for intentional torts, criminal acts, fraudulent conduct, or acts or omissions that result in personal injuries or death.
- D.19. Hold Harmless. The Contractor agrees to indemnify and hold harmless the State of Tennessee as well as its officers, agents, and employees from and against any and all claims, liabilities, losses, and causes of action which may arise, accrue, or result to any person, firm, corporation, or other entity which may be injured or damaged as a result of acts, omissions, or negligence on the part of the Contractor, its employees, or any person acting for or on its or their behalf relating to this Contract. The Contractor further agrees it shall be liable for the reasonable cost of attorneys for the State to enforce the terms of this Contract.

In the event of any suit or claim, the Parties shall give each other immediate notice and provide

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

- D.20. HIPAA Compliance. The State and Contractor shall comply with obligations under the Health Insurance Portability and Accountability Act of 1996 (“HIPAA”), Health Information Technology for Economic and Clinical Health (“HITECH”) Act and any other relevant laws and regulations regarding privacy (collectively the “Privacy Rules”). The obligations set forth in this Section shall survive the termination of this Contract.
- a. Contractor warrants to the State that it is familiar with the requirements of the Privacy Rules, and will comply with all applicable requirements in the course of this Contract.
 - b. Contractor warrants that it will cooperate with the State, including cooperation and coordination with State privacy officials and other compliance officers required by the Privacy Rules, in the course of performance of the Contract so that both parties will be in compliance with the Privacy Rules.
 - c. The State and the Contractor will sign documents, including but not limited to business associate agreements, as required by the Privacy Rules and that are reasonably necessary to keep the State and Contractor in compliance with the Privacy Rules. This provision shall not apply if information received or delivered by the parties under this Contract is NOT “protected health information” as defined by the Privacy Rules, or if the Privacy Rules permit the parties to receive or deliver the information without entering into a business associate agreement or signing another document.
 - d. The Contractor will indemnify the State and hold it harmless for any violation by the Contractor or its subcontractors of the Privacy Rules. This includes the costs of responding to a breach of protected health information, the costs of responding to a government enforcement action related to the breach, and any fines, penalties, or damages paid by the State because of the violation.
- D.21. Tennessee Consolidated Retirement System. Subject to statutory exceptions contained in Tenn. Code Ann. §§ 8-36-801, *et seq.*, the law governing the Tennessee Consolidated Retirement System (“TCRS”), provides that if a retired member of TCRS, or of any superseded system administered by TCRS, or of any local retirement fund established under Tenn. Code Ann. §§ 8-35-101, *et seq.*, accepts State employment, the member’s retirement allowance is suspended during the period of the employment. Accordingly and notwithstanding any provision of this Contract to the contrary, the Contractor agrees that if it is later determined that the true nature of the working relationship between the Contractor and the State under this Contract is that of “employee/employer” and not that of an independent contractor, the Contractor, if a retired member of TCRS, may be required to repay to TCRS the amount of retirement benefits the Contractor received from TCRS during the Term.
- D.22. Tennessee Department of Revenue Registration. The Contractor shall comply with all applicable registration requirements contained in Tenn. Code Ann. §§ 67-6-601 – 608. Compliance with applicable registration requirements is a material requirement of this Contract.
- D.23. Debarment and Suspension. The Contractor certifies, to the best of its knowledge and belief, that it, its current and future principals, its current and future subcontractors and their principals:
- a. are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any federal or state department or agency;
 - b. have not within a three (3) year period preceding this Contract been convicted of, or had a civil judgment rendered against them from commission of fraud, or a criminal offense in

connection with obtaining, attempting to obtain, or performing a public (federal, state, or local) transaction or grant under a public transaction; violation of federal or state antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification, or destruction of records, making false statements, or receiving stolen property;

- c. are not presently indicted or otherwise criminally or civilly charged by a government entity (federal, state, or local) with commission of any of the offenses detailed in section b. of this certification; and
- d. have not within a three (3) year period preceding this Contract had one or more public transactions (federal, state, or local) terminated for cause or default.

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

- D.24. Force Majeure. "Force Majeure Event" means fire, flood, earthquake, elements of nature or acts of God, wars, riots, civil disorders, rebellions or revolutions, acts of terrorism or any other similar cause beyond the reasonable control of the Party except to the extent that the non-performing Party is at fault in failing to prevent or causing the default or delay, and provided that the default or delay cannot reasonably be circumvented by the non-performing Party through the use of alternate sources, workaround plans or other means. A strike, lockout or labor dispute shall not excuse either Party from its obligations under this Contract. Except as set forth in this Section, any failure or delay by a Party in the performance of its obligations under this Contract arising from a Force Majeure Event is not a default under this Contract or grounds for termination. The non-performing Party will be excused from performing those obligations directly affected by the Force Majeure Event, and only for as long as the Force Majeure Event continues, provided that the Party continues to use diligent, good faith efforts to resume performance without delay. The occurrence of a Force Majeure Event affecting Contractor's representatives, suppliers, subcontractors, customers or business apart from this Contract is not a Force Majeure Event under this Contract. Contractor will promptly notify the State of any delay caused by a Force Majeure Event (to be confirmed in a written notice to the State within one (1) day of the inception of the delay) that a Force Majeure Event has occurred, and will describe in reasonable detail the nature of the Force Majeure Event. If any Force Majeure Event results in a delay in Contractor's performance longer than forty-eight (48) hours, the State may, upon notice to Contractor: (a) cease payment of the fees until Contractor resumes performance of the affected obligations; or (b) immediately terminate this Contract or any purchase order, in whole or in part, without further payment except for fees then due and payable. Contractor will not increase its charges under this Contract or charge the State any fees other than those provided for in this Contract as the result of a Force Majeure Event.
- D.25. State and Federal Compliance. The Contractor shall comply with all applicable state and federal laws and regulations in the performance of this Contract.
- D.26. Governing Law. This Contract shall be governed by and construed in accordance with the laws of the State of Tennessee. The Tennessee Claims Commission or the state or federal courts in Tennessee shall be the venue for all claims, disputes, or disagreements arising under this Contract. The Contractor acknowledges and agrees that any rights, claims, or remedies against the State of Tennessee or its employees arising under this Contract shall be subject to and limited to those rights and remedies available under Tenn. Code Ann. §§ 9-8-101 - 407.
- D.27. Entire Agreement. This Contract is complete and contains the entire understanding between the Parties relating to its subject matter, including all the terms and conditions of the Parties' agreement. This Contract supersedes any and all prior understandings, representations, negotiations, and agreements between the Parties, whether written or oral.
- D.28. Severability. If any terms and conditions of this Contract are held to be invalid or unenforceable as a matter of law, the other terms and conditions of this Contract shall not be affected and shall remain in full force and effect. The terms and conditions of this Contract are severable.

- D.29. Headings. Section headings of this Contract are for reference purposes only and shall not be construed as part of this Contract.
- D.30. Incorporation of Additional Documents. Each of the following documents is included as a part of this Contract by reference. In the event of a discrepancy or ambiguity regarding the Contractor's duties, responsibilities, and performance under this Contract, these items shall govern in order of precedence below:
- g. any amendment to this Contract, with the latter in time controlling over any earlier amendments;
 - h. this Contract with any attachments or exhibits (excluding the items listed at subsections c. through f., below), which includes Attachments 1, and 2;
 - i. any clarifications of or addenda to the Contractor's proposal seeking this Contract;
 - j. the State solicitation, as may be amended, requesting responses in competition for this Contract;
 - k. any technical specifications provided to proposers during the procurement process to award this Contract; and
 - l. the Contractor's response seeking this Contract.
- D.31. Insurance. Contractor shall provide the State a certificate of insurance ("COI") evidencing the coverages and amounts specified below. The COI shall be provided ten (10) business days prior to the Effective Date and again upon renewal or replacement of coverages required by this Contract. If insurance expires during the Term, the State must receive a new COI at least thirty (30) calendar days prior to the insurance's expiration date. If the Contractor loses insurance coverage, does not renew coverage, or for any reason becomes uninsured during the Term, the Contractor shall notify the State immediately.

The COI shall be on a form approved by the Tennessee Department of Commerce and Insurance ("TDCI") and signed by an authorized representative of the insurer. The COI shall list each insurer's national association of insurance commissioners (also known as NAIC) number or federal employer identification number and list the State of Tennessee, Risk Manager, 312 Rosa L. Parks Ave., 3rd floor Central Procurement Office, Nashville, TN 37243 in the certificate holder section. At any time, the State may require the Contractor to provide a valid COI detailing coverage description; insurance company; policy number; exceptions; exclusions; policy effective date; policy expiration date; limits of liability; and the name and address of insured. The Contractor's failure to maintain or submit evidence of insurance coverage is considered a material breach of this Contract.

If the Contractor desires to self-insure, then a COI will not be required to prove coverage. In place of the COI, the Contractor must provide a certificate of self-insurance or a letter on the Contractor's letterhead detailing its coverage, liability policy amounts, and proof of funds to reasonably cover such expenses. Compliance with Tenn. Code Ann. § 50-6-405 and the rules of the TDCI is required for the Contractor to self-insure workers' compensation.

All insurance companies must be: (a) acceptable to the State; (b) authorized by the TDCI to transact business in the State of Tennessee; and (c) rated A- VII or better by A. M. Best. The Contractor shall provide the State evidence that all subcontractors maintain the required insurance or that the subcontractors are included under the Contractor's policy.

The Contractor agrees to name the State as an additional insured on any insurance policies with the exception of workers' compensation (employer liability) and professional liability (errors and omissions) ("Professional Liability") insurance. Also, all policies shall contain an endorsement for a waiver of subrogation in favor of the State.

The deductible and any premiums are the Contractor's sole responsibility. Any deductible over fifty thousand dollars (\$50,000) must be approved by the State. The Contractor agrees that the insurance requirements specified in this Section do not reduce any liability the Contractor has assumed under this Contract including any indemnification or hold harmless requirements.

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

All coverage required shall be on a primary basis and noncontributory with any other insurance coverage or self-insurance carried by the State. The State reserves the right to amend or require additional endorsements, types of coverage, and higher or lower limits of coverage depending on the nature of the work. Purchases or contracts involving any hazardous activity or equipment, tenant, concessionaire and lease agreements, alcohol sales, cyber-liability risks, environmental risks, special motorized equipment, or property may require customized insurance requirements (e.g. umbrella liability insurance) in addition to the general requirements listed below.

d. Commercial General Liability Insurance

- 1) The Contractor shall maintain commercial general liability insurance, which shall be written on an Insurance Services Office, Inc. (also known as ISO) occurrence form (or a substitute form providing equivalent coverage) and shall cover liability arising from property damage, premises/operations, independent contractors, contractual liability, completed operations/products, personal and advertising injury, and liability assumed under an insured contract (including the tort liability of another assumed in a business contract).
- 2) The Contractor shall maintain bodily injury/property damage with a combined single limit not less than one million dollars (\$1,000,000) per occurrence and two million dollars (\$2,000,000) aggregate for bodily injury and property damage, including products and completed operations coverage with an aggregate limit of at least two million dollars (\$2,000,000).

e. Workers' Compensation and Employer Liability Insurance

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

- vi. The Contractor self-insures its workers' compensation and is in compliance with the TDCI rules and Tenn. Code Ann. § 50-6-405.

f. Automobile Liability Insurance

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

E. SPECIAL TERMS AND CONDITIONS:

- E.1. Conflicting Terms and Conditions. Should any of these special terms and conditions conflict with any other terms and conditions of this Contract, the special terms and conditions shall be subordinate to the Contract's other terms and conditions.
- E.2. Confidentiality of Records. Strict standards of confidentiality of records and information shall be maintained in accordance with applicable state and federal law. All material and information, regardless of form, medium or method of communication, provided to the Contractor by the State or acquired by the Contractor on behalf of the State that is regarded as confidential under state or federal law shall be regarded as "Confidential Information." Nothing in this Section shall permit Contractor to disclose any Confidential Information, regardless of whether it has been disclosed or made available to the Contractor due to intentional or negligent actions or inactions of agents of the State or third parties. Confidential Information shall not be disclosed except as required or permitted under state or federal law. Contractor shall take all necessary steps to safeguard the confidentiality of such material or information in conformance with applicable state and federal law.
- The obligations set forth in this Section shall survive the termination of this Contract.
- E.3. Extraneous Terms and Conditions. Contractor shall fill all orders submitted by the State under this Contract. No purchase order, invoice, or other documents associated with any sales, orders, or supply of any good or service under this Contract shall contain any terms or conditions other than as set forth in the Contract. Any such extraneous terms and conditions shall be void, invalid and unenforceable against the State. Any refusal by Contractor to supply any goods or services under this Contract conditioned upon the State submitting to any extraneous terms and conditions shall be a material breach of the Contract and constitute an act of bad faith by Contractor.
- E.4. State Furnished Property. The Contractor shall be responsible for the correct use, maintenance, and protection of all articles of nonexpendable, tangible personal property furnished by the State for the Contractor's use under this Contract. Upon termination of this Contract, all property furnished by the State shall be returned to the State in the same condition as when received, less reasonable wear and tear. Should the property be destroyed, lost, or stolen, the Contractor shall be responsible to the State for the fair market value of the property at the time of loss.
- E.5. Prohibited Advertising or Marketing. The Contractor shall not suggest or imply in advertising or marketing materials that Contractor's goods or services are endorsed by the State. The restrictions on Contractor advertising or marketing materials under this Section shall survive the termination of this Contract.
- E.6. Performance Bond. The Contractor shall provide to the State a performance bond guaranteeing full and faithful performance of all undertakings and obligations under this Contract, specifically faithful performance of the work in accordance with the plans, specifications, and contract documents. The performance bond shall be in an amount equal to one hundred percent (100%) of the Estimated Liability, **Written Dollar Amount (\$Number)**. The State reserves the right to review the bond amount and bonding requirements at any time during the Term. The Contractor shall submit the bond no later than the day immediately preceding the Effective Date and in the

manner and form prescribed by the State at Attachment 2. The bond shall be issued by a company licensed to issue such a bond in the state of Tennessee. The performance bond shall guarantee full and faithful performance of all undertakings and obligations for the Term, as the Contract is extended or renewed.

Failure to provide to the State the performance bond(s) as required under this Contract may result in this Contract being terminated by the State. The performance bond required under this Contract shall not be reduced during the Term without the State of Tennessee Central Procurement Office's prior written approval.

- E.7. Intellectual Property. The Contractor agrees to indemnify and hold harmless the State of Tennessee as well as its officers, agents, and employees from and against any and all claims or suits which may be brought against the State concerning or arising out of any claim of an alleged patent, copyright, trade secret or other intellectual property infringement. In any such claim or action brought against the State, the Contractor shall satisfy and indemnify the State for the amount of any settlement or final judgment, and the Contractor shall be responsible for all legal or other fees or expenses incurred by the State arising from any such claim. The State shall give the Contractor notice of any such claim or suit, however, the failure of the State to give such notice shall only relieve Contractor of its obligations under this Section to the extent Contractor can demonstrate actual prejudice arising from the State's failure to give notice. This Section shall not grant the Contractor, through its attorneys, the right to represent the State of Tennessee in any legal matter, as provided in Tenn. Code Ann. § 8-6-106.
- E.8. Personally Identifiable Information. While performing its obligations under this Contract, Contractor may have access to Personally Identifiable Information held by the State ("PII"). For the purposes of this Contract, "PII" includes "Nonpublic Personal Information" as that term is defined in Title V of the Gramm-Leach-Bliley Act of 1999 or any successor federal statute, and the rules and regulations thereunder, all as may be amended or supplemented from time to time ("GLBA") and personally identifiable information and other data protected under any other applicable laws, rule or regulation of any jurisdiction relating to disclosure or use of personal information ("Privacy Laws"). Contractor agrees it shall not do or omit to do anything which would cause the State to be in breach of any Privacy Laws. Contractor shall, and shall cause its employees, agents and representatives to: (i) keep PII confidential and may use and disclose PII only as necessary to carry out those specific aspects of the purpose for which the PII was disclosed to Contractor and in accordance with this Contract, GLBA and Privacy Laws; and (ii) implement and maintain appropriate technical and organizational measures regarding information security to: (A) ensure the security and confidentiality of PII; (B) protect against any threats or hazards to the security or integrity of PII; and (C) prevent unauthorized access to or use of PII. Contractor shall immediately notify State: (1) of any disclosure or use of any PII by Contractor or any of its employees, agents and representatives in breach of this Contract; and (2) of any disclosure of any PII to Contractor or its employees, agents and representatives where the purpose of such disclosure is not known to Contractor or its employees, agents and representatives. The State reserves the right to review Contractor's policies and procedures used to maintain the security and confidentiality of PII and Contractor shall, and cause its employees, agents and representatives to, comply with all reasonable requests or directions from the State to enable the State to verify and/or procure that Contractor is in full compliance with its obligations under this Contract in relation to PII. Upon termination or expiration of the Contract or at the State's direction at any time in its sole discretion, whichever is earlier, Contractor shall immediately return to the State any and all PII which it has received under this Contract and shall destroy all records of such PII.

The Contractor shall report to the State any instances of unauthorized access to or potential disclosure of PII in the custody or control of Contractor ("Unauthorized Disclosure") that come to the Contractor's attention. Any such report shall be made by the Contractor within twenty-four (24) hours after the Unauthorized Disclosure has come to the attention of the Contractor. Contractor shall take all necessary measures to halt any further Unauthorized Disclosures. The Contractor, at the sole discretion of the State, shall provide no cost credit monitoring services for individuals whose PII was affected by the Unauthorized Disclosure. The Contractor shall bear the cost of notification to all individuals affected by the Unauthorized Disclosure, including individual

letters and public notice. The remedies set forth in this Section are not exclusive and are in addition to any claims or remedies available to this State under this Contract or otherwise available at law.

E.9. Federal Educational Rights and Privacy Act & Tennessee Data Accessibility, Transparency and Accountability Act. The Contractor shall comply with the Federal Educational Rights and Privacy Act of 1974 (20 U.S.C. 1232(g)) and its accompanying regulations (34 C.F.R. § 99) (“FERPA”). The Contractor warrants that the Contractor is familiar with FERPA requirements and that it will comply with these requirements in the performance of its duties under this Contract. The Contractor agrees to cooperate with the State, as required by FERPA, in the performance of its duties under this Contract. The Contractor agrees to maintain the confidentiality of all education records and student information. The Contractor shall only use such records and information for the exclusive purpose of performing its duties under this Contract.

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

Any instances of unauthorized disclosure of data containing personally identifiable information in violation of FERPA or DATAA that come to the attention of the Contractor shall be reported to the State within twenty-four (24) hours. Contractor shall indemnify and hold harmless State, its employees, agents and representatives, from and against any and all claims, liabilities, losses, or causes of action that may arise, accrue, or result to any person or entity that is injured or damaged as a result of Contractor’s failure to comply with this section.

IN WITNESS WHEREOF,

CONTRACTOR LEGAL ENTITY NAME:

CONTRACTOR SIGNATURE

DATE

PRINTED NAME AND TITLE OF CONTRACTOR SIGNATORY (above)

CENTRAL PROCUREMENT OFFICE:

MICHAEL F. PERRY, CHIEF PROCUREMENT OFFICER

DATE

ATTACHMENT 1**ATTESTATION RE PERSONNEL USED IN CONTRACT PERFORMANCE**

SUBJECT CONTRACT NUMBER:	
CONTRACTOR LEGAL ENTITY NAME:	
FEDERAL EMPLOYER IDENTIFICATION NUMBER: (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. Attach evidence documenting the individual's authority to contractually bind the Contractor, unless the signatory is the Contractor's chief executive or president.

PRINTED NAME AND TITLE OF SIGNATORY**DATE OF ATTESTATION**

ATTACHMENT 2
BOND NO. #

PERFORMANCE BOND

KNOW ALL MEN BY THESE PRESENTS: that We,

Contractor name
Contractor address
Contractor telephone

(hereinafter called the "Principal"), whose principal business address and telephone number is as stated above; and

Surety name
Surety address
Surety telephone

(hereinafter called the "Surety"), whose principal address and telephone number is as stated above, a surety insurer chartered and existing under the laws of the State of **state name** and authorized to do business in the State of Tennessee;

are held and firmly bound unto the State of Tennessee Department of General Services Central Procurement Office ("State"), whose principal address is 312 Rosa L. Parks Avenue, 3rd Floor, Nashville, TN 37243, and whose principal telephone number is 615-741-1035 in the penal sum of **written amount (\$ number)** for payment of which we bond ourselves, our heirs, our personal representatives, our successors and our assignees, jointly and severally.

WHEREAS, Principal has entered into a contract with State for **solicitation name** (Solicitation No. #) (the "Contract") in accordance with the scope of services and deliverables (the "Scope") set forth in Section **reference** of the Contract.

THE CONDITION OF THIS BOND is that if Principal:

1. Performs the Contract at the times and in the manner prescribed in the Contract; and
2. Pays State any and all losses, damages, costs and attorneys' fees, including appellate proceedings, that State sustains because of any default by Principal under the Contract, including, but not limited to, all delay damages, whether liquidated or actual, incurred by State; and
3. Performs, to the satisfaction of State the Scope under the Contract for the time specified in the Contract;

then this bond is void; otherwise it remains in full force.

The Surety, for value received, hereby stipulates and agrees that no changes, extensions of time, alterations or additions to the terms of the Contract or other work to be performed hereunder, or the specifications referred to in the Contract shall in anyway affect its obligation under this bond. The Surety waives notice of any such changes, extensions of time, alterations or additions to the terms of the Contract or to the Scope.

It is expressly understood the time provision under Tenn. Code Ann. § 12-3-502 shall apply to this bond. Bond must be received within fourteen (14) calendar days of receipt of request by the State or a Delegated State Agency.

By execution of this bond, the Surety acknowledges that it has read the Surety qualifications and obligations imposed by the Contract and hereby satisfies those conditions.

IN WITNESS WHEREOF, the above bounded parties have executed this instrument this _____ day of _____, 20____, the name of each party being affixed and these presents duly signed by its undersigned representative, pursuant to authority of its governing body.

Signed, sealed and delivered
In the presence of:

PRINCIPAL:

Contractor name

By: _____
(Contractor's authorized signatory)

(Printed name and title)

STATE OF TENNESSEE

COUNTY OF _____

On this _____ day of _____, 20 _____, before me personally appeared _____, to me known to be the person (or persons) described in and who executed the foregoing instrument, and acknowledged that such person (or persons) executed the same as such person (or person's) free act and deed.

Notary Public
Printed Name: _____
Commission Expires: _____

Signed, sealed and delivered
In the presence of:

SURETY:

Surety name

By: _____
(Surety's authorized signatory)

(Printed name and title)

STATE OF TENNESSEE

COUNTY OF _____

On this _____ day of _____, 20 _____, before me personally appeared _____, to me known to be the person (or persons) described in and who executed the foregoing instrument, and acknowledged that such person (or persons) executed the same as such person (or person's) free act and deed.

Notary Public
Printed Name: _____
Commission Expires: _____

AREA OF FOCUS 3: ELIGIBLE MANAGED BROADBAND SERVICES**RFQ # 33104-00116 PRO FORMA CONTRACT**

The *pro forma* contract detailed in following pages of this exhibit contains some “blanks” (signified by descriptions in capital letters) that will be completed with appropriate information in the final contract resulting from the RFQ.

CONTRACT
BETWEEN THE STATE OF TENNESSEE,
CENTRAL PROCUREMENT OFFICE
AND
CONTRACTOR NAME

This Contract, by and between the State of Tennessee, Central Procurement Office ("State") and **Contractor Legal Entity Name** ("Contractor"), is for the provision of Eligible Managed Broadband Services for **SPECIFY GRAND DIVISION(S)**, as further defined in the "SCOPE." State and Contractor may be referred to individually as a "Party" or collectively as the "Parties" to this Contract.

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

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

Contractor Edison Registration ID # **Number**

A. SCOPE:

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

A.2. Definitions: An exhaustive listing of terms related to the E-rate program can be found at http://www.usac.org/_res/documents/sl/pdf/handouts/SL-Glossary-of-Terms.pdf.

TERM	DEFINITION
Organizations	
Federal Communications Commission (FCC)	An independent agency of the United States government created by Congress via the Communications Act of 1934 responsible for the regulation of interstate communications. The Wireline Competition Bureau of the FCC is responsible for the policy development for Schools and Libraries Program of the Universal Service Fund.
Local Education Agency (LEA)	Public School District
Schools and Libraries Division (SLD)	Division of USAC that administers the E-Rate Program
Universal Service Administration Company (USAC)	Created by the Telecommunications Act of 1996, is the independent American nonprofit corporation tasked to manage the contribution of revenue to and distribution of funding from the Universal Service Fund. The Schools and Libraries Program (E-rate) is managed by this group.
Programs	
Category 1	One of two service categories defined in the eligible services list (ESL); this category focuses on data transmission services and internet access, and voice services (how to get the pipes to the side of the building).
Category 2	One of two service categories defined in the ESL; this category focuses on internal connections, managed internal broadband services, and basic maintenance of internal connections (how to get the pipes into the classroom and students).
E-rate	The Schools and Libraries Program funded via the Universal Service Fund and administrated by USAC. The E-rate program is responsible for the discount funding provided to schools and libraries across the nation for procurement of broadband services to the building and into the classroom.
Eligible Services List (ESL)	A list published by USAC, each funding year, providing guidance on the eligibility of products and services under E-rate. The 2016 ESL is published at http://www.usac.org/_res/documents/sl/pdf/ESL_archive/EligibleServicesList-2016.pdf .
Managed Internal	A category of service on the Eligible Services List. Services provided by a

Broadband Services (MIBS)	third party for the operation, management, and monitoring of eligible broadband internal connections components. E-rate support is limited to eligible expenses or portions of expenses that directly support and are necessary for the broadband connectivity within schools and libraries.
FCC Forms	
FCC Forms	Forms required by the FCC for schools and libraries to make application to the E-rate program for discounted broadband services. (all descriptions and form information can be seen at http://www.usac.org/sl/tools/forms/default.aspx)
470	Description of Services Requested and Certification Form – opens a competitive bidding process for services requested on the form, may have a RFP associated with the filing.
471	Services Ordered and Certification Form – filed with USAC to request discounts on eligible services for eligible schools, libraries, and consortia of those entities under the E-rate program based upon a previously approve FCC Form 470.
472	Billed Entity Applicant Reimbursement (BEAR) Form - used by the Billed Entity that received a Funding Commitment Decision Letter (FCDL) from the fund administrator, the SLD of USAC, and filed an FCC Form 486, Receipt of Service Confirmation Form, indicating that the Billed Entity intended to submit to USAC an invoice for reimbursement of discounts on eligible services received on or after the effective date of discounts and already paid for by the applicant.
474	Service Provider Invoice (SPI) Form -to be completed and submitted by a service provider that has provided discounted eligible services to eligible schools and libraries, in order to seek universal service support in the amount of the discounts. The service provider must have provided the service and given a discounted bill to the applicant prior to submitting the FCC Form 474.
486	Receipt of Service Confirmation and Children’s Internet Protection Act and Technology Plan Certification Form - notifies USAC that the billed entity and/or the eligible entities that it represents is receiving, or has received, service in the relevant funding year from the named service provider(s).
498	Service Provider Identification Number and General Contact Information Form - used to collect contact, remittance, and payment information for service providers that receive support from the federal universal service programs.
Technology	
Local Area Network (LAN)	Network that connects computers and other devices in a relatively small area, typically a single building or a group of building.
Internet	Worldwide network of interconnected computers and networks using the Internet Protocol (IP)
Service Level Agreement (SLA)	Agreement between a service provider and the end user that defines the level of service expected from the service provider. SLAs are output-based in that their purpose is specifically to define with the customer will receive.
Wide Area Network (WAN)	A telecommunication network or computer network that extends over a large geographical distance.
Wireless Local Area Network (WLAN)	Wireless computer network that links two or more devices using a wireless distribution method within a limited area.

- A.3. Contractor Standing. The Contractor must be in good standing with the FCC, have no debts outstanding that are owed to the FCC and must not be on Red Light Status. The Contractor must immediately notify the State in any event that the Contractor is put on Red Light Status by the FCC and must take immediate measures to resolve and remove its Red Light Status. Contractor’s Red Light Status may constitute a material breach of contract and the State reserves the right to cancel the Contract immediately and without incurring any termination charges. Red

Light status can be checked via the Red Light Display System at <https://apps.fcc.gov/redlight/login.cfm>.

- A.4. Lowest Corresponding Price. Contractor shall comply with the FCC's Lowest Corresponding Price rule and not charge a price above the LCP for E-rate eligible services. See 47 C.F.R. Section 54.511 and 47 CFR Section 54.500(f). Contractor may refer to USAC guidance additional information.
- A.5. Mini-Bid Process. LEAs shall institute and qualified contractors shall participate in a mini-bid process, as described on USAC's website, as part of the LEA's FCC Form 471 filing.
- d. Costs submitted during the mini-bid on individual items shall not exceed the costs published in this Contract. Published costs will be an upper limit or ceiling. Costs can be submitted during the mini-bid processes that are lower than the published costs.
 - e. In accordance with FCC regulations and USAC guidance, cost will be the most heavily-weighted factor in the mini-bid evaluation matrix.
 - f. Schools and libraries shall develop an evaluation matrix based upon local requirements with the understanding that if a conflict exists between local procurement regulations and USAC guidance, the most restrictive of the regulations prevail.
- A.6. Audit and Review Support. Contractor shall cooperate with LEA and SLD / USAC during audit exercises by providing documentation about services provided and related invoicing information including details of calculations used to produce said invoices.
- A.7. Contractor Registration. Contractor shall annually submit to the SLD, a completed Form 473, Service Provider Annual Certification Form, which is a program requirement. The Contractor shall provide a copy of the completed Form 473 to the State upon request.
- A.8. Records Retention. Contractor shall maintain all records of services provided under the resulting contract for a period of no less than 10 years from the last date of service in the fiscal year in which a contract is in place in accordance with FCC regulations. This documentation shall be digitally archived and be made available at the request of the State or LEA.
- A.9. On-Premise Security. All Contractor personnel assigned to this Contract shall be required to carry company picture ID's while on-site, and premise visits must be authorized by site contact. These steps must be consistent with modern security practices and those practices instituted by the LEA to ensure the safety of its students.
- A.10. Quantity. Service/product demand may be increased or decreased during the period that the contract is in effect, including voluntary extension periods. While the State anticipates that long term service demands to expand, there may be some situations where buildings close or may need to reduce the quantity of service they receive. The State, LEA, and/or library will expect Contractor cooperation in a reduction of service due to building or school closure.
- A.11. Warranty. Contractor represents and warrants that the term of the warranty ("Warranty Period") shall be the greater of the Term of this Contract or any other warranty general offered by Contractor, its suppliers, or manufacturers to customers of its goods or services. The goods or services provided under this Contract shall conform to the terms and conditions of this Contract throughout the Warranty Period. Any nonconformance of the goods or services to the terms and conditions of this Contract shall constitute a "Defect" and shall be considered "Defective." If Contractor receives notice of a Defect during the Warranty Period, then Contractor shall correct the Defect, at no additional charge.

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

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

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

- A.12. Inspection and Acceptance. The Service Recipients shall have the right to inspect all goods or services provided by Contractor under this Contract. If, upon inspection, the State determines that the goods or services are Defective, the Service Recipient shall notify Contractor, and Contractor shall re-deliver the goods or provide the services at no additional cost to the Service Recipient. If after a period of thirty (30) days following delivery of goods or performance of services the Service Recipient does not provide a notice of any Defects, the goods or services shall be deemed to have been accepted by the Service Recipient.
- A.13. Services. The Contractor shall provide one (1) or two (2) solutions for Managed Internal Broadband Services (Managed Wi-Fi).
- a. The Contractor shall provide a maximum cost per student per month for a leased equipment MIBS solution. In this model, the school or library would lease the equipment from the Contractor. The Contractor shall provide all labor and materials, including but not limited to, switching equipment, access points, cabling, and connectors required to facilitate a complete solution that provides wireless connectivity into the classroom subject to published speed of the prevailing wireless standard. At the time of this document's publication, the current prevailing wireless standard is 802.11ac. The Contractor will be responsible for installation, management and maintenance of the internal wireless access solution.
 - b. The Contractor shall provide a maximum cost per student per month for an LEA-owned equipment MIBS solution. In this model, the school or library shall own/provide the equipment. The Contractor will be responsible for management and maintenance of the internal wireless access solution. The school or library shall be responsible for the procurement and installation of equipment and materials required to provide the service.
 - c. Proposed solutions costs will not exceed the maximum cost per student per month submitted in the cost proposal during the qualifying round.
 - d. Proposed solutions must include all work elements, including initial construction, to provide a complete solution which delivers broadband connectivity into the classroom.
 - e. The Contractor shall be responsible for providing all training for facility personnel required to properly use the managed solution as a daily service within the facility. This training shall include all information and procedures required to request support from the Contractor in the event of a system failure.
- A.14. Scope of Work (SOW). The Contractor shall provide a Scope of Work document outlining the costs and procedures to achieve the MIBS solution in response to a mini-bid solicitation for a specific facility or group of facilities within a LEA or library system. LEAs and libraries may elect to provide services to part or all of their constituent facilities.
- a. The SOW shall clearly identify the total cost per student per month for the proposed solution and demonstrate that the overall solution does not exceed the maximum cost per student per month presented by the Contractor in the cost proposal provided during the qualifying round.
 - b. The SOW shall clearly identify the model (school-owned or leased equipment) that will be used for the solution.
 - c. The SOW will clearly describe all labor and equipment costs, including initial construction, required to completely deploy the solution as requested by the school or library.
 - d. The SOW will clearly describe the escalation procedures to address service issues after deployment including a list of response times for multiple issue severity tiers.

- e. The SOW will have signatures from both the Contractor and authorized LEA or library personnel accepting the solution description and timeline for deployment.

B. TERM OF CONTRACT:

- B.1. This Contract shall be effective on February 18, 2016 ("Effective Date") and extend for a period of thirty-six (36) months after the Effective Date ("Term"). The State shall have no obligation for goods or services provided by the Contractor prior to the Effective Date.
- B.2. Renewal Options. This Contract may be renewed upon satisfactory completion of the Term. The State reserves the right to execute up to two (2) renewal options under the same terms and conditions for a period not to exceed twelve (12) months each by the State, at the State's sole option. In no event, however, shall the maximum Term, including all renewals or extensions, exceed a total of sixty (60) months.

C. PAYMENT TERMS AND CONDITIONS:

- C.1. Estimated Liability. The total purchases of any goods or services under the Contract are not known. The State estimates the purchases during the Term shall be **written number (\$number)** ("Estimated Liability"). This Contract does not grant the Contractor any exclusive rights. The State does not guarantee that it will buy any minimum quantity of goods or services under this Contract. Subject to the terms and conditions of this Contract, the Contractor will only be paid for goods or services provided under this Contract after a purchase order is issued to Contractor by the State or as otherwise specified by this Contract.
- C.2. Compensation Firm. The payment methodology in Section C.3. of this Contract shall constitute the entire compensation due the Contractor for all goods or services provided under this Contract regardless of the difficulty, materials or equipment required. The payment methodology includes all applicable taxes, fees, overhead, and all other direct and indirect costs incurred or to be incurred by the Contractor.
- C.3. Payment Methodology. The Contractor shall be compensated based on the payment methodology for goods or services authorized by the State in a total amount as set forth in Section C.1.
- e. The Contractor's compensation shall be contingent upon the satisfactory provision of goods or services as set forth in Section A.
- f. The Contractor shall be compensated based upon the following payment methodology:

Goods or Services Description	Amount (per compensable increment)
Leased Equipment	\$ Number / per student per month
Facility Owned Equipment	\$ Number / per student per month

- C.4. Travel Compensation. The Contractor shall not be compensated or reimbursed for travel time, travel expenses, meals, or lodging.
- C.5. Invoice Requirements. The Contractor shall invoice the Service Recipient only for goods delivered and accepted by the State or services satisfactorily provided at the amounts stipulated in Section C.3., above, and present said invoices monthly, with all necessary supporting documentation. The invoice must be submitted electronically (Comma Delimited Format and Portable Document Format) and on paper, to the email and billing address provided by the Service Recipient.

- a. Each invoice, on Contractor's letterhead, shall clearly and accurately detail all of the following information (calculations must be extended and totaled correctly):
 - (1) Invoice number (assigned by the Contractor);
 - (2) Invoice date;
 - (3) Contract number (assigned by the State);
 - (4) Customer account name;
 - (5) Customer account number (assigned by the Contractor to the above-referenced Customer);
 - (6) Contractor name;
 - (7) Contractor Tennessee Edison registration ID number;
 - (8) Contractor contact for invoice questions (name, phone, or email);
 - (9) Contractor remittance address;
 - (10) Description of delivered goods or services provided and invoiced, including identifying information as applicable;
 - (11) Number of delivered or completed units, increments, hours, or days as applicable, of each good or service invoiced;
 - (12) Applicable payment methodology (as stipulated in Section C.3.) of each good or service invoiced;
 - (13) Amount due for each compensable unit of good or service; and
 - (14) Total amount due for the invoice period.
 - b. Contractor's invoices shall:
 - (1) Only include charges for goods delivered or services provided as described in Section A and in accordance with payment terms and conditions set forth in Section C;
 - (2) Only be submitted for goods delivered or services completed and shall not include any charge for future goods to be delivered or services to be performed;
 - (3) Not include Contractor's taxes, which includes without limitation Contractor's sales and use tax, excise taxes, franchise taxes, real or personal property taxes, or income taxes; and
 - (4) Include shipping or delivery charges only as authorized in this Contract.
 - (5) Separately itemize the cost of E-rate eligible and ineligible products and/or services.
 - c. The timeframe for payment (or any discounts) begins only when the State is in receipt of an invoice that meets the minimum requirements of this Section C.5.
 - d. Contractor agrees to bill and receive a portion of the payment for the provisions of goods and services described herein directly from USAC via the Form 474 Service Provider Invoice (SPI). Service Recipient shall only be responsible for paying their non-discounted share of costs and do not intend to use the BEAR process (Form 472), the maximum percentage the Service Recipient will be liable for is the pre-discount amount minus the funded amount as shown on the FCC Form 471 Funding Request(s) and any identified ineligible costs. Alternately, should a Service Recipient decide that it is in their best interest to utilize Form 472; the Service Recipient will inform the Service Provider of its intent.
 - e. All credit adjustments must have sufficient detail to allow for proper crediting to occur. Requested credits/billing disputes must be resolved or credit issued within one month.
 - f. Partial month's billing shall be prorated from date of activation and upon the date of notice for deactivation.
 - g. Accurately list the names and addresses. The Contractor shall make any corrections to location names and addresses within 30 days of receiving such requests.
- C.6. Payment of Invoice. A payment by the State shall not prejudice the State's right to object to or question any payment, invoice, or other matter. A payment by the State shall not be construed as acceptance of goods delivered, any part of the services provided, or as approval of any amount invoiced.

- C.7. Invoice Reductions. The Contractor's invoice shall be subject to reduction for amounts included in any invoice or payment that is determined by the State, on the basis of audits conducted in accordance with the terms of this Contract, to not constitute proper compensation for goods delivered or services provided.
- C.8. Deductions. The State reserves the right to deduct from amounts, which are or shall become due and payable to the Contractor under this or any contract between the Contractor and the State of Tennessee, any amounts that are or shall become due and payable to the State of Tennessee by the Contractor.
- C.9. Prerequisite Documentation. The Contractor shall not invoice the State under this Contract until the State has received the following, properly completed documentation.
- a. The Contractor shall complete, sign, and present to the State the "Authorization Agreement for Automatic Deposit Form" provided by the State. By doing so, the Contractor acknowledges and agrees that, once this form is received by the State, payments to the Contractor, under this or any other contract the Contractor has with the State of Tennessee, may be made by ACH; and
 - b. The Contractor shall complete, sign, and return to the State the State-provided W-9 form. The taxpayer identification number on the W-9 form must be the same as the Contractor's Federal Employer Identification Number or Social Security Number referenced in the Contractor's Edison registration information.

D. MANDATORY TERMS AND CONDITIONS:

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

The State:

State Contact Name & Title
 State Agency Name
 Address
 Email Address
 Telephone # Number
 FAX # Number

The Contractor:

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

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

- D.3. Modification and Amendment. This Contract may be modified only by a written amendment signed by all Parties and approved by all applicable State officials.
- D.4. Subject to Funds Availability. The Contract is subject to the appropriation and availability of State or federal funds. In the event that the funds are not appropriated or are otherwise unavailable, the State reserves the right to terminate this Contract upon written notice to the Contractor. The State's exercise of its right to terminate this Contract shall not constitute a breach of Contract by the State. Upon receipt of the written notice, the Contractor shall cease all work associated with the Contract. If the State terminates this Contract due to lack of funds availability, the Contractor shall be entitled to compensation for all conforming goods requested and accepted by the State and for all satisfactory and authorized services completed as of the termination date. Should the State exercise its right to terminate this Contract due to unavailability of funds, the Contractor shall have no right to recover from the State any actual, general, special, incidental, consequential, or any other damages of any description or amount.
- D.5. Termination for Convenience. The State may terminate this Contract for convenience without cause and for any reason. The State shall give the Contractor at least thirty (30) days written notice before the termination date. The Contractor shall be entitled to compensation for all conforming goods delivered and accepted by the State or for satisfactory, authorized services completed as of the termination date. In no event shall the State be liable to the Contractor for compensation for any goods neither requested nor accepted by the State or for any services neither requested by the State nor satisfactorily performed by the Contractor. In no event shall the State's exercise of its right to terminate this Contract for convenience relieve the Contractor of any liability to the State for any damages or claims arising under this Contract.
- D.6. Termination for Cause. If the Contractor fails to properly perform its obligations under this Contract in a timely or proper manner, or if the Contractor materially violates any terms of this Contract ("Breach Condition"), the State shall have the right to immediately terminate the Contract and withhold payments in excess of compensation for completed services or provided goods. Notwithstanding the above, the Contractor shall not be relieved of liability to the State for damages sustained by virtue of any Breach Condition and the State may seek other remedies allowed at law or in equity for breach of this Contract.
- D.7. Assignment and Subcontracting. The Contractor shall not assign this Contract or enter into a subcontract for any of the goods or services provided under this Contract without the prior written approval of the State. Notwithstanding any use of the approved subcontractors, the Contractor shall be the prime contractor and responsible for compliance with all terms and conditions of this Contract. The State reserves the right to request additional information or impose additional terms and conditions before approving an assignment of this Contract in whole or in part or the use of subcontractors in fulfilling the Contractor's obligations under this Contract.
- D.8. Conflicts of Interest. The Contractor warrants that no part of the Contractor's compensation shall be paid directly or indirectly to an employee or official of the State of Tennessee as wages, compensation, or gifts in exchange for acting as an officer, agent, employee, subcontractor, or consultant to the Contractor in connection with any work contemplated or performed under this Contract.
- The Contractor acknowledges, understands, and agrees that this Contract shall be null and void if the Contractor is, or within the past six (6) months has been, an employee of the State of Tennessee or if the Contractor is an entity in which a controlling interest is held by an individual who is, or within the past six (6) months has been, an employee of the State of Tennessee.
- D.9. Nondiscrimination. The Contractor hereby agrees, warrants, and assures that no person shall be excluded from participation in, be denied benefits of, or be otherwise subjected to discrimination in the performance of this Contract or in the employment practices of the Contractor on the

grounds of handicap or disability, age, race, creed, color, religion, sex, national origin, or any other classification protected by federal or state law. The Contractor shall, upon request, show proof of nondiscrimination and shall post in conspicuous places, available to all employees and applicants, notices of nondiscrimination.

- D.10. Prohibition of Illegal Immigrants. The requirements of Tenn. Code Ann. § 12-3-309 addressing the use of illegal immigrants in the performance of any contract to supply goods or services to the state of Tennessee, shall be a material provision of this Contract, a breach of which shall be grounds for monetary and other penalties, up to and including termination of this Contract.
- a. The Contractor agrees that the Contractor shall not knowingly utilize the services of an illegal immigrant in the performance of this Contract and shall not knowingly utilize the services of any subcontractor who will utilize the services of an illegal immigrant in the performance of this Contract. The Contractor shall reaffirm this attestation, in writing, by submitting to the State a completed and signed copy of the document at Attachment 1, semi-annually during the Term. If the Contractor is a party to more than one contract with the State, the Contractor may submit one attestation that applies to all contracts with the State. All Contractor attestations shall be maintained by the Contractor and made available to State officials upon request.
 - b. Prior to the use of any subcontractor in the performance of this Contract, and semi-annually thereafter, during the Term, the Contractor shall obtain and retain a current, written attestation that the subcontractor shall not knowingly utilize the services of an illegal immigrant to perform work under this Contract and shall not knowingly utilize the services of any subcontractor who will utilize the services of an illegal immigrant to perform work under this Contract. Attestations obtained from subcontractors shall be maintained by the Contractor and made available to State officials upon request.
 - c. The Contractor shall maintain records for all personnel used in the performance of this Contract. Contractor's records shall be subject to review and random inspection at any reasonable time upon reasonable notice by the State.
 - d. The Contractor understands and agrees that failure to comply with this section will be subject to the sanctions of Tenn. Code Ann. § 12-3-309 for acts or omissions occurring after its effective date.
 - e. For purposes of this Contract, "illegal immigrant" shall be defined as any person who is not: (i) a United States citizen; (ii) a Lawful Permanent Resident; (iii) a person whose physical presence in the United States is authorized; (iv) allowed by the federal Department of Homeland Security and who, under federal immigration laws or regulations, is authorized to be employed in the U.S.; or (v) is otherwise authorized to provide services under the Contract.
- D.11. Records. The Contractor shall maintain documentation for all charges under this Contract. The books, records, and documents of the Contractor, for work performed or money received under this Contract, shall be maintained for a period of ten (10) full years from the date of the final payment and shall be subject to audit at any reasonable time and upon reasonable notice by the State, the Comptroller of the Treasury, or their duly appointed representatives. The financial statements shall be prepared in accordance with generally accepted accounting principles.
- D.12. Monitoring. The Contractor's activities conducted and records maintained pursuant to this Contract shall be subject to monitoring and evaluation by the State, the Comptroller of the Treasury, or their duly appointed representatives.
- D.13. Progress Reports. The Contractor shall submit brief, periodic, progress reports to the State as requested.
- D.14. Strict Performance. Failure by any Party to this Contract to require, in any one or more cases, the strict performance of any of the terms, covenants, conditions, or provisions of this Contract

shall not be construed as a waiver or relinquishment of any term, covenant, condition, or provision. No term or condition of this Contract shall be held to be waived, modified, or deleted except by a written amendment signed by the Parties.

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

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

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

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

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

- D.24. Force Majeure. "Force Majeure Event" means fire, flood, earthquake, elements of nature or acts of God, wars, riots, civil disorders, rebellions or revolutions, acts of terrorism or any other similar cause beyond the reasonable control of the Party except to the extent that the non-performing Party is at fault in failing to prevent or causing the default or delay, and provided that the default or delay cannot reasonably be circumvented by the non-performing Party through the use of alternate sources, workaround plans or other means. A strike, lockout or labor dispute shall not excuse either Party from its obligations under this Contract. Except as set forth in this Section, any failure or delay by a Party in the performance of its obligations under this Contract arising from a Force Majeure Event is not a default under this Contract or grounds for termination. The non-performing Party will be excused from performing those obligations directly affected by the Force Majeure Event, and only for as long as the Force Majeure Event continues, provided that the Party continues to use diligent, good faith efforts to resume performance without delay. The occurrence of a Force Majeure Event affecting Contractor's representatives, suppliers, subcontractors, customers or business apart from this Contract is not a Force Majeure Event under this Contract. Contractor will promptly notify the State of any delay caused by a Force Majeure Event (to be confirmed in a written notice to the State within one (1) day of the inception of the delay) that a Force Majeure Event has occurred, and will describe in reasonable detail the nature of the Force Majeure Event. If any Force Majeure Event results in a delay in Contractor's performance longer than forty-eight (48) hours, the State may, upon notice to Contractor: (a) cease payment of the fees until Contractor resumes performance of the affected obligations; or (b) immediately terminate this Contract or any purchase order, in whole or in part, without further payment except for fees then due and payable. Contractor will not increase its charges under this Contract or charge the State any fees other than those provided for in this Contract as the result of a Force Majeure Event.
- D.25. State and Federal Compliance. The Contractor shall comply with all applicable state and federal laws and regulations in the performance of this Contract.
- D.26. Governing Law. This Contract shall be governed by and construed in accordance with the laws of the State of Tennessee. The Tennessee Claims Commission or the state or federal courts in Tennessee shall be the venue for all claims, disputes, or disagreements arising under this Contract. The Contractor acknowledges and agrees that any rights, claims, or remedies against the State of Tennessee or its employees arising under this Contract shall be subject to and limited to those rights and remedies available under Tenn. Code Ann. §§ 9-8-101 - 407.
- D.27. Entire Agreement. This Contract is complete and contains the entire understanding between the Parties relating to its subject matter, including all the terms and conditions of the Parties' agreement. This Contract supersedes any and all prior understandings, representations, negotiations, and agreements between the Parties, whether written or oral.
- D.28. Severability. If any terms and conditions of this Contract are held to be invalid or unenforceable as a matter of law, the other terms and conditions of this Contract shall not be affected and shall remain in full force and effect. The terms and conditions of this Contract are severable.
- D.29. Headings. Section headings of this Contract are for reference purposes only and shall not be construed as part of this Contract.
- D.30. Incorporation of Additional Documents. Each of the following documents is included as a part of this Contract by reference. In the event of a discrepancy or ambiguity regarding the Contractor's duties, responsibilities, and performance under this Contract, these items shall govern in order of precedence below:
- m. any amendment to this Contract, with the latter in time controlling over any earlier amendments;

- n. this Contract with any attachments or exhibits (excluding the items listed at subsections c. through f., below), which includes Attachments 1 and 2;
- o. any clarifications of or addenda to the Contractor's proposal seeking this Contract;
- p. the State solicitation, as may be amended, requesting responses in competition for this Contract;
- q. any technical specifications provided to proposers during the procurement process to award this Contract; and
- r. the Contractor's response seeking this Contract.

- D.31. Insurance. Contractor shall provide the State a certificate of insurance ("COI") evidencing the coverages and amounts specified below. The COI shall be provided ten (10) business days prior to the Effective Date and again upon renewal or replacement of coverages required by this Contract. If insurance expires during the Term, the State must receive a new COI at least thirty (30) calendar days prior to the insurance's expiration date. If the Contractor loses insurance coverage, does not renew coverage, or for any reason becomes uninsured during the Term, the Contractor shall notify the State immediately.

The COI shall be on a form approved by the Tennessee Department of Commerce and Insurance ("TDCI") and signed by an authorized representative of the insurer. The COI shall list each insurer's national association of insurance commissioners (also known as NAIC) number or federal employer identification number and list the State of Tennessee, Risk Manager, 312 Rosa L. Parks Ave., 3rd floor Central Procurement Office, Nashville, TN 37243 in the certificate holder section. At any time, the State may require the Contractor to provide a valid COI detailing coverage description; insurance company; policy number; exceptions; exclusions; policy effective date; policy expiration date; limits of liability; and the name and address of insured. The Contractor's failure to maintain or submit evidence of insurance coverage is considered a material breach of this Contract.

If the Contractor desires to self-insure, then a COI will not be required to prove coverage. In place of the COI, the Contractor must provide a certificate of self-insurance or a letter on the Contractor's letterhead detailing its coverage, liability policy amounts, and proof of funds to reasonably cover such expenses. Compliance with Tenn. Code Ann. § 50-6-405 and the rules of the TDCI is required for the Contractor to self-insure workers' compensation.

All insurance companies must be: (a) acceptable to the State; (b) authorized by the TDCI to transact business in the State of Tennessee; and (c) rated A- VII or better by A. M. Best. The Contractor shall provide the State evidence that all subcontractors maintain the required insurance or that the subcontractors are included under the Contractor's policy.

The Contractor agrees to name the State as an additional insured on any insurance policies with the exception of workers' compensation (employer liability) and professional liability (errors and omissions) ("Professional Liability") insurance. Also, all policies shall contain an endorsement for a waiver of subrogation in favor of the State.

The deductible and any premiums are the Contractor's sole responsibility. Any deductible over fifty thousand dollars (\$50,000) must be approved by the State. The Contractor agrees that the insurance requirements specified in this Section do not reduce any liability the Contractor has assumed under this Contract including any indemnification or hold harmless requirements. The State agrees that it shall give written notice to the Contractor as soon as practicable after the State becomes aware of any claim asserted or made against the State, but in no event later than thirty (30) calendar days after the State becomes aware of such claim. The failure of the State to give notice shall only relieve the Contractor of its obligations under this Section to the extent that the Contractor can demonstrate actual prejudice arising from the failure to give notice. This Section shall not grant the Contractor or its insurer, through its attorneys, the right to represent the State in any legal matter, as the right to represent the State is governed by Tenn. Code Ann. § 8-6-106.

All coverage required shall be on a primary basis and noncontributory with any other insurance coverage or self-insurance carried by the State. The State reserves the right to amend or require additional endorsements, types of coverage, and higher or lower limits of coverage depending on

the nature of the work. Purchases or contracts involving any hazardous activity or equipment, tenant, concessionaire and lease agreements, alcohol sales, cyber-liability risks, environmental risks, special motorized equipment, or property may require customized insurance requirements (e.g. umbrella liability insurance) in addition to the general requirements listed below.

g. Commercial General Liability Insurance

- 1) The Contractor shall maintain commercial general liability insurance, which shall be written on an Insurance Services Office, Inc. (also known as ISO) occurrence form (or a substitute form providing equivalent coverage) and shall cover liability arising from property damage, premises/operations, independent contractors, contractual liability, completed operations/products, personal and advertising injury, and liability assumed under an insured contract (including the tort liability of another assumed in a business contract).
- 2) The Contractor shall maintain bodily injury/property damage with a combined single limit not less than one million dollars (\$1,000,000) per occurrence and two million dollars (\$2,000,000) aggregate for bodily injury and property damage, including products and completed operations coverage with an aggregate limit of at least two million dollars (\$2,000,000).

h. Workers' Compensation and Employer Liability Insurance

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

i. Automobile Liability Insurance

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

E. SPECIAL TERMS AND CONDITIONS:

- E.1. Conflicting Terms and Conditions. Should any of these special terms and conditions conflict with any other terms and conditions of this Contract, the special terms and conditions shall be subordinate to the Contract's other terms and conditions.
- E.2. Confidentiality of Records. Strict standards of confidentiality of records and information shall be maintained in accordance with applicable state and federal law. All material and information, regardless of form, medium or method of communication, provided to the Contractor by the State or acquired by the Contractor on behalf of the State that is regarded as confidential under state or federal law shall be regarded as "Confidential Information." Nothing in this Section shall permit Contractor to disclose any Confidential Information, regardless of whether it has been disclosed or made available to the Contractor due to intentional or negligent actions or inactions of agents of the State or third parties. Confidential Information shall not be disclosed except as required or permitted under state or federal law. Contractor shall take all necessary steps to safeguard the confidentiality of such material or information in conformance with applicable state and federal law.

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

- E.3. Extraneous Terms and Conditions. Contractor shall fill all orders submitted by the State under this Contract. No purchase order, invoice, or other documents associated with any sales, orders, or supply of any good or service under this Contract shall contain any terms or conditions other than as set forth in the Contract. Any such extraneous terms and conditions shall be void, invalid and unenforceable against the State. Any refusal by Contractor to supply any goods or services under this Contract conditioned upon the State submitting to any extraneous terms and conditions shall be a material breach of the Contract and constitute an act of bad faith by Contractor.
- E.4. State Furnished Property. The Contractor shall be responsible for the correct use, maintenance, and protection of all articles of nonexpendable, tangible personal property furnished by the State for the Contractor's use under this Contract. Upon termination of this Contract, all property furnished by the State shall be returned to the State in the same condition as when received, less reasonable wear and tear. Should the property be destroyed, lost, or stolen, the Contractor shall be responsible to the State for the fair market value of the property at the time of loss.
- E.5. Prohibited Advertising or Marketing. The Contractor shall not suggest or imply in advertising or marketing materials that Contractor's goods or services are endorsed by the State. The restrictions on Contractor advertising or marketing materials under this Section shall survive the termination of this Contract.
- E.6. Performance Bond. The Contractor shall provide to the State a performance bond guaranteeing full and faithful performance of all undertakings and obligations under this Contract, specifically faithful performance of the work in accordance with the plans, specifications, and contract documents. The performance bond shall be in an amount equal to one hundred percent (100%) of the Estimated Liability, **Written Dollar Amount (\$Number)**. The State reserves the right to review the bond amount and bonding requirements at any time during the Term. The Contractor shall submit the bond no later than the day immediately preceding the Effective Date and in the manner and form prescribed by the State at Attachment 2. The bond shall be issued by a company licensed to issue such a bond in the state of Tennessee. The performance bond shall guarantee full and faithful performance of all undertakings and obligations for the Term, as the Contract is extended or renewed.
- Failure to provide to the State the performance bond(s) as required under this Contract may result in this Contract being terminated by the State. The performance bond required under this Contract shall not be reduced during the Term without the State of Tennessee Central Procurement Office's prior written approval.
- E.7. Intellectual Property. The Contractor agrees to indemnify and hold harmless the State of Tennessee as well as its officers, agents, and employees from and against any and all claims or

suits which may be brought against the State concerning or arising out of any claim of an alleged patent, copyright, trade secret or other intellectual property infringement. In any such claim or action brought against the State, the Contractor shall satisfy and indemnify the State for the amount of any settlement or final judgment, and the Contractor shall be responsible for all legal or other fees or expenses incurred by the State arising from any such claim. The State shall give the Contractor notice of any such claim or suit, however, the failure of the State to give such notice shall only relieve Contractor of its obligations under this Section to the extent Contractor can demonstrate actual prejudice arising from the State's failure to give notice. This Section shall not grant the Contractor, through its attorneys, the right to represent the State of Tennessee in any legal matter, as provided in Tenn. Code Ann. § 8-6-106.

- E.8. Personally Identifiable Information. While performing its obligations under this Contract, Contractor may have access to Personally Identifiable Information held by the State ("PII"). For the purposes of this Contract, "PII" includes "Nonpublic Personal Information" as that term is defined in Title V of the Gramm-Leach-Bliley Act of 1999 or any successor federal statute, and the rules and regulations thereunder, all as may be amended or supplemented from time to time ("GLBA") and personally identifiable information and other data protected under any other applicable laws, rule or regulation of any jurisdiction relating to disclosure or use of personal information ("Privacy Laws"). Contractor agrees it shall not do or omit to do anything which would cause the State to be in breach of any Privacy Laws. Contractor shall, and shall cause its employees, agents and representatives to: (i) keep PII confidential and may use and disclose PII only as necessary to carry out those specific aspects of the purpose for which the PII was disclosed to Contractor and in accordance with this Contract, GLBA and Privacy Laws; and (ii) implement and maintain appropriate technical and organizational measures regarding information security to: (A) ensure the security and confidentiality of PII; (B) protect against any threats or hazards to the security or integrity of PII; and (C) prevent unauthorized access to or use of PII. Contractor shall immediately notify State: (1) of any disclosure or use of any PII by Contractor or any of its employees, agents and representatives in breach of this Contract; and (2) of any disclosure of any PII to Contractor or its employees, agents and representatives where the purpose of such disclosure is not known to Contractor or its employees, agents and representatives. The State reserves the right to review Contractor's policies and procedures used to maintain the security and confidentiality of PII and Contractor shall, and cause its employees, agents and representatives to, comply with all reasonable requests or directions from the State to enable the State to verify and/or procure that Contractor is in full compliance with its obligations under this Contract in relation to PII. Upon termination or expiration of the Contract or at the State's direction at any time in its sole discretion, whichever is earlier, Contractor shall immediately return to the State any and all PII which it has received under this Contract and shall destroy all records of such PII.

The Contractor shall report to the State any instances of unauthorized access to or potential disclosure of PII in the custody or control of Contractor ("Unauthorized Disclosure") that come to the Contractor's attention. Any such report shall be made by the Contractor within twenty-four (24) hours after the Unauthorized Disclosure has come to the attention of the Contractor. Contractor shall take all necessary measures to halt any further Unauthorized Disclosures. The Contractor, at the sole discretion of the State, shall provide no cost credit monitoring services for individuals whose PII was affected by the Unauthorized Disclosure. The Contractor shall bear the cost of notification to all individuals affected by the Unauthorized Disclosure, including individual letters and public notice. The remedies set forth in this Section are not exclusive and are in addition to any claims or remedies available to this State under this Contract or otherwise available at law.

- E.9. Federal Educational Rights and Privacy Act & Tennessee Data Accessibility, Transparency and Accountability Act. The Contractor shall comply with the Federal Educational Rights and Privacy Act of 1974 (20 U.S.C. 1232(g)) and its accompanying regulations (34 C.F.R. § 99) ("FERPA"). The Contractor warrants that the Contractor is familiar with FERPA requirements and that it will comply with these requirements in the performance of its duties under this Contract. The Contractor agrees to cooperate with the State, as required by FERPA, in the performance of its duties under this Contract. The Contractor agrees to maintain the confidentiality of all education

records and student information. The Contractor shall only use such records and information for the exclusive purpose of performing its duties under this Contract.

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

Any instances of unauthorized disclosure of data containing personally identifiable information in violation of FERPA or DATAA that come to the attention of the Contractor shall be reported to the State within twenty-four (24) hours. Contractor shall indemnify and hold harmless State, its employees, agents and representatives, from and against any and all claims, liabilities, losses, or causes of action that may arise, accrue, or result to any person or entity that is injured or damaged as a result of Contractor’s failure to comply with this section.

IN WITNESS WHEREOF,

CONTRACTOR LEGAL ENTITY NAME:

CONTRACTOR SIGNATURE

DATE

PRINTED NAME AND TITLE OF CONTRACTOR SIGNATORY (above)

CENTRAL PROCUREMENT OFFICE:

MICHAEL F. PERRY, CHIEF PROCUREMENT OFFICER

DATE

ATTACHMENT 1**ATTESTATION RE PERSONNEL USED IN CONTRACT PERFORMANCE**

SUBJECT CONTRACT NUMBER:	
CONTRACTOR LEGAL ENTITY NAME:	
FEDERAL EMPLOYER IDENTIFICATION NUMBER: (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. Attach evidence documenting the individual's authority to contractually bind the Contractor, unless the signatory is the Contractor's chief executive or president.

PRINTED NAME AND TITLE OF SIGNATORY

DATE OF ATTESTATION

PERFORMANCE BOND

KNOW ALL MEN BY THESE PRESENTS: that We,

Contractor name
Contractor address
Contractor telephone

(hereinafter called the "Principal"), whose principal business address and telephone number is as stated above; and

Surety name
Surety address
Surety telephone

(hereinafter called the "Surety"), whose principal address and telephone number is as stated above, a surety insurer chartered and existing under the laws of the State of **state name** and authorized to do business in the State of Tennessee;

are held and firmly bound unto the State of Tennessee Department of General Services Central Procurement Office ("State"), whose principal address is 312 Rosa L. Parks Avenue, 3rd Floor, Nashville, TN 37243, and whose principal telephone number is 615-741-1035 in the penal sum of **written amount (\$ number)** for payment of which we bond ourselves, our heirs, our personal representatives, our successors and our assignees, jointly and severally.

WHEREAS, Principal has entered into a contract with State for **solicitation name** (Solicitation No. #) (the "Contract") in accordance with the scope of services and deliverables (the "Scope") set forth in Section **reference** of the Contract.

THE CONDITION OF THIS BOND is that if Principal:

1. Performs the Contract at the times and in the manner prescribed in the Contract; and
2. Pays State any and all losses, damages, costs and attorneys' fees, including appellate proceedings, that State sustains because of any default by Principal under the Contract, including, but not limited to, all delay damages, whether liquidated or actual, incurred by State; and
3. Performs, to the satisfaction of State the Scope under the Contract for the time specified in the Contract;

then this bond is void; otherwise it remains in full force.

The Surety, for value received, hereby stipulates and agrees that no changes, extensions of time, alterations or additions to the terms of the Contract or other work to be performed hereunder, or the specifications referred to in the Contract shall in anyway affect its obligation under this bond. The Surety waives notice of any such changes, extensions of time, alterations or additions to the terms of the Contract or to the Scope.

It is expressly understood the time provision under Tenn. Code Ann. § 12-3-502 shall apply to this bond. Bond must be received within fourteen (14) calendar days of receipt of request by the State or a Delegated State Agency.

By execution of this bond, the Surety acknowledges that it has read the Surety qualifications and obligations imposed by the Contract and hereby satisfies those conditions.

IN WITNESS WHEREOF, the above bounded parties have executed this instrument this _____ day of _____, 20____, the name of each party being affixed and these presents duly signed by its undersigned representative, pursuant to authority of its governing body.

Signed, sealed and delivered
In the presence of:

PRINCIPAL:

Contractor name

By: _____
(Contractor's authorized signatory)

(Printed name and title)

STATE OF TENNESSEE
COUNTY OF _____

On this _____ day of _____, 20 _____, before me personally appeared _____, to me known to be the person (or persons) described in and who executed the foregoing instrument, and acknowledged that such person (or persons) executed the same as such person (or person's) free act and deed.

Notary Public
Printed Name: _____
Commission Expires: _____

Signed, sealed and delivered
In the presence of:

SURETY:

Surety name

By: _____
(Surety's authorized signatory)

(Printed name and title)

STATE OF TENNESSEE
COUNTY OF _____

On this _____ day of _____, 20 _____, before me personally appeared _____, to me known to be the person (or persons) described in and who executed the foregoing instrument, and acknowledged that such person (or persons) executed the same as such person (or person's) free act and deed.

Notary Public
Printed Name: _____
Commission Expires: _____