



Migrant Education Program Contractor 2021 Request for Applications (RFA)

Tennessee Department of Education | April 2021

Application Due Date: May 3, 2021

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General Information

Background

The Elementary and Secondary Education Act (ESEA) is the major federal law that impacts K-12 public education and provides benefits to non-public schools. ESEA emphasizes systematic, comprehensive educational reorganization through improving academic accountability, as well as curriculum, resources, and teacher quality. The law was reauthorized in 2001 as No Child Left Behind (NCLB), and in 2015 as Every Student Succeeds Act (ESSA). Title I, Part C of ESEA is a specific section focusing on migratory children and youth. The general purpose of the Migrant Education Program (MEP) is to ensure that migratory children benefit fully from the same free public education provided to other children and to help them overcome issues such as educational disruption, cultural and language barriers, social isolation, various health-related problems, and other factors that inhibit their ability to be successful in school. The services provided are supplemental. The Office of Migrant Education (OME) is the department within the United States Department of Education ([ED](#)) responsible for administering grant programs that provide academic and supportive services to the children of families who made a qualifying move in the preceding 36 months, and engaged in temporary or seasonal employment in agriculture (including dairy or initial processing of raw agricultural products); or actively sought such new employment and has a history of moves.

Procurement Purpose

The department is seeking one Contractor to assist the State director of English learner and migrant programs with the State-level implementation of the MEP. The selected Contractor will complete tasks associated with program monitoring, funding applications, providing local educational agencies (LEAs) with technical assistance, and the development and delivery of professional development through presentations, guidance documents, and other resources.

See the attached [pro forma contract](#) that includes a detailed scope of services. This substantially represents the contract document that the awarded Contractor must sign.

The maximum liability for this contract is up to \$50,000.00 for a one-year term.

Communications

Applicants must direct communications concerning this request for applications to the following person designated as the solicitation coordinator:

Jan Lanier, Director of English Learner and Migrant Programs
Federal Programs and Oversight
Department of Education

710 James Robertson Parkway
Andrew Johnson Tower
Nashville, TN 37243
(615) 337-8401
Jan.Lanier@tn.gov

NOTE: Applications must be submitted by email; hard copies will not be accepted.

Review Process

All complete application packages meeting the requirements and received by the department on or before the application deadline will be forwarded to a review committee. Please see the *Application Components* section below for a complete list of what should be included in the application. The committee will provide each application with a merit score based upon the review criteria and rubric. A copy of the scoring rubric for the application can be found in [Attachment A](#). Competitive applicants will move on to complete an interview with the review committee. The review committee will then select the highest scoring applicant based on the application and interview.

This request for applications by the department does not create rights, interests, or claims of entitlement in any applicant. The department reserves the right to reject any response. All contract award decisions are final. **All contracts are subject to the availability of funds and approval by state procurement offices.**

Schedule

Event	Time (central time zone)	Date
Request for Applications Issued		April 23, 2021
Application Deadline		May 3, 2021
Notice of Contract Award		May 10, 2021
Proposed Contract Start Date		May 24, 2021

Application Procedures

The application must be completed and submitted via email to Jan.Lanier@tn.gov no later than **4:00 p.m CT May 7, 2021. Paper copies of the application will not be accepted.**

Steps to submitting an application:

1. Submit the application components below to Jan.Lanier@tn.gov

Application Components

- Cover letter highlighting relevant work experience and interest in the contract position
- Current resume
- Work sample illustrating the applicant's knowledge or skills related to the contract position

Attachment A: Scoring Rubric

Cover Letter, Resume, and Work Sample	Maximum Points	Assigned Points
1. Communication and Organization Skills (All items are included and well-written)	30	
2. Interest in position	10	
3. Relevant work experience	30	
4. Work sample shows knowledge and ability to manage MEP programming	30	
SCORE (maximum possible score =100		
Evaluator Identification:		

Attachment B: Pro Forma Contract

The *Pro Forma* Contract details the State's requirements:

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

The *pro forma* contract substantially represents the document that the successful agency must sign.

CONTRACT
BETWEEN THE STATE OF TENNESSEE,
TENNESSEE DEPARTMENT OF EDUCATION
AND
CONTRACTOR NAME

This Contract, by and between the State of Tennessee, Tennessee Department of Education ("State") and **Contractor Legal Entity Name** ("Contractor"), is for the provision of Migrant Education Program (MEP) Support, 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 **an Individual**
 Contractor Place of Incorporation or Organization: **Location**
 Contractor Edison Registration ID # **Number**

A. SCOPE:

- A.1. The Contractor shall provide all goods or services and deliverables as required, described, and detailed below and shall meet all service and delivery timelines as specified by this Contract.
- A.2. Definitions. For purposes of this Contract, definitions shall be as follows and as set forth in the Contract:
- a. **Consolidated Funding Application (CFA):** The Consolidated Funding Application includes funding awards for Title I, Part A; Title I, Part A – Neglected; Title I, Part C; Title I, Part D; Title II, Part A; Title III, Part A; Title IV, Part A; Title V, Part B; Subpart 2 (Rural and Low-Income Schools); and IDEA (Part B, Section 611 and Section 619) grants. The State reviews and approves the application that must be completed by each LEA annually.
 - b. **Desktop Monitoring:** LEAs identified in the yearly risk analysis as having elevated risk participate in Desktop Monitoring, where LEAs submit answers and evidence inside the Monitoring instrument in ePlan to the State so Monitoring staff members can review and determine compliance.
 - c. **ePlan:** The State's electronic online grants management system. ePlan is an online platform that provides access to federal and state grants applications and budget processes. Users can only access platform features by signing into ePlan with appropriate credentials.
 - d. **ESEA/ESSA Title I, Part C ("ESEA/ESSA Title I, Part C")** - Specific section of ESEA/ESSA that focuses on migratory children and youth.
 - e. **Focus Monitoring:** Visits that provide the opportunity to complete an in-depth analysis of one or more programs within an LEA. These occur when serious concerns arise impacting specific students or subgroups or when an LEA may be failing to implement program requirements and/or serve students in a compliant manner. Focus Monitoring visits provide the opportunity to complete an in-depth analysis of one or more programs within an LEA with serious concerns impacting specific students or subgroups that may be failing to implement program requirements and/or serve students in a compliant manner.
 - f. **Local Educational Agency (LEA):** School district or entity which operates local public primary and/or secondary schools. There are currently 148 LEAs in Tennessee. For the purposes of this Contract, this definition also refers to all charter schools, State Special Schools, the Achievement School District as defined in T.C.A. § 49-1-614, Department of Children's Services schools, approved private schools, specialized programs, and facilities (e.g., hospitals, residential schools, specialized health facilities, and incarcerated youth).
 - g. **Migrant Education Program ("MEP")** - Program that is authorized by Title I, Part C of ESEA to establish and improve education programs for migratory children. The general purpose of the MEP is to ensure that migratory children fully benefit from the same free public education provided to other children and to help them overcome issues such as educational disruption, cultural and language barriers, social isolation, various health-related problems, and other factors that inhibit their ability to be successful in school. The services provided are supplemental and support other educational requirements provided under federal and state law.

- h. **Monitoring:** Tennessee's multi-tiered Monitoring framework includes three distinctive levels: On-Site, Desktop Monitoring, and Self-Assessment Monitoring. A risk analysis comprised of more than 50 factors identifies the level of risk and likelihood that an LEA may not comply with certain requirements. Results from the analysis designate each LEA's risk as one of three levels: significant (which results in an on-site visit), elevated (which identifies LEAs for participation in Desktop Monitoring), or low risk (with LEAs completing Self-Assessment monitoring). Each LEA in the state must participate in one level of Monitoring annually. A random selection of one or more LEAs to participate in On-Site Monitoring occurs prior to determining the Desktop Monitoring and Self-Assessment Monitoring selections.
 - i. **Self-Assessment Monitoring:** LEAs identified in the yearly risk analysis as having low risk participate in Self-Assessment Monitoring, where LEAs submit answers to questions in the Monitoring instrument in ePlan to the State so Monitoring staff members can review and determine compliance.
 - j. **Technical Assistance Plan (TAP):** a Technical Assistance Plan provides the opportunity to complete an in-depth analysis of one or more programs within an LEA with new staff or high turnover or a lack of programming.
- A.3. The Contractor shall attend virtual and/or in-person meetings and/or trainings as requested by the State.
- A.4. Within ten (10) business days of the end of each month of the Contract Term, the Contractor shall submit to the State a report and invoice on the State's template, to be provided to the Contractor. The monthly report shall outline progress made on deliverables, including the information specified by this Contract and any additional information requested by the State.
- A.5. The Contractor shall develop and deliver MEP-related trainings and professional development resources for LEAs as requested by the State.
- a. Summaries of the trainings and professional development resources shall be sent to the State as a component of the monthly report.
- A.6. The Contractor shall provide technical assistance related to Title I, part C and MEP programming to LEAs as requested by the State, including assisting the State's MEP team in regional programming:
- a. Collaborate with the State's MEP team and others to provide directed support and/or technical assistance to LEAs within the region as requested by the State.
 - b. Technical Assistance summaries shall be sent to the State as a component of the monthly report. Summaries must include: the date, the LEA(s), the topic(s) discussed, a summary of follow-up items, and the total number of hours worked.
- A.7. As requested by the State, the Contractor shall complete the following TAP (Title I, Part C or MEP) tasks:
- a. The Contractor shall attend meetings and trainings related to TAPs in-person or virtually via a State-specified platform.
 - b. The Contractor shall investigate concerns flagged by the State to develop questions and required documents to review prior to a visit at LEA- or school-level to determine compliance.
 - c. The Contractor shall participate in virtual or in-person on-site visits to LEAs and schools with a team of monitors to actively participate in interviewing staff members to determine compliance.
 - d. The Contractor shall take clear notes regarding research, observations, and summaries of interviews to use as evidence to write technical assistance results. The Contractor shall draft, edit, and proof technical assistance results to share with the State in a meeting via a State-specified platform, and shall professionally share Monitoring results with LEAs via ePlan during the scheduled exit meeting.

- A.8 As requested by the State, the Contractor shall complete the following Desktop Monitoring and Self-Assessment Monitoring tasks:
- The Contractor shall attend meetings and trainings related to Monitoring in-person or virtually via a State-specified platform.
 - The Contractor shall review submissions from LEAs regarding ESEA and IDEA programs to determine compliance.
 - The Contractor must take clear notes regarding research and observations to use as evidence to write Monitoring results.
 - The Contractor must draft, edit, and proof Monitoring results to share with the State in a meeting via a State-specified platform, and shall professionally share Monitoring results with LEAs via ePlan during the scheduled exit meeting.
 - Summaries of the work completed on this item shall be sent to the State as a component of the monthly report.
- A.9. As requested by the State, the Contractor shall complete the following CFA review tasks:
- The Contractor shall review assigned CFA sections from May-July for initial reviews and shall review ongoing revisions throughout the Contract Term.
 - The Contractor shall research allowability, budget expectations, and review narratives for content.
 - The Contractor shall provide professional feedback via comments in ePlan to instruct LEAs on necessary, reasonable, allowable, and documentable expenditures.
 - The Contractor shall meet deadline expectations for responding to LEAs via the CFA to respond within three (3) working days.
 - The Contractor shall collaborate with State program directors and coordinators to ensure consistent messaging to LEAs.
- A.10. As requested by the State, the Contractor shall complete the following technical assistance tasks:
- The Contractor shall identify concerns or weaknesses within the LEA related to compliance Monitoring.
 - The Contractor shall prepare content to train or provide technical assistance to LEAs based on the outcomes and observations from Focus Monitoring, Technical Assistance Plans, Self-Assessment Monitoring, and CFA reviews following guidance from the State, using State-approved templates, and adhering to State review processes.
- A.11. All work products developed or produced by the Contractor under this Contract shall constitute “works made for hire” or have similar status under relevant intellectual property law. The State shall have full, final, and perpetual ownership rights to all work products or other content and materials provided by the Contractor for the State under this Contract.
- A.12. All work products developed or produced by the Contractor under this Contract are subject to final approval by the State. The Contractor shall make any revisions requested by the State on a timeline approved by the State.
- A.13. To the extent applicable, the Contractor shall comply with the State’s Acceptable Use Policy, Network Access Rights and Obligations, found here: https://www.tn.gov/content/dam/tn/finance/documents/fa_policies/Acceptable%20Use%20Policy.pdf.
- A.14. Warranty. Contractor represents and warrants that the term of the warranty (“Warranty Period”) shall be the greater of the Term of this Contract or any other warranty generally offered by Contractor, its suppliers, or manufacturers to customers of its goods or services. The goods or services provided under this Contract shall conform to the terms and conditions of this Contract throughout the Warranty Period. Any nonconformance of the goods or services to the terms and conditions of this Contract shall constitute a “Defect” and shall be considered “Defective.” If Contractor receives notice of a Defect during the Warranty Period, then Contractor shall correct the Defect, at no additional charge.

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

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

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

- A.15. Inspection and Acceptance. The State shall have the right to inspect all goods or services provided by Contractor under this Contract. If, upon inspection, the State determines that the goods or services are Defective, the State shall notify Contractor, and Contractor shall re-deliver the goods or provide the services at no additional cost to the State. If after a period of thirty (30) days following delivery of goods or performance of services the State does not provide a notice of any Defects, the goods or services shall be deemed to have been accepted by the State.

B. TERM OF CONTRACT:

- B.1. This Contract shall be effective for the period beginning on May 15, 2021 ("Effective Date") and ending on May 14, 2022 ("Term"). The State shall have no obligation for goods delivered or services provided by the Contractor prior to the Effective Date.

C. PAYMENT TERMS AND CONDITIONS:

- C.1. Maximum Liability. In no event shall the maximum liability of the State under this Contract exceed fifty thousand dollars (\$50,000.00) ("Maximum Liability"). This Contract does not grant the Contractor any exclusive rights. The State does not guarantee that it will buy any minimum quantity of goods or services under this Contract. Subject to the terms and conditions of this Contract, the Contractor will only be paid for goods or services provided under this Contract after a purchase order is issued to Contractor by the State or as otherwise specified by this Contract.
- C.2. Compensation Firm. The payment methodology in Section C.3. of this Contract shall constitute the entire compensation due the Contractor for all goods or services provided under this Contract regardless of the difficulty, materials 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:

C.

Goods or Services Description	Amount (per compensable increment)
MEP support work	\$33 per hour

- C.4. Travel Compensation. The Contractor shall not be compensated or reimbursed for travel time, travel expenses, meals, or lodging.
- C.5. Invoice Requirements. The Contractor shall invoice the State only for goods delivered and accepted by the State or services satisfactorily provided at the amounts stipulated in Section C.3., above. Contractor shall submit invoices and necessary supporting documentation, no more frequently than once a month, and no later than thirty (30) days after goods or services have been provided to the following address:

Jan Lanier
Tennessee Department of Education
Andrew Johnson Tower
710 James Robertson Pkwy.
Nashville, TN 37243
Jan.Lanier@tn.gov

- a. Each invoice, on Contractor's letterhead, shall clearly and accurately detail all of the following information (calculations must be extended and totaled correctly):
 - (1) Invoice number (assigned by the Contractor);
 - (2) Invoice date;
 - (3) Contract number (assigned by the State);
 - (4) Customer account name: Department of Education & Federal Programs and Oversight;
 - (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) Be submitted using the State provided template

- c. The timeframe for payment (or any discounts) begins only when the State is in receipt of an invoice that meets the minimum requirements of this Section C.5.
- C.6. Payment of Invoice. A payment by the State shall not prejudice the State's right to object to or question any payment, invoice, or other matter. A payment by the State shall not be construed as acceptance of goods delivered, any part of the services provided, or as approval of any amount invoiced.
- C.7. Invoice Reductions. The Contractor's invoice shall be subject to reduction for amounts included in any invoice or payment that is determined by the State, on the basis of audits conducted in accordance with the terms of this Contract, to not constitute proper compensation for goods delivered or services provided.
- C.8. Deductions. The State reserves the right to deduct from amounts, which are or shall become due and payable to the Contractor under this or any contract between the Contractor and the State of Tennessee, any amounts that are or shall become due and payable to the State of Tennessee by the Contractor.
- C.9. Prerequisite Documentation. The Contractor shall not invoice the State under this Contract until the State has received the following, properly completed documentation.
 - a. The Contractor shall complete, sign, and present to the State the "Authorization Agreement for Automatic Deposit Form" provided by the State. By doing so, the Contractor acknowledges and agrees that, once this form is received by the State, payments to the Contractor, under this or any other contract the Contractor has with the State of Tennessee, may be made by ACH; and
 - b. The Contractor shall complete, sign, and return to the State the State-provided W-9 form. The taxpayer identification number on the W-9 form must be the same as the Contractor's Federal Employer Identification Number or Social Security Number referenced in the Contractor's Edison registration information.

D. MANDATORY TERMS AND CONDITIONS:

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

The State:

Jan Lanier, Director of English Learner and Migrant Programs
 Tennessee Department of Education
 Andrew Johnson Tower
 710 James Robertson Pkwy.
 Nashville, TN 37243
Jan.Lanier@tn.gov

Telephone # (615) 337-8401
 FAX # (615) 532-8226

The Contractor:

Contractor Contact Name & Title

Contractor Name

Address

Email Address

Telephone # Number

FAX # Number

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

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

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

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

- D.9. Nondiscrimination. The Contractor hereby agrees, warrants, and assures that no person shall be excluded from participation in, be denied benefits of, or be otherwise subjected to discrimination in the performance of this Contract or in the employment practices of the Contractor on the grounds of handicap or disability, age, race, creed, color, religion, sex, national origin, or any other classification protected by federal or state law. The Contractor shall, upon request, show proof of nondiscrimination and shall post in conspicuous places, available to all employees and applicants, notices of nondiscrimination.
- D.10. Prohibition of Illegal Immigrants. The requirements of Tenn. Code Ann. § 12-3-309 addressing the use of illegal immigrants in the performance of any contract to supply goods or services to the state of Tennessee, shall be a material provision of this Contract, a breach of which shall be grounds for monetary and other penalties, up to and including termination of this Contract.
- a. The Contractor agrees that the Contractor shall not knowingly utilize the services of an illegal immigrant in the performance of this Contract and shall not knowingly utilize the services of any subcontractor who will utilize the services of an illegal immigrant in the performance of this Contract. The Contractor shall reaffirm this attestation, in writing, by submitting to the State a completed and signed copy of the document at Attachment A, semi-annually during the Term. If the Contractor is a party to more than one contract with the State, the Contractor may submit one attestation that applies to all contracts with the State. All Contractor attestations shall be maintained by the Contractor and made available to State officials upon request.
 - b. Prior to the use of any subcontractor in the performance of this Contract, and semi-annually thereafter, during the Term, the Contractor shall obtain and retain a current, written attestation that the subcontractor shall not knowingly utilize the services of an illegal immigrant to perform work under this Contract and shall not knowingly utilize the services of any subcontractor who will utilize the services of an illegal immigrant to perform work under this Contract. Attestations obtained from subcontractors shall be maintained by the Contractor and made available to State officials upon request.
 - c. The Contractor shall maintain records for all personnel used in the performance of this Contract. Contractor's records shall be subject to review and random inspection at any reasonable time upon reasonable notice by the State.
 - d. The Contractor understands and agrees that failure to comply with this section will be subject to the sanctions of Tenn. Code Ann. § 12-3-309 for acts or omissions occurring after its effective date.
 - e. For purposes of this Contract, "illegal immigrant" shall be defined as any person who is not: (i) a United States citizen; (ii) a Lawful Permanent Resident; (iii) a person whose physical presence in the United States is authorized; (iv) allowed by the federal Department of Homeland Security and who, under federal immigration laws or regulations, is authorized to be employed in the U.S.; or (v) is otherwise authorized to provide services under the Contract.
- D.11. Records. The Contractor shall maintain documentation for all charges under this Contract. The books, records, and documents of the Contractor, for work performed or money received under this Contract, shall be maintained for a period of five (5) full years from the date of the final payment and shall be subject to audit at any reasonable time and upon reasonable notice by the

State, the Comptroller of the Treasury, or their duly appointed representatives. The financial statements shall be prepared in accordance with generally accepted accounting principles.

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

to this Contract. The Contractor further agrees it shall be liable for the reasonable cost of attorneys' fees, court costs, expert witness fees, and other litigation expenses for the State to enforce the terms of this Contract.

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

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

- a. are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any federal or state department or agency;
- b. have not within a three (3) year period preceding this Contract been convicted of, or had a civil judgment rendered against them from commission of fraud, or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, state, or local) transaction or grant under a public transaction; violation of federal or state antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification, or destruction of records, making false statements, or receiving stolen property;
- c. are not presently indicted or otherwise criminally or civilly charged by a government entity (federal, state, or local) with commission of any of the offenses detailed in section b. of this certification; and
- d. have not within a three (3) year period preceding this Contract had one or more public transactions (federal, state, or local) terminated for cause or default.

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

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

- D.27. Entire Agreement. This Contract is complete and contains the entire understanding between the Parties relating to its subject matter, including all the terms and conditions of the Parties' agreement. This Contract supersedes any and all prior understandings, representations, negotiations, and agreements between the Parties, whether written or oral.
- D.28. Severability. If any terms and conditions of this Contract are held to be invalid or unenforceable as a matter of law, the other terms and conditions of this Contract shall not be affected and shall remain in full force and effect. The terms and conditions of this Contract are severable.
- D.29. Headings. Section headings of this Contract are for reference purposes only and shall not be construed as part of this Contract.
- D.30. Incorporation of Additional Documents. Each of the following documents is included as a part of this Contract by reference. In the event of a discrepancy or ambiguity regarding the Contractor's duties, responsibilities, and performance under this Contract, these items shall govern in order of precedence below:
- a. any amendment to this Contract, with the latter in time controlling over any earlier amendments;
 - b. this Contract with any attachments or exhibits (excluding the items listed at subsections c. through f., below), which includes **Attachment A**;
 - c. any clarifications of or addenda to the Contractor's proposal seeking this Contract;
 - d. the State solicitation, as may be amended, requesting responses in competition for this Contract;
 - e. any technical specifications provided to proposers during the procurement process to award this Contract; and
 - f. the Contractor's response seeking this Contract.
- D.31. Iran Divestment Act. The requirements of Tenn. Code Ann. § 12-12-101, *et seq.*, addressing contracting with persons as defined at Tenn. Code Ann. §12-12-103(5) that engage in investment activities in Iran, shall be a material provision of this Contract. The Contractor certifies, under penalty of perjury, that to the best of its knowledge and belief that it is not on the list created pursuant to Tenn. Code Ann. § 12-12-106.
- D.32. Insurance. Contractor shall maintain insurance coverage as specified in this Section. The State reserves the right to amend or require additional insurance coverage, coverage amounts, and endorsements required under this Contract. The State reserves the right to require complete copies of all required insurance policies, including endorsements required by these specifications, at any time. If Contractor loses insurance coverage, fails to renew coverage, or for any reason becomes uninsured during the Term, Contractor shall immediately notify the State.

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

a. Automobile Liability Insurance

1) In the event that the Contractor (1) owns, leases, or otherwise operates an automotive vehicle and (2) intends to use such vehicle in furtherance of their Contractual duties or

for regular or periodic transportation onto State property for the purposes of performing the Contractor's duties under the Terms of this Contract, then the Contractor shall provide to the State proof of the Contractor's automobile liability insurance policy. Such automobile liability insurance policy shall maintain limits not less than the minimum liability limits established by the relevant authority under which said vehicle is licensed. Such verification is required whether or not the State intends to reimburse the Contractor for mileage.

2) If the Contractor DOES NOT (1) own, lease, or otherwise operate an automotive vehicle or (2) WILL NOT operate or otherwise employ a personal vehicle in furtherance of their contractual duties or for regular or periodic transportation onto State property for the purposes of performing the Contractor's duties under the Terms of this Contract, then the Contractor shall provide to the State a letter signed by the Contractor certifying as to the above. In the event that such situation changes over the course of the Term of this Contract as described in provision 1) above, the Contractor shall inform the State and provide proof of automobile liability insurance before such time as the Contractor shall use such vehicle in furtherance of their Contractual duties or for regular or periodic transportation onto State property for the purposes of performing the Contractor's duties under the Terms of this Contract.

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

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

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. State Ownership of Goods. The State shall have ownership, right, title, and interest in all goods provided by Contractor under this Contract including full rights to use the goods and transfer title in the goods to any third parties.
- E.3. Family Educational Rights and Privacy Act & Tennessee Data Accessibility, Transparency and Accountability Act. The Contractor shall comply with the Family Educational Rights and Privacy Act of 1974 (20 U.S.C. 1232(g)) and its accompanying regulations (34 C.F.R. § 99) ("FERPA"). The Contractor warrants that the Contractor is familiar with FERPA requirements and that it will comply with these requirements in the performance of its duties under this Contract. The Contractor agrees to cooperate with the State, as required by FERPA, in the performance of its duties under this Contract. The Contractor agrees to maintain the confidentiality of all education records and student information. The Contractor shall only use such records and information for

the exclusive purpose of performing its duties under this Contract. The obligations set forth in this Section shall survive the termination of this Contract.

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

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

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

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

- E.6. Personally Identifiable Information. While performing its obligations under this Contract, Contractor may have access to Personally Identifiable Information held by the State (“PII”). For the purposes of this Contract, “PII” includes “Nonpublic Personal Information” as that term is defined in Title V of the Gramm-Leach-Bliley Act of 1999 or any successor federal statute, and the rules and regulations thereunder, all as may be amended or supplemented from time to time (“GLBA”) and personally identifiable information and other data protected under any other applicable laws, rule or regulation of any jurisdiction relating to disclosure or use of personal information (“Privacy Laws”). Contractor agrees it shall not do or omit to do anything which would

cause the State to be in breach of any Privacy Laws. Contractor shall, and shall cause its employees, agents and representatives to: (i) keep PII confidential and may use and disclose PII only as necessary to carry out those specific aspects of the purpose for which the PII was disclosed to Contractor and in accordance with this Contract, GLBA and Privacy Laws; and (ii) implement and maintain appropriate technical and organizational measures regarding information security to: (A) ensure the security and confidentiality of PII; (B) protect against any threats or hazards to the security or integrity of PII; and (C) prevent unauthorized access to or use of PII. Contractor shall immediately notify State: (1) of any disclosure or use of any PII by Contractor or any of its employees, agents and representatives in breach of this Contract; and (2) of any disclosure of any PII to Contractor or its employees, agents and representatives where the purpose of such disclosure is not known to Contractor or its employees, agents and representatives. The State reserves the right to review Contractor's policies and procedures used to maintain the security and confidentiality of PII and Contractor shall, and cause its employees, agents and representatives to, comply with all reasonable requests or directions from the State to enable the State to verify or ensure that Contractor is in full compliance with its obligations under this Contract in relation to PII. Upon termination or expiration of the Contract or at the State's direction at any time in its sole discretion, whichever is earlier, Contractor shall immediately return to the State any and all PII which it has received under this Contract and shall destroy all records of such PII.

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

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

The Contractor shall comply with the following:

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

Securities and Exchange Commission total compensation filings at <http://www.sec.gov/answers/execomp.htm>).

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

- (2) Total compensation means the cash and noncash dollar value earned by the executive during the Contractor's preceding fiscal year and includes the following (for more information see 17 C.F.R. § 229.402(c)(2)):
- i. Salary and bonus.
 - ii. Awards of stock, stock options, and stock appreciation rights. Use the dollar amount recognized for financial statement reporting purposes with respect to the fiscal year in accordance with the Statement of Financial Accounting Standards No. 123 (Revised 2004) (FAS 123R), Shared Based Payments.
 - iii. Earnings for services under non-equity incentive plans. This does not include group life, health, hospitalization or medical reimbursement plans that do not discriminate in favor of executives, and are available generally to all salaried employees.
 - iv. Change in pension value. This is the change in present value of defined benefit and actuarial pension plans.
 - v. Above-market earnings on deferred compensation which is not tax qualified.
 - vi. Other compensation, if the aggregate value of all such other compensation (e.g. severance, termination payments, value of life insurance paid on behalf of the employee, perquisites or property) for the executive exceeds \$10,000.
- b. The Contractor must report executive total compensation described above to the State by the end of the month during which this Contract is awarded.
 - c. If this Contract is amended to extend the Term, the Contractor must submit an executive total compensation report to the State by the end of the month in which the term extension becomes effective.
 - d. The Contractor will obtain a Data Universal Numbering System (DUNS) number and maintain its DUNS number for the term of this Contract. More information about obtaining a DUNS Number can be found at: <http://fedgov.dnb.com/webform/>

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

IN WITNESS WHEREOF,

CONTRACTOR LEGAL ENTITY NAME:

CONTRACTOR SIGNATURE

DATE

PRINTED NAME AND TITLE OF CONTRACTOR SIGNATORY (above)

TENNESSEE DEPARTMENT OF EDUCATION:

DR. PENNY SCHWINN, COMMISSIONER

DATE

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

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

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

CONTRACTOR SIGNATURE

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

PRINTED NAME AND TITLE OF SIGNATORY

DATE OF ATTESTATION

FA TEMPLATE INSTRUCTIONS, CONSIDERATIONS, and OPTIONS

The following pages contain additional instructions, considerations, and options. Replace or modify the Standard FA Template by including the following content as appropriate. Content included with a box around it is intended to be inserted into the standard FA Template, as appropriate.

Procurement professionals should complete text fields and follow, replace, or otherwise address red instructional text (e.g., **State Agency Name**, **amount**, **will/will not**) as indicated and with conforming font and color.

SUMMARY COVER SHEET

A summary cover sheet properly completed and in accordance with the Template is required for every copy of the contracting document. Complete summary cover sheet fields as indicated within the Template and the following field descriptions.

<i>Agency Tracking #</i>	a unique number comprised of: 5-digit business unit # + unique, 5-digit # example: 31707-12345
<i>Funding</i>	amounts by fiscal year & funding source and with row & column totals; the sum of the TOTAL Contract Amount column (the grand total amount for all fiscal years & all sources of funding) MUST equal the contract maximum liability
<i>Contractor Ownership Characteristics</i>	<p>Minority Business Enterprise (MBE): select if a minority-owned business, which means a continuing, independent, for profit business that performs a commercially useful function, and is at least fifty-one percent (51%) owned and controlled by one (1) or more minority individuals who are impeded from normal entry into the economic mainstream because of past practices of discrimination based on race or ethnic background.</p> <p>Identify the applicable Minority if known. Minority means a person who is a citizen or lawful permanent resident of the United States and who is:</p> <ul style="list-style-type: none"> (A) African American, a person having origins in any of the black racial groups of Africa; (B) Asian American, a person having origins in any of the original peoples of the Far East, Southeast Asia, the Indian subcontinent, or the Pacific Islands; (C) Hispanic American, a person of Mexican, Puerto Rican, Cuban, Central or South American, or other Spanish culture or origin, regardless of race; (D) Native American, a person having origins in any of the original peoples of North America. <p>Woman Business Enterprise (WBE): select if a woman-owned business, which means a woman-owned business that is a continuing, independent, for profit business that performs a commercially useful function, and is at least fifty-one percent (51%) owned and controlled by one or more women; or, in the case of any publicly owned business, at least fifty-one-percent (51%) of the stock of which is owned and controlled by one (1) or more women and whose management and daily business operations are under the control of one (1) or more women.</p> <p>Service-Disabled Veteran Enterprise (SDVBE): select if a Tennessee service-disabled veteran-owned business, which means a service-disabled veteran-owned business that is a continuing, independent, for profit business located in this state that performs a commercially useful function and:</p> <ul style="list-style-type: none"> (A) Is at least fifty-one percent (51%) owned and controlled by one (1) or more service-disabled veterans; (B) In the case of a business solely owned by one (1) service-disabled veteran and such person's spouse, is at least fifty percent (50%) owned and controlled by the service-disabled veteran; or (C) In the case of any publicly owned business, at least fifty-one percent (51%) of the stock of which is owned and controlled by one (1) or more service-disabled veterans and whose management and daily business operations are under the control of one (1) or more service-disabled veteran.

Disabled Owned Businesses (DSBE): select if a business owned by persons with disabilities, which means a continuing, independent, for-profit business that performs a commercially useful function, and is at least fifty-one percent (51%) owned and controlled by one (1) or more persons with a disability; or, in the case of any publicly owned business, at least fifty-one percent (51%) of the stock of which is owned and controlled by one (1) or more persons with a disability and whose management and under the control of one (1) or more persons with a disability.

Small Business Enterprise (SBE): select if a small business, which means a business that is a continuing, independent, for profit business which performs a commercially useful function with residence in Tennessee and has gross receipts of no more than ten million dollars (\$10,000,000) averaged over a three-year period or employs no more than ninety-nine (99) persons on a full-time basis.

Non-Minority/Disadvantaged if the contractor is not \geq 51% owned or controlled by minority or disadvantaged persons & is not a small business

Other: select if none of the above options. There is an option to provide additional details here.

For additional guidance, please visit:

<https://www.tn.gov/generalservices/procurement/central-procurement-office--cpo-/governor-s-office-of-diversity-business-enterprise--godbe-/program-eligibility.html>

PREAMBLE

Add additional information only if necessary.

In a contract with an individual, delete the Template preamble phrase, “Place of Incorporation or Organization: **Location.**”

A. SCOPE OF SERVICES OR SPECIFICATIONS OF GOODS (“Scope”)

Do NOT include payment terms in the Scope. Define any Contractor milestones without reference to payment. Section C should address payment at milestones.

Draft the Scope to clearly, specifically, and definitively detail contractor duties, responsibilities, and associated performance requirements and describe, in detail, the Scope and deliverable requirements and all related specifications. Include a definition section, key performance indicators, or any other specifications as needed.

It is the contracting state agency’s responsibility to adequately draft a Scope, and oversight examiners will rely on the contracting state agency head’s signature on the contract document as certification and assurance that the proposed Scope is clear and correct, adequate for all legal and enforcement purposes, and sufficiently detailed to ensure contractor accountability and results.

Option: Definitions

Remove Contract Section A.2. Definitions if not needed. Any defined term should be capitalized and used consistently throughout the Contract.

Option: MyTN.gov Interface

If the Contract involves software: (1) add the following MyTN.gov Interface term to Section A. Scope; **and** (2) add the Additional Lines, Items, or Options contract term to Section E.#. Special Terms and Conditions

A.#. MyTN.gov Interface.

- a. The State may require the software developed or provided by the Contractor under this Contract to interface with the State's customer-facing portal, MyTN.gov. This may occur at any time during the Term of the Contract. If so, the Contractor may have to comply with one, or more, of the following requirements:
 - (1) All web applications must be Responsive. "Responsive" is an industry standard term that refers to a web design that makes web pages render well on a variety of devices and window or screen sizes.
 - (2) All web applications must have the capability to use a single-sign on server utilizing the following industry standard protocols: Security Assertion Markup Language ("SAML") or minimum of OAuth 2.0.
- b. Any of the obligations in Section A.#.a that were known and required prior to Contract Effective Date will be specified herein, including necessary compensation methods and amounts.
- c. For any of the obligations in Section A.#.a that were unknown or not required at Contract Effective Date, it will be necessary to add lines, items, or options to the Contract to accommodate one or more of the new interface requirements. The State shall add these lines, items, or options in accordance with the MOU process described in Section E.#, below. If the Contractor requires additional compensation for the interface tasks, such compensation shall be negotiated and specified through this same MOU process.

Option: Warranty when Contractor is reselling goods

Replace the standard warranty provision with the following to require Contractor to provide a warranty of the greater of one year or to pass through the original manufacturer's warranty.

- A.#.** Warranty for Resale of Goods. For all goods provided under this Contract, Contractor shall pass-through to the State any manufacturers' warranties. In addition, for a period of one (1) year after any receipt of any goods under this Contract, Contractor expressly warrants that all such goods are: (a) merchantable; (b) of good quality and workmanship; (c) free from defects; (d) in conformity with the intended purpose and for the particular purpose for which they were designed; and (e) in conformity with Contractor's samples, if any.

Option: Warranty period that is shorter than the Term

Replace the standard warranty provision with the following to obtain a warranty period that is shorter than the Term. The Contract shall not include a warranty period of less than one (1) year.

- A.#.** Warranty. Contractor represents and warrants that the term of the warranty ("Warranty Period") shall be the greater of: (a) **number (#) months or years** after the provision and acceptance by the State of goods or services provided by Contractor; or (b) any other warranty generally offered by Contractor, its suppliers, or manufacturers to customers of its goods or services. During the Warranty Period, any nonconformance of the goods or services to the terms and conditions of this Contract shall constitute a "Defect" and shall be considered "Defective." If Contractor receives notice of a Defect during the Warranty Period, then Contractor shall correct the Defect at no additional charge.

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

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

Option: Warranty Additional Options

The standard Warranty term may be removed or revised, with approval by CPO legal.

Option: Acceptable Alternative to *Change Orders*.

The RFP Contract Amendment section does not preclude the State from "locking in" payment rates for any additional work per potential contract amendments. Therefore, if deemed appropriate, add the following sections to the *pro forma* contract Scope:

- #. Correction of Deficiencies. Any corrections of deficiencies relating to the Contract Scope of Services requirements or deliverables and any investigation necessary to determine the source of such deficiencies shall be completed by the Contractor at no cost to the State.

AND...

- #. Additional Work. The State may request, at its sole discretion, additional work involving the enhancement or modification of a deliverable under the Contract Scope, provided that this Contract is amended, pursuant to section #. Remuneration for any such additional work shall be based on the applicable "contingent," payment rate(s) detailed in Section C.3 of this Contract.

AND...

- #. Contingent Rates— In accordance with section **REFERENCE** of this Contract, The State may request and the Contractor may agree to perform additional work involving the enhancement or modification of deliverables under the Contract Scope of Services, provided that this Contract is amended to require such work.

- i. Remuneration for any such additional work shall be based on the applicable contingent, payment rate(s) detailed below and as approved by the State.

SERVICE

AMOUNT PER HOUR

SERVICE DESCRIPTION

\$ AMOUNT

- ii. The Contractor shall not be compensated for travel time to the primary location of service provision.

Option: *Change Orders*.

The incorporation of *pro forma* contract language permitting Change Orders will be stringently considered and may require oversight authority executive-level approval prior to a solicitation being approved for release.

Propose a Change Order process within a draft document only as appropriate, and provide clear justification as to why it is deemed necessary. **At minimum, draft the solicitation document to include: (1) appropriate RFP text permitting Change Orders within specified parameters; (2) a clear, comprehensive change order process in the *pro forma* contract's scope; and (3) clear, non-conflicting payment provisions in the *pro forma* contract's payment methodology section.**

(1) Add the following to the solicitation document after RFP Section 4.11:

Notwithstanding the above, *pro forma* Contract section **REFERENCE** provides for limited service “change orders” without a formal Contract Amendment upon the documented mutual agreement by the Parties.

(2) Add the following to the *pro forma* contract’s scope:

- A.#. The State may, at its sole discretion and with written notice to the Contractor, request changes in the Scope that are necessary but were inadvertently unspecified in this Contract.
- a. Change Order Creation— After receipt of a written request for additional services from the State, the Contractor shall respond to the State, within a maximum of ten (10) business days, with a written proposal for completing the service. Contractor’s proposal must specify:
- (1) the effect, if any, of implementing the requested change(s) on all other services required under this Contract;
 - (2) the specific effort involved in completing the change(s);
 - (3) the expected schedule for completing the change(s);
 - (4) the maximum number of person hours required for the change(s); and
 - (5) the maximum cost for the change(s)— this maximum cost shall in no instance exceed the product of the person hours required multiplied by the appropriate payment rate proposed for such work.
- The Contractor shall not perform any additional service until the State has approved the proposal. If approved, the State will sign the proposal, and it shall constitute a Change Order between the Contract Parties pertaining to the specified change(s) and shall be incorporated, hereby, as a part of this Contract.
- b. Change Order Performance— Subsequent to creation of a Change Order, the Contractor shall complete the required services. The State will be the sole judge of the acceptable completion of work and, upon such determination, shall provide the Contractor written approval.
- c. Change Order Remuneration— The State will remunerate the Contractor only for acceptable work. All acceptable work performed pursuant to an approved Change Order, without a formal amendment of this Contract, shall be remunerated in accordance with and further limited by Contract Section C.3.c., PROVIDED THAT, the State shall be liable to the Contractor only for the cost of the actual goods or services provided to complete the necessary work, not to exceed the maximum cost for the change detailed in the Change Order. In no instance shall the State be liable to the Contractor for any amount exceeding the maximum cost specified by the Change Order authorizing the goods or services. Upon State approval of the work, the Contractor shall invoice the State in accordance with the relevant provisions of this Contract.

(3) Add the following to the *pro forma* contract’s payment methodology section:

[C.3.]x. The Contractor shall be compensated for changes requested and performed pursuant to Contract Section **Reference**, without a formal amendment of this Contract based upon the payment rates detailed in the schedule below and as agreed pursuant to Section **Reference**, PROVIDED THAT compensation to the Contractor for such “change order” work shall not exceed **NUMBER NOT TO EXCEED SEVEN PERCENT (Number %)** of the sum of milestone payment rates detailed in Section C.3.b., above (which is the total cost for the milestones and associated deliverables set forth in Contract Sections A.#., through A.#.). If, at any point during the Term, the State determines that the cost of necessary “change order” work would exceed the maximum amount, the State may amend this Contract to address the need.

Service Description	Amount (per compensable increment)
	\$ Amount per hour
NOTE: The Contractor shall not be compensated for travel time to the primary location of service provision.	

B. TERM OF CONTRACT

Procurement professionals should obtain the Contractor’s signature first before submitting the Contract for state signatures or approvals. Procurement professionals shall obtain all required approvals prior to the Effective Date written in the Contract and submit it for Central Procurement Office approval no less than thirty (30) days before the Effective Date.

If a signed contract is not submitted to the Central Procurement Office at least thirty (30) days prior to the Effective Date, then the CPO may request that the Contract be resubmitted with a new Effective Date or request that the procurement professional provide a written explanation as to why the Contract was submitted less than thirty (30) days before the Effective Date. In no event shall the Contractor deliver goods or perform services prior to the Effective Date.

Procurement professionals should plan procurements and draft contracts with a Term of no longer than sixty (60) months, including extensions or renewals. Contracts requiring a Term greater than sixty (60) months shall require an approved Rule Exception Request.

Option: Term of Contract

To revise the Term of Contract language to include a specific end date, replace the section with the following.

B. TERM OF CONTRACT:

This Contract shall be effective for the period beginning on **Date** (“Effective Date”) and ending on **Date**, (“Term”). The State shall have no obligation for goods delivered or services provided by the Contractor prior to the Effective Date.

Option: Renewal or Extension Term

To reserve the right to renew or extend the Term, change the section designation under B. to B.1., and add either or both of the following sections.

B.#. Renewal Options. This Contract may be renewed upon satisfactory completion of the Term. The State reserves the right to execute up to **number (#)** 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.

B.#. Term Extension. The State may extend the Term an additional period of time, not to exceed one hundred-eighty (180) days beyond the expiration date of this Contract, under the same terms and conditions, 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.

Option: Term Renewal Additional Option

This alternative Renewal Option provides procurement professionals with the flexibility to exercise multiple renewal options in the best interest of the State and in accordance with the Contract terms. To use, change the section designation under B. to B.1., and add the following section.

B.#. Renewal Options. This Contract may be renewed upon satisfactory completion of the Term. The State reserves the right to execute **[insert number (#) of renewal terms and length]** renewal options under the same terms and conditions, 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

Revise Payment Terms and Conditions sections only as instructed.

Option: Statewide Contract Estimated Liability.

For statewide contracts with no Maximum Liability, replace C.1. with the following:

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 **DOLLAR AMOUNT (\$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.

Option: Price Changes Authorized for Equitable Adjustment

C.2. Price Changes. Prices listed in awarded published catalog, price lists or price schedule shall remain firm for **Number (#)** days ("Firm Price Period").

- a. Price Decreases. After the Firm Price Period, prices shall be equitably adjusted to reflect a decrease in Contractor's costs.
- b. Price Increases. After the Firm Price Period, Contractor may request price increases.

The request shall: include copies of the new price lists or catalog that reflect a change in the Contractor's cost; not constitute an increase in profit; and apply to all of the Contractor's customers.

- c. Approval of Price Changes. The State may at its sole option: (1) grant the Contractor's request; (2) cancel the Contract and award it to the next apparent best evaluated Respondent; (3) cancel the Contract and reissue the solicitation; or (4) deny the Contractor's request. If approved, any price changes of less than seven percent (7%) will become effective upon the State's approval in writing. Price changes exceeding seven percent (7%) shall require a Contract amendment. The Contractor shall honor all purchase orders dated prior to the approved price change. Upon request from the State, the Contractor shall furnish the approved catalog, price schedule or price list as applicable to the State at no charge.

Option: Contracts That Detail Payment Methodology in an Appendix

Reference any appendix with line items as applicable.

- C.3. Payment Methodology. The Contractor shall be compensated based on the payment rates for goods or services contained in Contract Appendix # and as authorized by the State in a total amount as set forth in Section C.1. The Contractor's compensation shall be contingent upon the satisfactory provision of goods or services as set forth in Section A.

The reimbursement of actual costs in a fee-for-service contract is NOT recommended. If the Contract includes payment terms providing for a reimbursement of actual costs (other than travel compensation in accordance with state rates), the payment terms MUST also include provisions that describe EXACTLY how the State will audit Contractor expenditures to ensure that the State pays for actual, reasonable, necessary and allowed costs only and that such costs resulted from competitive procurements.

Payment Methodology

The default payment methodology used in the Template provides for unit, milestone and temporal rate payments.

Requirement: *Pro Rata* Payments

If temporal payment rates effect payment for service periods greater than an hour (*e.g.*, daily payment rates), add a new subsection (similar to the following example) that defines the payment period and provides for *pro rata* payments for completed periods of service less than the payment rate period.

- c. A "day" shall be defined as a minimum of eight (8) hours of service. If the Contractor provides fewer than eight hours of service in a standard twenty-four hour day, the Contractor shall bill *pro rata* for only those portions of the day in which service was actually delivered. The Contractor shall not bill more than the daily rate even if the Contractor works more than eight hours in a day.

Option: Rate Escalation

Replace paragraph C.3.b. with the following if specific rate escalation during the Term is appropriate.

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

(1) For service performed from **Date**, through **Date**, the following rates shall apply:

Service Description	Amount (per compensable increment)
Milestone	\$ Number
Service Unit	\$ Number each
Job Title /Activity	\$ Number per Hour /Day /etc.
Use & Repeat Rows Above as Necessary	

(2) For service performed from **Date**, through **Date**, the Contractor shall be compensated based upon the payment rates in Section **Reference (e.g., C.3.b.(1))** above but adjusted by the percentage increase, if any, between the Consumer Price Index for All Urban Consumers (CPI-U): U.S. city average, **All Items /Medical Care** expenditure category, not seasonally adjusted, index base period: 1982-84=100) published by the United States Department of Labor, Bureau of Labor Statistics in **Month & Year (just before prior period end month)** and that figure published in the same month, 12-months prior, up to a maximum of **Written Number** percent (**Number%**).

Repeat Previous Subsection for Each Subsequent Term

Option: Payment Upon Completion

Replace sections in the Template with the following sections if the Contract specifies one, lump sum payment after completion of all work.

C.3. Payment Methodology. Upon Contractor's satisfactory provision of goods or services set forth in Section A, the Contractor shall be compensated **Written Dollar Amount (\$Number)**.

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

C.5. Invoice Requirements. The Contractor shall invoice the State only after completion of all work, described in Section A of this Contract, and present invoices no more often than monthly, with all necessary supporting documentation, to:

State Agency Billing Address

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

- (1) Invoice number (assigned by the Contractor);
- (2) Invoice date;
- (3) Contract number (assigned by the State);
- (4) Customer account name: **State Agency & Division Name**;
- (5) Customer account number (assigned by the Contractor to the above-referenced

- Customer);
- (6) Contractor name;
- (7) Contractor Tennessee Edison registration ID number;
- (8) Contractor contact for invoice questions (name, phone, or email);
- (9) Contractor remittance address;
- (10) Description of delivered goods or services provided and invoiced, including identifying information as applicable; and
- (11) Total amount due for delivered goods or services provided (as stipulated in Section C.3. above).

- b. The Contractor understands and agrees that an invoice under this Contract 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 Contract 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) begin the timeframe for payment (and any discounts) only when the State is in receipt of the invoice, and the invoice meets the minimum requirements of this Section C.5.

Payment Methodology

Option: Advance Payment – Software Licenses or Maintenance and Support Agreements.

Replace contract section C.3. with the following if the contract will result in an advance payment as a result of software licenses or maintenance and support agreements.

- 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 paid in advance in accordance with this Contract.
 - b. The Contractor shall be compensated based upon the following payment methodology:

Goods or Services Description	Amount (per compensable increment)
Milestone	\$ Number
Unit	\$ Number each
Job Title /Activity	\$ Number per Hour /Day /etc.
Use & Repeat Rows Above as Necessary	

Add Contingently Required Subsections as Appropriate (refer to instructions for details)

Travel Compensation

Replace the Section with the following as appropriate (and revise the Compensation Firm Section as indicated).

- C.4. Travel Compensation. Compensation to the Contractor for travel, meals, or lodging shall be subject to amounts and limitations specified in the current "State Comprehensive Travel Regulations." **Insert any additional text restricting travel compensation.**

The Contractor must include (in addition to other invoice requirements of this Contract) a complete itemization of requested travel compensation and appropriate documentation and receipts as required by the "State Comprehensive Travel Regulations."

AND replace the second sentence of the Compensation Firm Section with the following:

The payment methodology in Section C.3 and the Travel Compensation provided in Section C.4 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 or indirect costs incurred or to be incurred by the Contractor.

Invoice Requirements

Add clear, non-conflicting, invoice requirements to this Section as appropriate.

Revise the Section to require or permit invoices more or less often than monthly.

Option: Retention of Final Payment

Add the following Section as appropriate. If unsure whether the Section is applicable, consult the CPO legal team.

- C.#. Retention of Final Payment. The amount of **Written Dollar Amount (\$Number)** shall be withheld by the State until **Written Number (Number)** days after final provision of goods or services under this Contract.

Option: Contractor will accept the State's Purchasing Card ("P-Card") as a form of payment

Replace the mandatory Prerequisite Documentation provision with the following if the RFP or RFQ required the awarded Respondent to accept the P-Card as a form of payment or as necessary.

- C.9. Prerequisite Documentation. The Contractor shall not invoice the State under this Contract until the State has received the following, properly completed documentation. At the State's option, it may make payments to Contractor by automated clearing house ("ACH") or the State Purchasing Card ("P-Card").
- a. The Contractor shall complete, sign, and present to the State:
 - (1) An "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

(2) An "Authorization to Receive Payments by Purchasing Card Form" provided by the State. By doing so, the Contractor agrees that payments to the Contractor under this Contract may be made using the State P-Card and Contractor will provide level III data reporting information.

- 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

Modification and Amendment

Add the following section if the Contract includes a Renewal Option or Term Extension provision.

- 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. The State's exercise of a valid Renewal Option or Term Extension does not constitute an amendment so long as there are no other changes to the Contract's terms and conditions.

Option: Revise Termination for Convenience Time Period

Specify whether the termination is immediate, increase or decrease notice requirement days as appropriate.

- D.5. Termination for Convenience. The State may terminate this Contract for convenience without cause for any reason. The State's election to terminate this Contract for convenience shall be effective upon the date specified and shall not be deemed a breach of contract by the State. 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 good or service that has not been provided, nor shall the Contractor be relieved of any liability to the State for any damages or claims arising under this Contract.

Option: Bilateral Termination

Replace the standard Termination for Convenience Section with the following bilateral termination Section only if the contracting agency can justify that bilateral termination is in the best interest of the State.

- D.5. Termination for Convenience. Either Party may terminate this Contract without cause for any reason. A party's exercise of its right to terminate this Contract for convenience shall not be deemed a breach of contract by either Party. The terminating Party shall give the other Party 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, but in no event shall the State be liable to the Contractor for compensation for any good or service that has not been provided, nor shall the Contractor be relieved of any liability to the State for any damages or claims arising under this Contract.

Termination for Cause

Option: Termination for Cause Providing for Notice of Breach and an Opportunity to Cure

Replace the Section with either of the following as appropriate. The first option requires the State to give notice of breach and provide Contractor an opportunity to cure the condition prior to termination. The second option allows the Contractor as well as the State to declare the other Party in breach while requiring a cure period prior to termination.

D.6. Termination for Cause. If the Contractor fails to properly perform its obligations under this Contract, or if the Contractor materially violates any terms of this Contract ("Breach Condition"), the State shall provide written notice to Contractor specifying the Breach Condition. If within thirty (30) days of notice, the Contractor has not cured the Breach Condition, the State may 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 of this Contract by the Contractor and the State may seek other remedies allowed at law or in equity for breach of this Contract.

D.6. Termination for Cause. If a Party ("Breaching Party") fails to properly perform its obligations under this Contract, or if a Party materially violates any terms of this Contract ("Breach Condition"), the other Party ("Non-breaching Party") may provide written notice to the Breaching Party specifying the Breach Condition. If within thirty (30) days of notice, the Breaching Party has not cured the Breach Condition, the Non-breaching Party may terminate the Contract. In the event the Non-breaching Party is the State, the State may withhold payments in excess of compensation for completed services or provided goods. The Breaching Party shall not be relieved of liability to the Non-breaching Party for damages sustained by virtue of any breach of this Contract, and the Non-breaching Party may seek other remedies allowed at law or in equity for breach of this Contract.

Nondiscrimination

Replace the standard nondiscrimination provision with the following ONLY if contracting with a RELIGIOUS ORGANIZATION.

D.#. 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 basis of any classification protected by federal, Tennessee State constitutional, or statutory law. The Contractor shall, upon request, show proof of such nondiscrimination and shall post in conspicuous places, available to all employees and applicants, notices of nondiscrimination.

Equal Opportunity

Add the following Section only if the goods or services under the Contract are paid for with federal funds.

D.#. Equal Opportunity. The Contractor agrees as follows:

- a. The Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. The Contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to the following:

- (1) Employment, upgrading, demotion, or transfer, recruitment or recruitment advertising;
- (2) Layoff or termination;
- (3) Rates of pay or other forms of compensation; and
- (4) Selection for training, including apprenticeship.

The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting officer setting forth the provisions of this nondiscrimination clause.

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

Prevailing Wage Rates

Add the following section if the Contractor will be performing work on a State highway construction project.

D.#. Prevailing Wage Rates. All State contracts for highway construction projects, which are for the purpose of building, rebuilding, locating, relocating or repairing any streets, highways or bridges, require compliance with the prevailing wage laws as provided in Tenn. Code Ann. §§ 12-4-401 – 12-4-415.

Limitation of Liability

If the Contractor's Limitation of Liability will vary from Tenn. Code Ann. § 12-3-701, an approved Limitation of Liability Request is required.

D.18. Limitation of Contractor's Liability. The Contractor's liability for all claims arising under this Contract shall be limited to an amount equal to **NUMBER (#)**, PROVIDED THAT in no event shall this Section limit the liability of the Contractor for intentional torts, criminal acts, fraudulent conduct or acts or omissions that result in personal injuries or death.

Limitation of Liability

If the Contractor's Limitation of Liability will vary from Tenn. Code Ann. § 12-3-701, an approved Limitation of Liability Request is required. This language is allowed only if the CPO has agreed in negotiations to use of this language.

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. Except as set forth below, in no event will the Contractor be liable to the State or any other party for any lost revenues, lost profits, loss of business, decrease in the value of any securities or cash

position, time, goodwill, or any indirect, special, incidental, punitive, exemplary or consequential damages of any nature, whether based on warranty, contract, statute, regulation, tort (including but not limited to negligence), or any other legal theory that may arise under this Contract, unless such damages are insured by the insurance coverages required by this Contract or would have been covered had the required insurance been purchased or maintained. 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.

Option: Statewide Contracts Estimated Liability

For statewide contracts with no Maximum Liability, replace D.17. and D.18. with the following:

D.17. Limitation of State's Liability. The State shall have no liability except as specifically provided in this Contract. In no event will the State be liable to the Contractor or any other party for any lost revenues, lost profits, loss of business, decrease in the value of any securities or cash position, time, goodwill, or any indirect, special, incidental, punitive, exemplary or consequential damages of any nature, whether based on warranty, contract, statute, regulation, tort (including but not limited to negligence), or any other legal theory that may arise under this Contract or otherwise. Notwithstanding anything else herein, the State's total liability under this Contract (including without limitation any exhibits, schedules, amendments or other attachments to the Contract) or otherwise shall under no circumstances exceed the Estimated Liability. This limitation of liability is cumulative and not per incident.

D.18. Limitation of Contractor's Liability. 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 Estimated Liability amount detailed in Section C.1. and as may be amended, PROVIDED THAT in no event shall this Section limit the liability of the Contractor for: (i) intellectual property or any Contractor indemnity obligations for infringement for third-party intellectual property rights; (ii) any claims covered by any specific provision in the Contract providing for liquidated damages; or (iii) any claims for intentional torts, criminal acts, fraudulent conduct, or acts or omissions that result in personal injuries or death.

Insurance Options

Commercial General Liability, Workers' Compensation and Employer Liability Insurance, and Automobile Liability Insurance are included as Mandatory Terms and Conditions. An approved Rule Exception Request (Risk) is required for any deviations from insurance requirements, including any request to remove the Commercial General Liability and Workers' Compensation and Employer Liability insurance types. Automobile Insurance may be removed without an approved Rule Exception Request if vehicles will not be used to perform the Scope.

Certain situations call for adjusting the coverage requirements to provide adequate protection to the State. If the procurement involves activities that present either a higher risk (e.g., heavy machinery, frequent use of automobiles, medical industry, etc.) or a unique risk (e.g., internet-based services, employee-committed crime, etc.), please consult with the CPO Risk Manager to determine if a deviation from the default coverage requirements is appropriate. Enter any revised coverage amounts as "**written amount** Dollars (\$**NUMBER AMOUNT**)" and obtain an approved Rule Exception Request (Risk). If additional insurance coverage is appropriate, add as new subsections and number accordingly.

Option 1: Workers' Compensation and Employer Liability Insurance – Low Risk Option

Consider the risk of each contract (value, type of services or work provided). Option 1 should only be used where the risk of the Contractor Employee injury is low. If an agency has any questions concerning the risks involved please contact the CPO Risk Manager.

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.
- 2) If the Contractor certifies that it is exempt from the requirements of Tenn. Code Ann. §§ 50-6-101 – 103, then the Contractor shall furnish written proof of such exemption for one or more of the following reasons:
 - i. The Contractor employs fewer than five (5) employees;
 - ii. The Contractor is a sole proprietor;
 - iii. The Contractor is in the construction business or trades with no employees;
 - iv. The Contractor is in the coal mining industry with no employees;
 - v. The Contractor is a state or local government; or
 - vi. The Contractor self-insures its workers' compensation and is in compliance with the TDCI rules and Tenn. Code Ann. § 50-6-405.

Option 2: Professional Liability Insurance

Add the following if the Contract involves professional service providers, e.g., architects, engineers, consultants, counselors, medical professionals, attorneys, accountants.

D.#.

d. Professional Liability Insurance

- i. Professional liability insurance shall be written on an occurrence basis or on a claims-made basis. If this coverage is written on a claims-made basis, then:
 1. The retroactive date must be shown, and must be on or before the earlier of the Effective Date of the Contract or the beginning of Contract work or provision of goods and services;
 2. Insurance must be maintained and evidence of insurance must be provided for at least five (5) full years from the date of the final Contract payment; and

3. If coverage is canceled or non-renewed, and not replaced with another claims-made policy form with a retroactive date on or prior to the Contract Effective Date, the Contractor must purchase “extended reporting” or “tail coverage” for a minimum of five (5) full years from the date of the final Contract payment.

- ii. Any professional liability insurance policy shall have a limit not less than **one million** dollars (\$1,000,000) per claim and **two million** dollars (\$2,000,000) in the aggregate; and
- iii. If the Contract involves the provision of services by medical professionals, a policy limit not less than **three million** (\$3,000,000) per claim and **three million** dollars (\$3,000,000) in the aggregate for medical malpractice insurance.

Option 3: Low Risk Insurance for Independent Contractors

Option 3: Low Risk Insurance for Independent Contractors

Certain situations may arise where the Contract is with an Independent Contractor or otherwise presents a low risk procurement where standard Template Insurance requirements may not be appropriate but where best practices would still dictate some level of insurance verification. This option, if approved by CPO, replaces the D.32. Insurance provision in its entirety. An approved Rule Exception Request (Risk) is required to use this option. Please consult the CPO Risk Manager if you have any questions.

D.32. Insurance. Contractor shall maintain insurance coverage as specified in this Section. The State reserves the right to amend or require additional insurance coverage, coverage amounts, and endorsements required under this Contract. The State reserves the right to require complete copies of all required insurance policies, including endorsements required by these specifications, at any time. If Contractor loses insurance coverage, fails to renew coverage, or for any reason becomes uninsured during the Term, Contractor shall immediately notify the State.

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

a. Automobile Liability Insurance

1) In the event that the Contractor (1) owns, leases, or otherwise operates an automotive vehicle and (2) intends to use such vehicle in furtherance of their Contractual duties or for regular or periodic transportation onto State property for the purposes of performing

the Contractor's duties under the Terms of this Contract, then the Contractor shall provide to the State proof of the Contractor's automobile liability insurance policy. Such automobile liability insurance policy shall maintain limits not less than the minimum liability limits established by the relevant authority under which said vehicle is licensed. Such verification is required whether or not the State intends to reimburse the Contractor for mileage.

2) If the Contractor DOES NOT (1) own, lease, or otherwise operate an automotive vehicle or (2) WILL NOT operate or otherwise employ a personal vehicle in furtherance of their contractual duties or for regular or periodic transportation onto State property for the purposes of performing the Contractor's duties under the Terms of this Contract, then the Contractor shall provide to the State a letter signed by the Contractor certifying as to the above. In the event that such situation changes over the course of the Term of this Contract as described in provision 1) above, the Contractor shall inform the State and provide proof of automobile liability insurance before such time as the Contractor shall use such vehicle in furtherance of their Contractual duties or for regular or periodic transportation onto State property for the purposes of performing the Contractor's duties under the Terms of this Contract.

Option 4: Technology Professional Liability (Errors & Omissions) / Cyber Liability Insurance

Add the following if the Contractor will have access to or be involved in the collection of confidential, privileged, or sensitive personally identifiable information to provide coverage in the event of a data breach.

d. Technology Professional Liability (Errors & Omissions)/Cyber Liability Insurance

- 1) The Contractor shall maintain technology professional liability (errors & omissions)/cyber liability insurance appropriate to the Contractor's profession in an amount not less than **ten million dollars (\$10,000,000)** per occurrence or claim and **ten million dollars (\$10,000,000)** annual aggregate, covering all acts, claims, errors, omissions, negligence, infringement of intellectual property (including copyright, patent and trade secret); network security and privacy risks, including but not limited to unauthorized access, failure of security, information theft, damage to destruction of or alteration of electronic information, breach of privacy perils, wrongful disclosure and release of private information, collection, or other negligence in the handling of confidential information, and including coverage for related regulatory fines, defenses, and penalties.
- 2) Such coverage shall include data breach response expenses, in an amount not less than **ten million dollars (\$10,000,000)** and payable whether incurred by the State or Contractor, including but not limited to consumer notification, whether or not required by law, computer forensic investigations, public relations and crisis management firm fees, credit file or identity monitoring or remediation services and expenses in the performance of services for the State or on behalf of the State hereunder.

Option 5: Crime Insurance

Add the following when adding Cyber Liability Insurance coverage to protect exposure from crimes related to data theft, breach, fraudulent impersonation, and social engineering.

e. Crime Insurance

- 1) The Contractor shall maintain crime insurance, which shall be written on a “loss sustained form” or “loss discovered form” providing coverage for third party fidelity, including cyber theft and extortion. The policy must allow for reporting of circumstances or incidents that may give rise to future claims, include an extended reporting period of no less than two (2) years with respect to events which occurred but were not reported during the term of the policy, and not contain a condition requiring an arrest or conviction.
- 2) Any crime insurance policy shall have a limit not less than **one million dollars (\$1,000,000)** per claim and **one million dollars (\$1,000,000)** in the aggregate. Any crime insurance policy shall contain a Social Engineering Fraud Endorsement with a limit of not less than **two hundred and fifty thousand dollars (\$250,000)**. This insurance may be written on a claims-made basis, but in the event that coverage is cancelled or non-renewed, the Contractor shall purchase an extended reporting or “tail coverage” of at least two (2) years after the Term.

Option 6: Sexual Abuse and Molestation Insurance

Add the following insurance coverage if the Contractor has duties involving minors, persons with disabilities, or senior adults. For example, include if the Contractor is involved in a child day care center, healthcare facility, or a nursing home.

f. Sexual Abuse and Molestation Insurance

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

Option 7: Aviation Premises Liability Insurance and Hangerkeeper’s Liability Insurance

Add the following Aviation Premises Liability insurance coverage if the Contract involves an aircraft. Hangarkeeper’s Liability Insurance should also be included to protect the aircraft while docked in a hangar space, when applicable.

g. Aviation Premises Liability Insurance

- 1) The Contractor shall maintain Aviation Premises Liability Insurance, which shall include Products/Completed Operations Liability, On Airport Premises Auto Liability and War Liability for a Combined Single Limit of not less than **fifty million dollars (\$50,000,000)** per occurrence and in the annual aggregate as respects Products/Completed Operations and War Liability. The State shall be included as an additional insured on the Contractor's policy or the policy shall be endorsed to include the State as an additional insured.
- 2) The Contractor shall maintain Aviation Premises Liability Insurance written on a per occurrence basis:
 - i. Insurance must be maintained and evidence of insurance must be provided for at least five (5) years after completion of the Contract.
 - ii. If coverage is cancelled or non-renewed, and not replaced with another claims-made policy form with a retroactive date prior to the Contract Effective Date, the Contractor must purchase an extended period coverage for a minimum of five (5) years after completion of the Contract.

h. Hangerkeeper's Liability Insurance

Contractor shall maintain a limit not less than **fifteen million dollars (\$15,000,000)** per aircraft and **one hundred million dollars (\$100,000,000)** per occurrence basis.

Major Procurement Contract Sales and Use Tax.

Remove the "Major Procurement Contract Sales and Use" contract clause if the total contract value is under seventy-five thousand dollars (\$75,000.00).

HIPAA Compliance

Contractors: The Contractor must execute a business associate agreement ("BAA") if: (a) the contracting State Agency is a "covered entity" as defined by the Privacy Rules; and (b) the Contractor will provide services to the contracting State Agency that involve Contractor's access to protected health information ("PHI") as defined by the Privacy Rules.

Subcontractors: The Contractor must execute a BAA with a subcontractor if the subcontractor creates, receives, maintains, or transmits PHI on behalf of the Contractor.

Annual and Final Reports

Do NOT insert an Annual and Final Reports provision in a contract prepared using the FA Template. If an Annual and Final Reports provision is appropriate because a subrecipient relationship exists, use one of the CPO's grant templates or models.

Audit Report

Do NOT insert an Audit Report provision in a contract prepared using the FA Template. If an Audit Report provision is appropriate because a subrecipient relationship exists, use one of the CPO's grant templates or models.

E. SPECIAL TERMS AND CONDITIONS

Add the following sections as appropriate and in the order below. An approved Rule Exception Request is required to add any Section E terms that are not among the options below. Should any of these special terms and conditions conflict with the mandatory terms and conditions in Section D of this Contract, the mandatory terms and conditions shall control.

Printing Authorization

Add the following Section as appropriate.

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

State Ownership of Goods

Add the following Section as appropriate.

E.#. State Ownership of Goods. The State shall have ownership, right, title, and interest in all goods provided by Contractor under this Contract including full rights to use the goods and transfer title in the goods to any third parties.

Additional Lines, Items, or Options

Add the following Section as appropriate.

E.#. Additional lines, items, or options. At its sole discretion, the State may make written requests to the Contractor to add **lines, items, or options** that are needed and within the Scope but were not included in the original Contract. Such **lines, items, or options** will be added to the Contract through a Memorandum of Understanding ("MOU"), not an amendment.

- a. After the Contractor receives a written request to add **lines, items, or options**, the Contractor shall have ten (10) business days to respond with a written proposal. The Contractor's written proposal shall include:
 - (1) The effect, if any, of adding the **lines, items, or options** on the other **goods or services** required under the Contract;
 - (2) Any pricing related to the new lines, items, or options;
 - (3) The expected effective date for the availability of the new **lines, items, or options; and**
 - (4) **Any additional information requested by the State.**
- b. The State may negotiate the terms of the Contractor's proposal by requesting revisions to the proposal.
- c. To indicate acceptance of a proposal, the State will sign it. The signed proposal shall constitute a MOU between the Parties, and the lines, items, or options shall be incorporated into the Contract as if set forth verbatim.
- d. Only after a MOU has been executed shall the Contractor **perform or deliver the new lines, items, or options.**

Intellectual Property Indemnity

This Section shall be used for all contracts involving computers, software, or technology related goods or services. Add the following Section as appropriate. If unsure whether the Section is applicable, consult the CPO legal team.

Option 1

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

Option 2

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

In addition to the above indemnity, if the State's use of any deliverable, or any portion thereof, provided under this Contract, is or is likely to be enjoined by order of a court of competent jurisdiction as such an infringement or unauthorized use, the Contractor, at its expense, shall: (x) procure for the State the continued use of such deliverable; (y) replace such deliverable with a non-infringing counterpart; or (z) modify such deliverable so it becomes non-infringing; provided that, if (y) or (z) is the option chosen by the Contractor, the replacement or modified deliverable must be capable of performing substantially the same function. Notwithstanding the foregoing, the State retains the right to terminate the Contract in accordance with Section D.6 hereunder in the event of such infringement or unauthorized use, and any such exercise of these allowable options by Contractor shall not relieve Contractor of its indemnity obligations under this Section.

The forgoing indemnity does not apply to the extent that the infringement arises from the State's: (i) use of the deliverable not in accordance with instructions, documentations, or specifications ("Misuse"); (ii) alteration, modification or revision of the Deliverables not expressly authorized by the Contractor ("Alteration"); (iii) failure to use or implement corrections or enhancements to the Deliverables made available by the Contractor to the State at no additional cost to the State, except where such failure to use or implement corrections or enhancements is a result of State's termination in accordance with the preceding paragraph; or (iv) combination of the Deliverables with materials not provided, specified, or approved by the Contractor.

Software License Warranty

Add the following if the Contract involves software.

E.#. Software License Warranty. Contractor grants a license to the State to use all software provided under this Contract in the course of the State's business and purposes.

Software Support and Maintenance Warranty

Add the following if the Contract involves software.

E.#. Software Support and Maintenance Warranty. Contractor shall provide to the State all software upgrades, modifications, bug fixes, or other improvements in its software that it makes generally available to its customers.

Extraneous Terms and Conditions

Add the following term **only after** consulting with the Central Procurement Office's Legal Team and obtaining Central Procurement Office approval.

E.#. 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.

Transfer of Ownership of Custom Software Developed for the State

This section should only be added in the event the State wishes to have complete ownership of customized software and perpetual rights to use and maintain any underlining associated pre-existing software. This section shall only be used with the permission of CPO.

The terms of any license Contractor grants the State should be included in Section A of the *pro forma* contract.

E.#. Transfer of Ownership of Custom Software Developed for the State.

a. Definitions.

- (1) "Contractor-Owned Software," shall mean commercially available software the rights to which are owned by Contractor, including but not limited to commercial "off-the-shelf" software which is not developed using State's money or resources.

- (2) "Custom-Developed Application Software," shall mean customized application software developed by Contractor for the State under this Contract intended to function with the Contractor-Owned Software or any Work Product provided under this Contract.
- (3) "Rights Transfer Application Software," shall mean any pre-existing application software and documentation owned or supplied by Contractor or a third party necessary for the use, functioning, support, or maintenance of the Contractor-Owned Software, the Custom-Developed Application Software, Third Party Software, and any Work Product provided to State.
- (4) "Third-Party Software," shall mean software supplied by Contractor under this Contract or necessary for the functioning of any Work Product not owned by the State or the Contractor.
- (5) "Work Product," shall mean all deliverables such as software, software source code, documentation, planning, etc., that are created, designed, developed, or documented by the Contractor for the State under this Contract. Work Product shall include Rights Transfer Application Software.

b. Rights and Title to the Software

- (1) All right, title and interest in and to the Contractor-Owned Software shall at all times remain with Contractor, subject to any license or transfer of rights or ownership granted under this Contract. Contractor grants the State a perpetual non-exclusive license to the Contractor-Owned Software to be used solely with the Custom-Developed Application Software and the Work Product.
- (2) Contractor shall provide the source code in the Custom-Developed Application Software, Work Product and the Contractor-Owned Software, with all subsequent modifications, enhancements, bug-fixes or any other changes in the source code of the Work Product and the Contractor-Owned Software and all other code and documentation necessary for the Custom-Developed Application Software to be installed and function as intended and as set forth in this Contract, to the State.
- (3) Contractor may lease or sell the Custom-Developed Application Software to third parties with the written permission of the State, which permission may be conditioned on the State receiving royalties from such sales or licenses.
- (4) All right, title and interest in and to the Custom-Developed Application Software, and to modifications thereof made by State, including without limitation all copyrights, patents, trade secrets and other intellectual property and other proprietary rights embodied by and arising out of the Custom-Developed Application Software, shall belong to State. To the extent such rights do not automatically belong to State, Contractor hereby assigns, transfers, and conveys all right, title and interest in and to the Custom-Developed Application Software, including without limitation the copyrights, patents, trade secrets, and other intellectual property rights arising out of or embodied by the Custom-Developed Application Software. Contractor and its employees, agents, contractors or representatives shall execute any other documents that State or its counsel deem necessary or desirable to document this transfer or allow State to register its claims and rights to such intellectual property rights or enforce them against third parties.

- (5) All right, title and interest in and to the Third-Party Software shall at all times remain with the third party, subject to any license or other rights granted to the State under this Contract or otherwise.
- c. The Contractor may use for its own purposes the general knowledge, skills, experience, ideas, concepts, know-how, and techniques obtained and used during the course of performing under this Contract. The Contractor may develop for itself, or for others, materials which are similar to or competitive with those that are produced under this Contract.

Contractor Hosted Services Requirements and Confidential Data Options

General Instructions:

If the contract will allow a Contractor or Subcontractor to host State services or State data in the cloud (e.g., Software as a Service (SaaS), Infrastructure as a Service (IaaS), Platform as a Service (PaaS)), then follow the instructions as described in the various options below. Include all applicable sections, renumbering as may be appropriate.

Section E.#.a: Confidential State Data

If the Contractor or Subcontractor will host data that is deemed confidential by State or Federal statute or regulation, or process data per the payment card industry (Confidential State Data), including data in transit, include Section E.#.a. If there is any type of Confidential State Data, also include the standard language covering Disclosure of Personally Identifiable Information (PII) from the Section E options provided in the FA Template.

Section E.#.b and c. Minimum Requirements and Comptroller Audit Requirements

Include Section E.#.b as minimum Strategic Technology Solutions (STS) requirements and Section E.#.c as minimum Comptroller audit requirements for all contracts where the Contractor or any Subcontractors will host State services or State data in the cloud (e.g., SaaS, IaaS, PaaS).

Section E.#.e: CAFR or Single Audit Requirements

Add Section E.#.e as an additional Comptroller audit requirement, if the Contractor or Subcontractor will host services that store or process State financial or other data that (1) is used for reporting through the State's Comprehensive Annual Financial Report (CAFR) or (2) is used for demonstrating compliance with the requirements of Title 2, Code of Federal Regulations, Part 200, "Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards" (Uniform Guidance). The Contractor must provide to the State a System and Organization Controls (SOC) 1 Type II or SOC 2 Type II audit report annually. The Contractor must also verify that all Subcontractors, including data center vendors, successfully complete and provide to the State an annual SOC Type II audit report. Additionally, the State should consider obtaining and reviewing the latest available SOC report for the Contractor and Subcontractor prior to the awarding of the Contract. This requirement should be added to the solicitation Technical Response requirements.

If Section E.#.e, CAFR or Single Audit Requirements is included, remove Section E.#.a.3 unless the contract will involve CJIS data, FTI data, or CMS data, which requires replacing E.#.a.3 as described in the options below. In this case, both a SOC Type II audit report and FEDRAMP authorization are required.

Please direct any questions regarding these requirements to STS, Security Area, or the Comptroller's Office, Office of Management Services. Direct any questions regarding the types of Confidential State Data to STS, Security Area.

Criminal Justice Information Services ("CJIS") Data

The contracting state agency must obtain prior approval from the Tennessee Bureau of Investigation ("TBI") before contracting for external hosting of CJIS data.

Health Insurance Portability and Accountability Act ("HIPAA") Data

Keep all language in E.#.a, and do the following:

Contractor must enter into a Business Associate Agreement (BAA) with the State. Therefore, include as a contract attachment a BAA agreement. Please visit the following website link, available on TEAM TN, for the ["HIPAA Business Associate Agreement Example."](#)

General Requirements

E.#.	Contractor Hosted Services Confidential Data, Audit, and Other Requirements
	<p>a. "Confidential State Data" is defined as data deemed confidential by State or Federal statute or regulation. The Contractor shall protect Confidential State Data as follows:</p> <ol style="list-style-type: none"> (1) The Contractor shall ensure that all Confidential State Data is housed in the continental United States, inclusive of backup data. (2) The Contractor shall encrypt Confidential State Data at rest and in transit using the current version of Federal Information Processing Standard ("FIPS") 140-2 validated encryption technologies. (3) The Contractor and the Contractor's processing environment containing Confidential State Data shall either (1) be in accordance with at least one of the following security standards: (i) International Standards Organization ("ISO") 27001; (ii) Federal Risk and Authorization Management Program ("FedRAMP"); or (2) be subject to an annual engagement by a CPA firm in accordance with the standards of the American Institute of Certified Public Accountants ("AICPA") for a System and Organization Controls for service organizations ("SOC") Type II audit. The State shall approve the SOC audit control objectives. The Contractor shall provide proof of current ISO certification or FedRAMP authorization for the Contractor and Subcontractor(s), or provide the State with the Contractor's and Subcontractor's annual SOC Type II audit report within 30 days from when the CPA firm provides the audit report to the Contractor or Subcontractor. The Contractor shall submit corrective action plans to the State for any issues included in the audit report within 30 days after the CPA firm provides the audit report to the Contractor or Subcontractor. <p>If the scope of the most recent SOC audit report does not include all of the current State fiscal year, upon request from the State, the Contractor must provide to the State a letter from the Contractor or Subcontractor stating whether the Contractor or Subcontractor made any material changes to their control environment since the prior audit and, if so, whether the changes, in the opinion of the Contractor or Subcontractor, would negatively affect the auditor's opinion in the most recent audit report.</p> <p>No additional funding shall be allocated for these certifications, authorizations, or audits as these are included in the Maximum Liability of this Contract.</p>

- (4) The Contractor must annually perform Penetration Tests and Vulnerability Assessments against its Processing Environment. "Processing Environment" shall mean the combination of software and hardware on which the Application runs. "Application" shall mean the computer code that supports and accomplishes the State's requirements as set forth in this Contract. "Penetration Tests" shall be in the form of attacks on the Contractor's computer system, with the purpose of discovering security weaknesses which have the potential to gain access to the Processing Environment's features and data. The "Vulnerability Assessment" shall be designed and executed to define, identify, and classify the security holes (vulnerabilities) in the Processing Environment. The Contractor shall allow the State, at its option, to perform Penetration Tests and Vulnerability Assessments on the Processing Environment.
- (5) Upon State request, the Contractor shall provide a copy of all Confidential State Data it holds. The Contractor shall provide such data on media and in a format determined by the State
- (6) Upon termination of this Contract and in consultation with the State, the Contractor shall destroy all Confidential State Data it holds (including any copies such as backups) in accordance with the current version of National Institute of Standards and Technology ("NIST") Special Publication 800-88. The Contractor shall provide a written confirmation of destruction to the State within ten (10) business days after destruction.

b. Minimum Requirements

- (1) The Contractor and all data centers used by the Contractor to host State data, including those of all Subcontractors, must comply with the State's Enterprise Information Security Policies as amended periodically. The State's Enterprise Information Security Policies document is found at the following URL:
<https://www.tn.gov/finance/strategic-technology-solutions/strategic-technology-solutions/sts-security-policies.html>.
- (2) The Contractor agrees to maintain the Application so that it will run on a current, manufacturer-supported Operating System. "Operating System" shall mean the software that supports a computer's basic functions, such as scheduling tasks, executing applications, and controlling peripherals.
- (3) If the Application requires middleware or database software, Contractor shall maintain middleware and database software versions that are at all times fully compatible with current versions of the Operating System and Application to ensure that security vulnerabilities are not introduced.

c. Comptroller Audit Requirements

Upon reasonable notice and at any reasonable time, the Contractor and Subcontractor(s) agree to allow the State, the Comptroller of the Treasury, or their duly appointed representatives to perform information technology control audits of the Contractor and all Subcontractors used by the Contractor. Contractor will maintain and cause its Subcontractors to maintain a complete audit trail of all transactions and activities in connection with this Contract. Contractor will provide to the State, the Comptroller of the Treasury, or their duly appointed representatives access to Contractor and Subcontractor(s) personnel for the purpose of performing the information technology control audit.

The information technology control audit may include a review of general controls and application controls. General controls are the policies and procedures that apply to all or a large segment of the Contractor's or Subcontractor's information systems and applications and include controls over security management, access controls, configuration management, segregation of duties, and contingency planning. Application controls are directly related to the application and help ensure that transactions are complete, accurate, valid, confidential, and available. The audit shall include the Contractor's and Subcontractor's compliance with the State's Enterprise Information Security Policies and all applicable requirements, laws, regulations or policies.

The audit may include interviews with technical and management personnel, physical inspection of controls, and review of paper or electronic documentation.

For any audit issues identified, the Contractor and Subcontractor(s) shall provide a corrective action plan to the State within 30 days from the Contractor or Subcontractor receiving the audit report.

Each party shall bear its own expenses incurred while conducting the information technology controls audit.

- d. Business Continuity Requirements. The Contractor shall maintain set(s) of documents, instructions, and procedures which enable the Contractor to respond to accidents, disasters, emergencies, or threats without any stoppage or hindrance in its key operations ("Business Continuity Requirements"). Business Continuity Requirements shall include:
- (1) "Disaster Recovery Capabilities" refer to the actions the Contractor takes to meet the Recovery Point and Recovery Time Objectives defined below. Disaster Recovery Capabilities shall meet the following objectives:
 - i. Recovery Point Objective ("RPO"). The RPO is defined as the maximum targeted period in which data might be lost from an IT service due to a major incident: **[NUMBER OF HOURS/MINUTES]**
 - ii. Recovery Time Objective ("RTO"). The RTO is defined as the targeted duration of time and a service level within which a business process must be restored after a disaster (or disruption) in order to avoid unacceptable consequences associated with a break in business continuity: **[NUMBER OF HOURS/MINUTES]**
 - (2) The Contractor **and the Subcontractor(s)** shall perform at least one Disaster Recovery Test every three hundred sixty-five (365) days. A "Disaster Recovery Test" shall mean the process of verifying the success of the restoration procedures that are executed after a critical IT failure or disruption occurs. The Disaster Recovery Test shall use actual State Data Sets that mirror production data, and success shall be defined as the Contractor verifying that the Contractor can meet the State's RPO and RTO requirements. A "Data Set" is defined as a collection of related sets of information that is composed of separate elements but can be manipulated as a unit by a computer. The Contractor shall provide written confirmation to the State after each Disaster Recovery Test that its Disaster Recovery Capabilities meet the RPO and RTO requirements.

Option: Minimum Requirements

Delete and Replace the standard (b)(1), referring to a URL, if the State's Enterprise Information Security Policy will be included as a Contract Attachment.

- (1) The Contractor and all data centers used by the Contractor to host State data, including those of all Subcontractors, must comply with the State's Enterprise Information Security Policies. The State's Enterprise Information Security Policies document is attached to this Contract at Attachment [Reference](#).

Option: CAFR or Single Audit Requirements

If the contract will involve applications that store or process State financial or other data that is used for reporting through the State's Comprehensive Annual Financial Report (CAFR) or for demonstrating compliance with Uniform Guidance, include Section E.#.e.

- e. The Contractor and any Subcontractor used by the Contractor to host State data, including data center vendors, shall be subject to an annual engagement by a CPA firm in accordance with the standards of the American Institute of Certified Public Accountants ("AICPA") for a System and Organization Controls for service organizations ("SOC") Type II audit. The State shall approve the SOC audit control objectives. The Contractor shall provide the State with the Contractor's and Subcontractor's annual audit report within 30 days from when the CPA firm provides the audit report to the Contractor or Subcontractor. The Contractor shall submit corrective action plans to the State for any issues included in the audit report within 30 days after the CPA firm provides the audit report to the Contractor and Subcontractor.

If the scope of the most recent SOC audit report does not include all of the current State fiscal year, upon request from the State, the Contractor must provide to the State a letter from the Contractor or Subcontractor stating whether the Contractor or Subcontractor made any material changes to their control environment since the prior audit and, if so, whether the changes, in the opinion of the Contractor or Subcontractor, would negatively affect the auditor's opinion in the most recent audit report.

No additional funding shall be allocated for these audits as they are included in the Maximum Liability of this Contract.

Option: Federal Risk and Authorization Management Program ("FedRAMP")

If the contract will involve CJIS data, FTI data, or CMS data include all of the General Requirements above, except replace section E.#.a.(3) with the following and add each additional requirement as applicable.

- (3) The Contractor shall maintain a Security Management Certification from the Federal Risk and Authorization Management Program ("FedRAMP"). A "Security

Management Certification” shall mean written confirmation from FedRAMP that FedRAMP has assessed the Contractor’s information technology Infrastructure, using a standardized approach to security assessment, authorization, and continuous monitoring for cloud products and services, and has certified that the Contractor meets FedRAMP standards. Information technology “Infrastructure” shall mean the Contractor’s entire collection of hardware, software, networks, data centers, facilities and related equipment used to develop, test, operate, monitor, manage and/or support information technology services. The Contractor shall provide proof of current certification annually and upon State request. No additional funding shall be allocated for these certifications, authorizations, or audits as these are included in the Maximum Liability of this Contract.

Option: Federal Tax Information (“FTI”) Data

If the contract will contain FTI data, also add the following sentence to the optional section E.#.a.(3) (FedRAMP) language above. Also include the FTI attachment contained elsewhere in this FA Template.

Contractor shall meet all applicable requirements of the most current version of Internal Revenue Service Publication 1075.

Option: Centers for Medicare and Medicaid Services (“CMS”) Data

As applicable, if the contract will involve CMS data, also add the following sentence to the optional section E.#.a.(3) (FedRAMP) language above:

Contractor shall meet requirements of current version of Minimum Acceptable Risk Standards for Exchanges (“MARS-E”) controls.

Option: Payment Card Industry (“PCI”) Data

If the contract will involve PCI data, include all of the General Requirements above, and add the following as section E.#.a.(5):

(5) Contractor shall be certified to host Payment Card Industry (“PCI”) data in accordance with the current version of PCI DSS (“Data Security Standard”), maintained by the PCI Security Standards Council.

Reimbursement

Add the following section if the contract payment terms provide for Contractor reimbursement for goods, materials, supplies, equipment, or contracted services.

E.#. Reimbursement. This Contract provides for reimbursement of the cost of goods, materials,

supplies, equipment, or contracted services. Any goods, materials, supplies, equipment or contracted services procured by Contractor under this Contract shall be procured on a competitive basis when practicable. The Contractor shall maintain documentation supporting Contractor's request for reimbursement. In each instance where it is determined that use of a competitive procurement method was not practicable, Contractor shall seek approval of the **State Agency Head's Title** to procure by non-competitive procurement as a condition for reimbursement.

Family Educational Rights and Privacy Act & Tennessee Data Accessibility, Transparency and Accountability Act

Add the following section only if the Grantee will have access to personally identifiable student information or student information that is confidential pursuant to federal or state law.

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

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

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

State Furnished Property

Add the following Section as appropriate.

E.#. 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 ordinary 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.

Work Papers Subject to Review

Add the following Section only if the contract requires the performance of audit, accounting or financial analysis services.

- E.#.** Work Papers Subject to Review. The Contractor shall make all audit, accounting, or financial analysis work papers, notes, and other documentation available for review by the Comptroller of the Treasury or his representatives, upon request, during normal working hours either while the analysis is in progress or subsequent to the completion of this Contract.

Prohibited Advertising or Marketing

Add the following Section as appropriate.

- E.#.** 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.

Public Accountability

Add the following Section as appropriate.

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

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

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

Environmental Tobacco Smoke

Add the following Section as appropriate.

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

Prison Rape Elimination Act (PREA)

Add the following Section as appropriate.

E.#. Prison Rape Elimination Act (PREA). The Contractor must comply with the Prison Rape Elimination Act (PREA) of 2003 (Federal law 42 U.S.C. 15601 et. seq.), with all applicable Federal PREA standards, and with all State policies and standards related to PREA for preventing, detecting, monitoring, investigating, and eradicating any form of sexual abuse within facilities/programs/offices owned, operated, or contracted.

Lobbying

Add the following Section if the contract will be funded in whole or in part by federal funds.

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

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

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

Contractor Commitment to Diversity

Add the following Section as appropriate (typically in contracts resulting from a standard RFP).

E.#. Contractor Commitment to Diversity. The Contractor shall comply with and make reasonable business efforts to exceed the commitment to diversity represented by the Contractor's Response to **Solicitation Number** (Attachment **Reference**) and resulting in this Contract.

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

Clean Air Act and Federal Water Pollution Control Act

To the extent applicable, add the following section if the Contractor is receiving a federal award in excess of \$150,000.

- E. #. Clean Air Act and Federal Water Pollution Control Act. As a condition for receipt of federal awards, the Contractor agrees to comply with the Clean Air Act, 42 U.S.C. § 7401 *et seq.* and the Federal Water Pollution Control Act, 33 U.S.C § 1251 *et seq.*, as those sections are amended from time to time during the term. Violations must be reported to the [insert federal awarding agency] and the Region 4 Office of the Environmental Protection Agency.

Performance Bond

For contracts that do not involve public works projects, a performance bond should be required only when necessary to protect against contract risk to the State. For agency term contracts, choose option #1 or option #2. For statewide contracts that do not involve awards to multiple contractors, choose option #3 or option #4. If unsure whether a performance bond is appropriate or which option is best, contact the CPO Risk Manager.

Option 1

- E.#. 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 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 **Reference**. 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.

Option 2—Insert the term below only after obtaining an approved Rule Exception Request.

- E. #. 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 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 **Reference**. 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 under this Contract for the first year of the Term in the amount of **Written Dollar Amount (\$Number)** and, thereafter, a new performance bond in an amount of one hundred percent (100%) of the Maximum Liability, **Written Dollar Amount (\$Number)** covering each subsequent year of the Term, including any renewals or extensions. The State reserves the right to review the bond amount and bonding requirements at any time during the Term. The

Contractor shall provide performance bonds to the State prior to the Effective Date and thirty (30) days prior to the beginning of each renewal or extended Term.

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's prior written approval.

Option 3

E.#. 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 **Reference**. 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 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's prior written approval.

Option 4—Insert the term below only after obtaining an approved Rule Exception Request.

E.#. 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 **Reference**. 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 under this Contract for the first year of the Term in the amount of **Written Dollar Amount (\$Number)** and, thereafter, a new performance bond in the amount of **Written Dollar Amount (\$Number)** covering each subsequent year of the Term, including any renewals or extensions of the Contract. The Contractor shall provide performance bonds to the State prior to the Effective Date and thirty (30) days prior to the beginning of each renewal or extended Term.

Failure to provide to the State the performance bond 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's prior written approval.

Payment Bond

Tenn. Code Ann. § 12-4-201 requires a payment bond for all public works projects in excess of one hundred thousand dollars (\$100,000). Insert option #1 for agency term contracts; insert

option #2 for statewide contracts that do not involve awards to multiple contractors. If unsure whether a payment bond is appropriate, contact the CPO Risk Manager.

Option 1

E.#. 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 **Reference**. 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.

Option 2

E.#. 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 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 **Reference**. 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's prior written approval.

Option: Liquidated Damages

The incorporation of the *pro forma* Liquidated Damages language below will require an approved Liquidated Damages Request. Deviations from this language shall be on a case-by-case basis and shall require an approved Rule Exception Request. In order to be enforceable, any liquidated damages amount must be a reasonable estimate of potential damages. If unsure whether the Section is appropriate, consult the CPO legal team.

E.#. Liquidated Damages. If <insert description of event giving rise to liquidated damages> occurs, ("Liquidated Damages Event"), the State may assess damages on Contractor ("Liquidated Damages"). The State shall notify the Contractor of amounts to be assessed as Liquidated Damages. The Parties agree that due to the complicated nature of the Contractor's obligations under this Contract it would be difficult to specifically designate a monetary amount for Contractor's failure to fulfill its obligations regarding the Liquidated Damages Event as these amounts are likely to be uncertain and not easily proven. Contractor has carefully reviewed the Liquidated Damages contained in Attachment **Reference** and agrees that these amounts represent a reasonable relationship between the amount and what might reasonably be expected in the event of a Liquidated Damages Event, and are a reasonable estimate of the damages that would occur from a Liquidated Damages Event. The Parties agree that the Liquidated Damages represent solely the damages and injuries sustained by the State in losing the benefit of the bargain with Contractor and do not include any injury or damage sustained by a third party. The Contractor agrees that the Liquidated Damages are in addition to any amounts Contractor may owe the State pursuant to the indemnity provision or any other sections of this Contract.

The State is not obligated to assess Liquidated Damages before availing itself of any other remedy. The State may choose to discontinue Liquidated Damages and avail itself of any other remedy available under this Contract or at law or equity.

Option: Liquidated Damages – HCFA

The incorporation of the *pro forma* Liquidated Damages language below will require an approved Liquidated Damages Request. The below language may only be utilized by the Division of Health Care Finance & Administration (HCFA) and does not require an approved Rule Exception Request.

Add the following section to the *pro forma* contract Scope:

A.#. Control Memorandum Process.

- a. The Control Memorandum ("CM") process shall be utilized by the State to clarify Contract requirements, issue instruction to the Contractor, document action required of the Contractor, or request information from the Contractor. In addition, the CM process shall be used by the State to impose assessments of damages, either actual or liquidated. This process will be used to address issues or matters that do not require a contract amendment. Each CM must be in writing and indicate the date on which it was issued. CMs may provide relevant history, background, and other pertinent information regarding the issue(s) being addressed in the CM. Each CM will establish a deadline or timeframe for the Contractor's reply or other action. All CMs submitted to the Contractor must be signed and approved by the State's Project Director (or his/her designee). When the CM pertains to damages, either actual or liquidated, the State may issue consecutive CMs, as may be necessary or appropriate.
- b. A CM may include one (1) or more of the five (5) components of the CM process described below:
 - (1) On Request Report – a request directing the Contractor to provide information by the time and date set out in the CM.
 - (2) Control Directive (CD) – instructions that require the Contractor to complete, within a designated timeframe, one (1) or more deliverables or to perform any other

request from the State that is within the scope of the Contract. The CD may include a Corrective Action Plan. A CD may also provide clarification of certain Contract terms. Once a CM/CD has been issued, it shall be considered to be incorporated into this Contract.

- (3) Notice of Potential Damages (Actual or Liquidated) (NPD) – notification to the Contractor that the State has determined that a potential Contract performance or compliance failure exists and that the State is contemplating assessing damages. The NPD shall identify the Contract provision(s) on which the State determination rests.
 - (4) Notice of Calculation of Potential Damages (Actual or Liquidated) (NCPD) – notification to the Contractor that provides a calculation of the amount of potential damages that the State is contemplating assessing against the Contractor. NPDs and NCPDs may be issued consecutively or simultaneously.
 - (5) Notice of Intent to Assess Damages (Actual or Liquidated) (NIAD) – notification to the Contractor that the State is assessing damages and specifying whether the damages, due to a performance or compliance failure, are actual damages or Liquidated Damages and setting out the performance or compliance failure underlying each intended damage assessment. The NIAD shall identify the NPD and NCPD upon which it is based. The NIAD shall specify the total amount and type of damages, whether actual or liquidated, that the State intends to assess. Following the issuance of an NIAD, the State may elect to withhold damages from payments due to Contractor. The State may not issue a NIAD without first issuing a NPD and a NCPD. The State may not obtain both Liquidated Damages and Actual Damages for the same occurrence of a Contract performance or compliance failure.
- c. Damages for failure to comply with CM. The Contractor shall fully comply with all CMs. Failure to do so may result in the State pursuing recovery of damages, as defined in Section E.#., including Liquidated Damages as listed in Contract Attachment **Reference**, a corrective action plan, and/or termination of the Contract.
 - d. Appeal of Damages by Contractor. Contractor may appeal either the basis for NPD or calculation of NCPD potential damages, either actual or liquidated. To do so, the Contractor shall submit to the State's Project Director (or his/her designee) a written response to the NPD and/or NCPD within ten (10) business days of receipt of a CM which includes a NPD or a NCPD. The State's Project Director (or his/her designee) shall review the appeal and provide notice of his/her determination to the Contractor through a CM. If the Contractor disagrees with the State's Project Director's (or his/her designee) initial appeal determination or the State's Project Director (or his/her designee) is unable to resolve the appeal, the Contractor may submit a written request to the State's Project Director (or his/her designee) that the matter be escalated to senior management of the Agency. Contractor shall submit such a request for escalation within ten (10) business days of its receipt of the initial appeal determination from the State's Project Director (or his/her designee) or of notification by the State's Project Director that he/she is unable to resolve the appeal. The State's senior management shall provide written notice of its final determination to the Contractor within ten (10) days of the receipt of the appeal from the Contractor. Upon appeal or escalation, the State shall not increase the amount of the potential damages.

AND add the following section to section E. Special Terms and Conditions:

E.# Liquidated Damages.

In the event of a Contract performance or compliance failure by the Contractor, the State may, but is not obligated to address such Contract performance or compliance failure and/or assess damages ("Liquidated Damages") in accordance with Attachment **Reference** of the Contract. The State shall notify the Contractor of any amounts to be assessed as Liquidated Damages via the Control Memorandum process specified in Contract Section A.#. The Parties agree that due to the complicated nature of the Contractor's obligations under this Contract it would be difficult to specifically designate a monetary amount for a Contract performance or compliance failure, as these amounts are likely to be uncertain and not easily proven. Contractor has carefully reviewed the Liquidated Damages contained in Contract Attachment **Reference** and agrees that these amounts represent a reasonable relationship between the amount and what might reasonably be expected in the event of a Contract performance or compliance failure, are a reasonable estimate of the damages that would occur from a Contract performance or compliance failure, and are not punitive. The Parties agree that although the Liquidated Damages represent the reasonable estimate of the damages and injuries sustained by the State due to the Contract performance or compliance failure, they do not include any injury or damage sustained by a third party. The Contractor agrees that the Liquidated Damages are in addition to any amounts Contractor may owe the State pursuant to the indemnity provision or any other sections of this Contract.

The State is not obligated to assess Liquidated Damages as a result of a Contract performance or compliance failure before availing itself of any other remedy. In the event of multiple Contract performance or compliance failures, the Parties recognize that the cumulative effect of these Contract performance failures may exceed the compensation provided by Liquidated Damages. The State may choose to avail itself of any other remedy available under this Contract or at law or equity. The Parties further recognize that the State may not obtain both Liquidated Damages and Actual Damages for the same occurrence of a Contract performance or compliance failure.

Without regard to whether the State has imposed Liquidated Damages or pursued any other remedy due to any action or inaction by the Contractor, the State may impose a corrective action plan or similar measure through a Control Memorandum. Such measure is neither punitive nor related to any damages the State might suffer.

AND add the following Contract Attachment, Liquidated Damages:

ATTACHMENT REFERENCE

LIQUIDATED DAMAGES

In the event of a Contract performance or compliance failure by Contractor and such Contract performance or compliance failure is not included in the following table with an associated Liquidated Damage amount, the parties hereby agree that the State may choose one of the following courses of action in order to obtain redressability for such Contract performance or compliance failure: (1) the State may assess actual damages resulting from the Contract performance or compliance failure against the Contractor in the event that such actual damages are known or are reasonably ascertainable at the time of discovery of such Contract performance or compliance failure or (2) if such actual damages are unknown or are not reasonably ascertainable at the time of discovery of the Contract performance or compliance failure, the State may (a) require the Contractor to submit a corrective action plan to address any such Contract performance or compliance failure and (b) assess liquidated damages against Contractor for an amount that is reasonable in relation to the Contract performance or compliance failure

as measured at the time of discovery of the Contract performance or compliance failure. In the event that the State chooses to assess a Liquidated Damage for a Contract performance or compliance failure according to the immediately preceding sentence, in no event shall such Liquidated Damage be in excess of \$1,000 for any single Contract performance or compliance failure.

HCFA may elect to apply the following liquidated damages remedies in the event the Contractor fails to perform its obligations under this Contract in a proper and/or timely manner. Upon determination by HCFA that the Contractor has failed to meet any of the requirements of this Contract in a proper and/or timely manner, HCFA will notify the Contractor in writing of the performance or compliance failure and of the potential liquidated damages to be assessed. Should the performance or compliance failure remain uncorrected for more than thirty (30) calendar days from the date of the original notification of the performance or compliance failure by HCFA, HCFA may impose an additional liquidated damage of Five Hundred Dollars (\$500) per day from the date of the original notification to Contractor until said performance or compliance failure is resolved.

All liquidated damages remedies set forth in the following table may, at HCFA's election, be retroactive to the date of the initial occurrence of the failure to comply with the terms of the Contract as set forth in the notice of performance or compliance failure from HCFA and may continue until such time as the HCFA Deputy Commissioner, or the Deputy Commissioner's representative, determines the performance or compliance failure has been cured.

If liquidated damages are assessed, HCFA shall reduce the amount of any payment due to the Contractor in the next invoice by the amount of damages. In the event that damages due exceed the amount HCFA is to pay to Contractor in a given payment, HCFA shall invoice Contractor for the amount exceeding the amount payable to Contractor, and such excess amount shall be paid by Contractor within thirty (30) calendar days of the invoice date. In situations where the Contractor wishes to dispute any liquidated damages assessed by HCFA, the Contractor must submit a written notice of dispute, including the reasons for disputing the liquidated damages, to the HCFA Deputy Commissioner or the Deputy Commissioner's representative within thirty (30) calendar days of receipt of the notice from HCFA containing the total amount of damages assessed against the Contractor. If the Contractor fails to timely dispute a liquidated damages assessment as set forth herein, such failure shall constitute a bar to the Contractor seeking to have the assessment amount overturned in a forum or court of competent jurisdiction.

Liquidated damages will apply to the Contract performance or compliance failures listed below. Contractor acknowledges that the actual damages likely to result from Contract performance or compliance failures are difficult to estimate and may be difficult for the State to prove. The parties intend that the Contractor's payment of assessed liquidated damages will compensate the State for breach of the Contractor obligations under this Contract. Liquidated damages do not serve as punishment for any breach by the Contractor.

Partial Takeover

Add the following Section as appropriate. If unsure whether the Section is applicable, consult the CPO legal team.

E.#.	<p>Partial Takeover of Contract. The State may, at its convenience and without cause, exercise a partial takeover of any service that the Contractor is obligated to perform under this Contract, including any service which is the subject of a subcontract between Contractor and a third party (a "Partial Takeover"). A Partial Takeover of this Contract by the State shall not be deemed a breach of contract. The Contractor shall be given at least thirty (30) days prior written notice of a Partial Takeover. The notice shall specify the areas of service the State will assume and the date the State will be assuming. The State's exercise of a Partial Takeover shall not alter the</p>
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Contractor's other duties and responsibilities under this Contract. The State reserves the right to withhold from the Contractor any amounts the Contractor would have been paid but for the State's exercise of a Partial Takeover. The amounts shall be withheld effective as of the date the State exercises its right to a Partial Takeover. The State's exercise of its right to a Partial Takeover of this Contract shall not entitle the Contractor to any actual, general, special, incidental, consequential, or any other damages irrespective of any description or amount.

Unencumbered Personnel

Add the following Section as appropriate. If unsure whether the Section is applicable, consult the CPO legal team.

E.#. Unencumbered Personnel. The Contractor shall not restrict its employees, agents, subcontractors or principals who perform services for the State under this Contract from performing the same or similar services for the State after the termination of this Contract, either as a State employee, an independent contractor, or an employee, agent, subcontractor or principal of another contractor with the State.

Disclosure of Personally Identifiable Information

Add the following Section as appropriate. If unsure whether the Section is applicable, consult the CPO legal team.

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

The Contractor shall report to the State any instances of unauthorized access to or potential disclosure of PII in the custody or control of Contractor ("Unauthorized Disclosure") that come to

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

Federal Funding Accountability and Transparency Act

Add the following Section if the contract will be funded in whole or part by a federal grant or contract of \$25,000 or more and the contract will provide for the expenditure of \$25,000 or more in federal funds.

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

The Contractor shall comply with the following:

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

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

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

- (2) Total compensation means the cash and noncash dollar value earned by the executive during the Contractor's preceding fiscal year and includes the following (for more information see 17 C.F.R. § 229.402(c)(2)):
 - i. Salary and bonus.
 - ii. Awards of stock, stock options, and stock appreciation rights. Use the

- dollar amount recognized for financial statement reporting purposes with respect to the fiscal year in accordance with the Statement of Financial Accounting Standards No. 123 (Revised 2004) (FAS 123R), Shared Based Payments.
- iii. Earnings for services under non-equity incentive plans. This does not include group life, health, hospitalization or medical reimbursement plans that do not discriminate in favor of executives, and are available generally to all salaried employees.
 - iv. Change in pension value. This is the change in present value of defined benefit and actuarial pension plans.
 - v. Above-market earnings on deferred compensation which is not tax qualified.
 - vi. Other compensation, if the aggregate value of all such other compensation (e.g. severance, termination payments, value of life insurance paid on behalf of the employee, perquisites or property) for the executive exceeds \$10,000.

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

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

Drug-Free Workplace.

Add the following Section as appropriate:

E. #. Drug-Free Workplace. The Contractor shall provide a drug-free workplace pursuant to the Drug-Free Workplace Act of 1988, Title 41 U.S.C. §§ 701, *et seq.*, and the regulations in Title 41 U.S.C.A. §§ 8101 through 8106.

Statewide Contract – CPO use Only

Add the following Section if the contract will establish a Statewide Contract.

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

entities, who are authorized to and who may purchase off of this Statewide Contract ("Authorized Users"):

- a. all Tennessee State governmental entities (this includes the legislative branch; judicial branch; and, commissions and boards of the State outside of the executive branch of government);
- b. Tennessee local governmental agencies;
- c. members of the University of Tennessee or Tennessee Board of Regents systems;
- d. any private nonprofit institution of higher education chartered in Tennessee; and,
- e. any corporation which is exempted from taxation under 26 U.S.C. Section 501(c) (3), as amended, and which contracts with the Department of Mental Health and Substance Abuse to provide services to the public (Tenn. Code Ann. § 33-2-1001).

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

Insurance of the State of Tennessee

Only use with prior approval of the CPO Risk Manager. This provision should only be used in the event the Contractor has requested the State's proof of self-insurance as part of the Contract.

E.#. State Insurance Program. The State of Tennessee self-insures its exposures in general liability, automobile liability, professional malpractice, and workers' compensation.

- a. The limits for general liability, professional malpractice, and automobile liability are three hundred thousand dollars (\$300,000) per person and one million dollars (\$1,000,000) per occurrence.
- b. The limits of liability under workers' compensation are those set forth in Tenn. Code Ann. § 50-6-101 et seq.

Copies of the statutes that authorize actions against the State of Tennessee, establish the State's limit of liability, and authorize self-insurance through the Risk Management Fund, are set forth in Tenn. Code Ann. § 9-8-101 et seq.

Persons wishing to file a claim for damages against the State of Tennessee arising from an act or omission of the State or its employees should file a claim with the State Treasury Department, Division of Risk Management and Claims Administration, 15th Floor, Andrew Jackson State Office Building, 502 Deaderick Street, Nashville, Tennessee 37243-0202. A copy of the State of Tennessee's Certificate of Self-Insurance may be obtained at http://treasury.tn.gov/risk/PDFs/Certificate_of_Self_Insurance.pdf or is available upon request.

Protection of Federal Tax Information

Add one of the following options below **as a separate attachment** to the Contract for Contractors having access to Federal Tax Information ("FTI") during performance of the Contract. If unsure whether to include one of the options below, contact your agency's disclosure officer and legal counsel as appropriate.

FTI means any return or return information, as defined by I.R.C. § 6103(b)(2), received from the Internal Revenue Service or secondary source, such as the Social Security Administration, Federal Office of Child Support Enforcement, or Bureau of Fiscal Service. FTI includes any information created by the recipient that is derived from return or return information. If the Contract involves disclosing FTI to a Contractor, the contracting State Agency shall provide the IRS at least forty-five (45) days notice before executing the Contract. Use Option #1 when the Contractor may have access to hard copies of FTI. Use Option #2 when the Contractor may have access to electronic forms of FTI.

Option 1

ATTACHMENT REFERENCE

FEDERALLY MANDATED REQUIREMENTS FOR SERVICES CONTRACTS WITH ACCESS TO FEDERAL TAX RETURN INFORMATION

Federal Tax Information ("FTI") includes return or return information received directly from the IRS or obtained through an authorized secondary source, such as Social Security Administration (SSA), Federal Office of Child Support Enforcement (OCSE), Bureau of the Fiscal Service (BFS), or Centers for Medicare and Medicaid Services (CMS), or another entity acting on behalf of the IRS pursuant to an IRC 6103(p)(2)(B) Agreement. FTI includes any information created by the recipient that is derived from federal return or return information received from the IRS or obtained through a secondary source.

CONTRACT LANGUAGE FOR GENERAL SERVICES

I. PERFORMANCE

In performance of this Contract, the Contractor agrees to comply with and assume responsibility for compliance by his or her employees with the following requirements:

- (1) All work will be performed under the supervision of the Contractor or the Contractor's responsible employees.
- (2) The Contractor and the Contractor's employees with access to or who use FTI must meet the background check requirements defined in IRS Publication 1075.
- (3) Any Federal tax returns or return information (hereafter referred to as returns or return information) made available shall be used only for the purpose of carrying out the provisions of this Contract. Information contained in such material shall be treated as confidential and shall not be divulged or made known in any manner to any person except as may be necessary in the performance of this Contract. Inspection by or disclosure to anyone other than an officer or employee of the Contractor is prohibited.
- (4) All returns and return information will be accounted for upon receipt and properly stored before, during, and after processing. In addition, all related output and products will be given the same level of protection as required for the source material.
- (5) No work involving returns and return information furnished under this Contract will be subcontracted without prior written approval of the IRS.

- (6) The Contractor will maintain a list of employees authorized access. Such list will be provided to the State and, upon request, to the IRS reviewing office.
- (7) The State will have the right to void the Contract if the Contractor fails to provide the safeguards described above.
- (8) (Include any additional safeguards that may be appropriate.)

II. CRIMINAL/CIVIL SANCTIONS

- (1) Each officer or employee of any person to whom returns or return information is or may be disclosed shall be notified in writing by such person that returns or return information disclosed to such officer or employee can be used only for a purpose and to the extent authorized herein, and that further disclosure of any such returns or return information for a purpose or to an extent unauthorized herein constitutes a felony punishable upon conviction by a fine of as much as \$5,000 or imprisonment for as long as five years, or both, together with the costs of prosecution. Such person shall also notify each such officer and employee that any such unauthorized future disclosure of returns or return information may also result in an award of civil damages against the officer or employee in an amount not less than \$1,000 with respect to each instance of unauthorized disclosure. These penalties are prescribed by IRCs 7213 and 7431 and set forth at 26 CFR 301.6103(n)-1.
- (2) Each officer or employee of any person to whom returns or return information is or may be disclosed shall be notified in writing by such person that any return or return information made available in any format shall be used only for the purpose of carrying out the provisions of this Contract. Information contained in such material shall be treated as confidential and shall not be divulged or made known in any manner to any person except as may be necessary in the performance of this Contract. Inspection by or disclosure to anyone without an official need-to-know constitutes a criminal misdemeanor punishable upon conviction by a fine of as much as \$1,000 or imprisonment for as long as 1 year, or both, together with the costs of prosecution. Such person shall also notify each such officer and employee that any such unauthorized inspection or disclosure of returns or return information may also result in an award of civil damages against the officer or employee in an amount equal to the sum of the greater of \$1,000 for each act of unauthorized inspection or disclosure with respect to which such defendant is found liable or the sum of the actual damages sustained by the plaintiff as a result of such unauthorized inspection or disclosure plus in the case of a willful inspection or disclosure which is the result of gross negligence, punitive damages, plus the costs of the action. The penalties are prescribed by IRCs 7213A and 7431 and set forth at 26 CFR 301.6103(n)-1.
- (3) Additionally, it is incumbent upon the Contractor to inform its officers and employees of the penalties for improper disclosure imposed by the Privacy Act of 1974, 5 U.S.C. 552a. Specifically, 5 U.S.C. 552a(i)(1), which is made applicable to Contractors by 5 U.S.C. 552a(m)(1), provides that any officer or employee of a Contractor, who by virtue of his/her employment or official position, has possession of or access to State records which contain individually identifiable information, the disclosure of which is prohibited by the Privacy Act or regulations established thereunder, and who knowing that disclosure of the specific material is so prohibited, willfully discloses the material in any manner to

any person or entity not entitled to receive it, shall be guilty of a misdemeanor and fined not more than \$5,000.

- (4) Granting a Contractor access to FTI must be preceded by certifying that each individual understands the State's security policy and procedures for safeguarding IRS information. Contractors must maintain their authorization to access FTI through annual recertification. The initial certification and recertification must be documented and placed in the State's files for review. As part of the certification and at least annually afterwards, Contractors must be advised of the provisions of IRCs 7431, 7213, and 7213A (see Exhibit 4, Sanctions for Unauthorized Disclosure, and Exhibit 5, Civil Damages for Unauthorized Disclosure. The training provided before the initial certification and annually thereafter must also cover the incident response policy and procedure for reporting unauthorized disclosures and data breaches. (See Section 10) For both the initial certification and the annual certification, the Contractor must sign, either with ink or electronic signature, a confidentiality statement certifying their understanding of the security requirements.

III. INSPECTION

The IRS and the State, with 24 hour notice, shall have the right to send its inspectors into the offices and plants of the Contractor to inspect facilities and operations performing any work with FTI under this Contract for compliance with requirements defined in IRS Publication 1075. The right of inspection shall include the use of manual and/or automated scanning tools to perform compliance and vulnerability assessments of information technology (IT) assets that access, store, process or transmit FTI. On the basis of such inspection, corrective actions may be required in cases where the Contractor is found to be noncompliant with Contract safeguards.

Option 2

ATTACHMENT REFERENCE

FEDERALLY MANDATED REQUIREMENTS FOR TECHNOLOGY SERVICES CONTRACTS WITH ACCESS TO FEDERAL TAX RETURN INFORMATION

Federal Tax Information ("FTI") includes return or return information received directly from the IRS or obtained through an authorized secondary source, such as Social Security Administration (SSA), Federal Office of Child Support Enforcement (OCSE), Bureau of the Fiscal Service (BFS), or Centers for Medicare and Medicaid Services (CMS), or another entity acting on behalf of the IRS pursuant to an IRC 6103(p)(2)(B) Agreement. FTI includes any information created by the recipient that is derived from federal return or return information received from the IRS or obtained through a secondary source.

CONTRACT LANGUAGE FOR TECHNOLOGY SERVICES

I. PERFORMANCE

In performance of this Contract, the Contractor agrees to comply with and assume responsibility for compliance by his or her employees with the following requirements:

- (1) All work will be done under the supervision of the Contractor or the Contractor's employees.
- (2) The Contractor and the Contractor's employees with access to or who use FTI must meet the background check requirements defined in IRS Publication 1075.
- (3) Any return or return information made available in any format shall be used only for the purpose of carrying out the provisions of this Contract. Information contained in such material will be treated as confidential and will not be divulged or made known in any manner to any person except as may be necessary in the performance of this Contract. Disclosure to anyone other than an officer or employee of the Contractor will be prohibited.
- (4) All returns and return information will be accounted for upon receipt and properly stored before, during, and after processing. In addition, all related output will be given the same level of protection as required for the source material.
- (5) The contractor certifies that the data processed during the performance of this contract will be completely purged from all data storage components of his or her computer facility, and no output will be retained by the contractor at the time the work is completed. If immediate purging of all data storage components is not possible, the contractor certifies that any IRS data remaining in any storage component will be safeguarded to prevent unauthorized disclosures.
- (6) Any spoilage or any intermediate hard copy printout that may result during the processing of IRS data will be given to the agency or his or her designee. When this is not possible, the contractor will be responsible for the destruction of the spoilage or any intermediate hard copy printouts, and will provide the agency or his or her designee with a statement containing the date of destruction, description of material destroyed, and the method used.
- (7) All computer systems receiving, processing, storing or transmitting FTI must meet the requirements defined in IRS Publication 1075. To meet functional and assurance requirements, the security features of the environment must provide for the managerial, operational, and technical controls. All security features must be available and activated to protect against unauthorized use of and access to Federal Tax Information.
- (8) No work involving Federal Tax Information furnished under this Contract will be subcontracted without prior written approval of the IRS.
- (9) The Contractor will maintain a list of employees authorized access. Such list will be provided to the State and, upon request, to the IRS reviewing office.
- (10) The State will have the right to void the Contract if the Contractor fails to provide the safeguards described above.
- (11) (Include any additional safeguards that may be appropriate.)

II. CRIMINAL/CIVIL SANCTIONS

- (1) Each officer or employee of any person to whom returns or return information is or may be disclosed will be notified in writing by such person that returns or return information disclosed to such officer or employee can be used only for a purpose and to the extent authorized herein, and that further disclosure of any such returns or return information for a purpose or to an extent unauthorized herein constitutes a felony punishable upon conviction by a fine of as much as \$5,000 or imprisonment for as long as 5 years, or both, together with the costs of prosecution. Such person shall also notify each such officer and employee that any such unauthorized further disclosure of returns or return information may also result in an award of civil damages against the officer or employee in an amount not less than \$1,000 with respect to each instance of unauthorized disclosure. These penalties are prescribed by IRCs 7213 and 7431 and set forth at 26 CFR 301.6103(n)-1.

- (2) Each officer or employee of any person to whom returns or return information is or may be disclosed shall be notified in writing by such person that any return or return information made available in any format shall be used only for the purpose of carrying out the provisions of this Contract. Information contained in such material shall be treated as confidential and shall not be divulged or made known in any manner to any person except as may be necessary in the performance of the Contract. Inspection by or disclosure to anyone without an official need-to-know constitutes a criminal misdemeanor punishable upon conviction by a fine of as much as \$1,000 or imprisonment for as long as 1 year, or both, together with the costs of prosecution. Such person shall also notify each such officer and employee that any such unauthorized inspection or disclosure of returns or return information may also result in an award of civil damages against the officer or employee in an amount equal to the sum of the greater of \$1,000 for each act of unauthorized inspection or disclosure with respect to which such defendant is found liable or the sum of the actual damages sustained by the plaintiff as a result of such unauthorized inspection or disclosure plus in the case of a willful inspection or disclosure which is the result of gross negligence, punitive damages, plus the costs of the action. These penalties are prescribed by IRC 7213A and 7431 and set forth at 26 CFR 301.6103(n)-1.

- (3) Additionally, it is incumbent upon the Contractor to inform its officers and employees of the penalties for improper disclosure imposed by the Privacy Act of 1974, 5 U.S.C. 552a. Specifically, 5 U.S.C. 552a(i)(1), which is made applicable to Contractors by 5 U.S.C. 552a(m)(1), provides that any officer or employee of a Contractor, who by virtue of his/her employment or official position, has possession of or access to State records which contain individually identifiable information, the disclosure of which is prohibited by the Privacy Act or regulations established thereunder, and who knowing that disclosure of the specific material is prohibited, willfully discloses the material in any manner to any person or agency not entitled to receive it, shall be guilty of a misdemeanor and fined not more than \$5,000.

- (4) Granting a Contractor access to FTI must be preceded by certifying that each individual understands the State's security policy and procedures for safeguarding IRS information. Contractors must maintain their authorization to access FTI through annual recertification. The initial certification and recertification must be documented and placed in the State's files for review. As part of the certification and at least annually afterwards, Contractors must be advised of the provisions of IRCs 7431, 7213, and 7213A (see

Exhibit 4, Sanctions for Unauthorized Disclosure, and Exhibit 5, Civil Damages for Unauthorized Disclosure). The training provided before the initial certification and annually thereafter must also cover the incident response policy and procedure for reporting unauthorized disclosures and data breaches. (See Section 10) For both the initial certification and the annual certification, the Contractor must sign, either with ink or electronic signature, a confidentiality statement certifying their understanding of the security requirements.

III. INSPECTION

The IRS and the State, with 24 hour notice, shall have the right to send its inspectors into the offices and plants of the Contractor to inspect facilities and operations performing any work with FTI under this Contract for compliance with requirements defined in IRS Publication 1075. The IRS' right of inspection shall include the use of manual and/or automated scanning tools to perform compliance and vulnerability assessments of information technology (IT) assets that access, store, process or transmit FTI. On the basis of such inspection, corrective actions may be required in cases where the Contractor is found to be noncompliant with Contract safeguards.

Survival

Add one of the two survival options as appropriate. If unsure whether a survival provision is appropriate, consult the CPO legal team.

Option 1

E.#	<u>Survival</u> . The terms, provisions, representations, and warranties contained in this Contract which by their sense and context are intended to survive the performance and termination of this Contract, shall so survive the completion of performance and termination of this Contract.
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Option 2

E.#	<u>Survival</u> . The terms, provisions, representations, and warranties contained in Sections <list numbered Sections> of this Contract shall survive the completion of performance, termination or expiration of this Contract.
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Liens, Encumbrances, and Title

Add the following section as appropriate.

E.#.	<u>Liens, Encumbrances, and Title</u> . The Contractor owns and has good and marketable title to, and legal ownership of the goods, free and clear of any and all liens, security interests, pledges, mortgages, charges, limitations, claims, restrictions, rights of first refusal, rights of first offer, rights of first negotiation or other encumbrances of any kind or nature (collectively, "Encumbrances"). Upon delivery, without exception, the State will acquire from the Contractor legal and beneficial ownership of, good and marketable title to, and all rights to the goods to be sold to the State by the Contractor, free and clear of all Encumbrances. The Contractor shall, within ten (10) days after delivery deliver to the State if required by applicable law to establish or show evidence of
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ownership, any and all documents or certificates required to establish or show evidence of the State's ownership in the goods.

Procurement of Recovered Materials

E.#. Procurement of Recovered Materials.

- a. In the Performance of this contract, the Contractor shall make maximum use of products containing recovered materials that are EPA-designated items unless the product cannot be acquired competitively within a timeframe providing for compliance with the contract performance schedule; meeting contract performance requirements; or at a reasonable price.
- b. Information about this requirement, along with the list of EPA-designated items, is available at EPA's Comprehensive
- c. Procurement Guidelines website, <https://www.epa.gov/smm/comprehensive-procurement-guideline-cpg-program>.
- d. The Contractor also agrees to comply with all other applicable requirements of Section 6002 of the Solid Waste Disposal Act.

Access to Records

E.#. Access to Records.

- a. The Contractor agrees to provide the State, the FEMA Administrator, the Comptroller General of the United States, or any of their authorized representatives access to any books, documents, papers, and records of the Contractor which are directly pertinent to this contract for purposes of making audits, examinations, excerpts, and transcriptions.
- b. The Contractor agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.
- c. The Contractor agrees to provide the FEMA Administrator or his authorized representatives access to construction or other work sites pertaining to the work being completed under the contract.
- d. In Compliance with the Disaster Recovery Act of 2018, the State and the Contractor acknowledge and agree that no language in this contract is intended to prohibit the audits or internal reviews by the FEMA Administrator or the Comptroller General of the United States.

Use of DHS Logo

E.#. Use of DHS Logo. The contractor shall not use the DHS seal(s), logos, crests, or reproductions of flags or likenesses of DHS agency officials without specific FEMA pre-approval.

Compliance with Federal Law, Regulations, and Executive Orders

E.#. Compliance with Federal Law, Regulations, and Executive Orders. This is an acknowledgement that FEMA financial assistance will be used to fund all or a portion of the contract. The contractor will comply with all applicable Federal law, regulations, executive orders, FEMA policies, procedures, and directives.

No Obligation by Federal Government

E.#. No Obligation by Federal Government. The Federal Government is not a party to this contract and is not subject to any obligations or liabilities to the non-Federal entity, contractor, or any other party pertaining to any matter resulting from the Contract.

Compliance with The False Claims Act

E.#. Compliance with The False Claims Act. The Contractor acknowledges that 31 U.S.C. Chap. 38 (Administrative Remedies for False Claims and Statements) applies to the Contractor's actions pertaining to this contract.

Equal Employment Opportunity

E.#. Equal Employment Opportunity. During the performance of this Contract, the Contractor agrees as follows:

- a. The Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. The Contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to the following: Employment, upgrading, demotion, or transfer, recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting officer setting forth the provisions of this nondiscrimination clause.
- b. The Contractor will, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.
- c. The Contractor will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with the contractor's legal duty to furnish information.
- d. The Contractor will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, a notice to be provided by the agency contracting officer, advising the labor union or workers' representative of the contractor's commitments under section 202 of Executive Order 11246 of September 24, 1965, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
- e. The Contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.
- f. The Contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the contracting agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.
- g. In the event of the Contractor's non-compliance with the nondiscrimination clauses of this contract or with any of such rules, regulations, or orders, this contract may be canceled, terminated or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

- h. The Contractor will include the portion of the sentence immediately preceding paragraph (1) and the provisions of paragraphs (1) through (8) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The Contractor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance:

Provided, however, that in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency, the contractor may request the United States to enter into such litigation to protect the interests of the United States.

The applicant further agrees that it will be bound by the above equal opportunity clause with respect to its own employment practices when it participates in federally assisted construction work: Provided, That if the applicant so participating is a State or local government, the above equal opportunity clause is not applicable to any agency, instrumentality or subdivision of such government which does not participate in work on or under the contract.

The applicant agrees that it will assist and cooperate actively with the administering agency and the Secretary of Labor in obtaining the compliance of contractors and subcontractors with the equal opportunity clause and the rules, regulations, and relevant orders of the Secretary of Labor, that it will furnish the administering agency and the Secretary of Labor such information as they may require for the supervision of such compliance, and that it will otherwise assist the administering agency in the discharge of the agency's primary responsibility for securing compliance.

The applicant further agrees that it will refrain from entering into any contract or contract modification subject to Executive Order 11246 of September 24, 1965, with a contractor debarred from, or who has not demonstrated eligibility for, Government contracts and federally assisted construction contracts pursuant to the Executive Order and will carry out such sanctions and penalties for violation of the equal opportunity clause as may be imposed upon contractors and subcontractors by the administering agency or the Secretary of Labor pursuant to Part II, Subpart D of the Executive Order. In addition, the applicant agrees that if it fails or refuses to comply with these undertakings, the administering agency may take any or all of the following actions: Cancel, terminate, or suspend in whole or in part this grant (contract, loan, insurance, guarantee); refrain from extending any further assistance to the applicant under the program with respect to which the failure or refund occurred until satisfactory assurance of future compliance has been received from such applicant; and refer the case to the Department of Justice for appropriate legal proceedings.

Compliance with Contract Work Hours and Safety Standards Act

E.#. Compliance with Contract Work Hours and Safety Standards Act.

- a. Overtime requirements. No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.
- b. Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in paragraph (b)(1) of this section the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia

or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (b)(1) of this section, in the sum of \$27 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (b)(1) of this section.

- c. Withholding for unpaid wages and liquidated damages. The (write in the name of the Federal agency or the loan or grant recipient) shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (b)(2) of this section.
- d. Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraph (b)(1) through (4) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (b)(1) through (4) of this section.

Prohibition on Certain Telecommunications and Video Surveillance Services or Equipment

Add the following Section as appropriate.

- E.#.** Prohibition on Certain Telecommunications and Video Surveillance Services or Equipment. If applicable and as required by 2 CFR 200.216, Contractor is prohibited from obligating or expending loan or grant funds to procure or obtain; extend or renew a contract to procure or obtain; or enter into a contract (or extend or renew a contract) to procure or obtain equipment, services, or systems that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as a critical technology as part of any system. As described in Public Law 115-232, Section 889, "covered telecommunications equipment" is as follows:
- a. Telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities).
 - b. For the purpose of public safety, security of government facilities, physical security surveillance of critical infrastructure, and other national security purposes, video surveillance and telecommunications equipment produced by Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company (or any subsidiary or affiliate of such entities).
 - c. Telecommunications or video surveillance services provided by such entities or using such equipment.
 - d. Telecommunications or video surveillance equipment or services produced or provided by an entity that the Secretary of Defense, in consultation with the Director of the National Intelligence or the Director of the Federal Bureau of Investigation, reasonably believes to be an entity owned or controlled by, or otherwise connected to, the government of a covered foreign country.

Tennessee Department of Mental Health and Substance Abuse Services

The Tennessee Department of Mental Health and Substance Abuse Services may add the following Sections as appropriate:

E. #. Code of Conduct. The Contractor shall ensure that there is a code of conduct applicable to all Contractor employees that covers, at minimum, business practices, clinical practices, and workplace interaction. Contractor employees shall conduct their practice in conformity with all applicable statutes, rules and regulations, and recognized ethical standards pertaining to Contractor's profession. Contractor shall develop procedures for reporting violations of the ethical standards, which shall be communicated to Contractor's employees, including new hires, on at least an annual basis. Contractor's code of conduct shall prohibit Contractor, its officers, directors, and employees from retaliating against any Contractor employee who reports any violations or acts or omissions that appear to be violations. Contractor's non-retaliation policy shall prescribe discipline for violating the Contractor's code of conduct. Failure to implement a code of conduct in accordance with this section and to adequately address suspected violations of the code of conduct shall entitle the State to exercise any right it has at law or in equity, including, but not limited to termination of this Contract.

E. #. Additional Subcontracting Requirements. Contractor shall ensure in all subcontracts between it and Contractor's State approved subcontractors that each subcontract shall contain the sections of "Confidentiality of Records", "HIPAA Compliance", and "Rule 2 Compliance" (as identified by the section headings) as these may be modified from time to time. Notwithstanding any use of State approved subcontractors, the Contractor shall be the prime contractor and shall be responsible for all work performed by its subcontractors or other providers of goods or services.

E. #. Rule 2 Compliance. The State and the Contractor shall comply with the obligations under Rule 2 of the Confidentiality of Alcohol and Drug Abuse Patient Records, and its accompanying regulations as codified at 42 CFR §§ 2.1, *et seq.* ("Rule 2").

- a. The Contractor warrants to the State that it is familiar with the requirements of Rule 2 and its accompanying regulations, and that it will comply with all requirements imposed by Rule 2 during the Term of this Contract.
- b. The Contractor warrants that it will cooperate with the State, including cooperation and coordination with State privacy officials and other compliance officers required by Rule 2 during the Term of this Contract.
- c. The State and the Contractor will execute such documents, including but not limited to business associate agreements, as required by Rule 2 that are reasonably necessary for the State and the Contractor to comply with Rule 2. This provision shall not apply if information received by the State under this Contract is NOT "protected health information" as defined by Rule 2 or if Rule 2 permits the State to receive such information without entering into a business associate agreement or other agreement.

E. #. Prohibitions on Use of Federal Substance Abuse Block Grant Funds. Pursuant to federal law, Contractor shall not use any funds paid or services rendered under the federal Substance Abuse Prevention and Treatment Block Grant to supplant any other funds available for the goods or services provided under this Contract. Contractor shall not use any federal Substance Abuse Prevention and Treatment Block Grant funds under this Contract for any of the following purposes:

- a. to provide inpatient hospital or inpatient community mental health services;
- b. to make cash payments to intended recipients of health services;
- c. to purchase or improve land; purchase, construct, or permanently improve (other than minor remodeling) any building or facility; or purchase major medical equipment;
- d. to satisfy any requirement for the expenditure of non-federal funds as a condition for the receipt of federal funds;
- e. to provide financial assistance to any entity other than a public or non-profit entity;
- f. to carry out any program of distributing sterile needles for the hypodermic injection of any illegal drug or distributing bleach for the purpose of cleansing needles for such hypodermic injection; or
- g. to carry out any testing for the etiologic agent for acquired immune deficiency syndrome unless such testing is accompanied by the appropriate pre-test and post-test counseling.

License.

If the contract will involve the State granting a license, e.g., use of the State of TN registered trademark, add the following Section as appropriate:

- E.#.** License. State hereby grants to Contractor the non-exclusive, non-transferable license, privilege and authority to use the Property in connection with the project as approved, set out in this Contract **at Section A/Attachment Reference** all other rights being reserved to State for the Term of this contract as provided below.
- a. Property. The "Property" licensed **[Insert word portion of mark, if any]** mark:

[Insert picture of mark]
 - i. Exclusivity. None.
 - ii. Territory. Worldwide.
 - b. Term. Contractor shall begin to use the Property as set out in **Contract Section A/Attachment Reference** and shall cease upon termination of the Contract unless otherwise agreed to herein.
 - c. Use Limitations and Collateral Materials. The Property may be used on signs, promotional materials, marketing materials, Contractor's visitor website, and/or as otherwise set out in **Contract [insert Contract #], Section A/Attachment Reference**. The License also includes the right to create and use promotional, advertising and packing material in connection with marketing of the services. In advertising and promoting with use of the Property, Contractor shall seek prior approval as set out in this Section. The Contractor does not have any rights to use the Property on any consumer products or merchandise rights.
 - d. Use of Signage and Other Materials. Upon expiration of this License, Contractor shall cease use of the Property on current materials. If this License is terminated earlier than contemplated by this Contract, Contractor and State shall negotiate in good faith the wind up of the License.
 - e. Sub-licensing. Sub-licensing is not allowed.
 - f. Approvals. All use of the Property shall require State's prior written approval. Failure to obtain approvals at all stages shall be cause for termination of Contractor's use of the

Property, only, and not the remainder of the Contract unless failure to use the Property results in a material breach.

- g. Intellectual Property Notices. The Property shall always be displayed with the “®” symbol and the following notice shall appear, where space permits, on all marketing or collateral materials bearing the Property:

[Insert word portion of Mark, if any] is a registered trademark and is used under license to the Contractor.

- h. Exclusive Property of State. The Property is and shall remain the exclusive property of State and all rights arising from the use of the Property, shall inure to State. Contractor acknowledges that it does not now have and in the future will not assert any right, title or interest of any kind or nature whatsoever in or to the Property nor will it change or contest any of State's rights therein.
- i. Royalty Rate. This License shall be royalty free.

SIGNATURES

Draft the Contract so that the signature section immediately follows the previous section text separated by only one blank line. Do NOT insert an arbitrary page break prior to the signature section.

By contract signature, the contracting agency head shall assure and affirm that:

1. if there is a Maximum Liability included in the Contract, then there is a balance in the appropriation from which obligations under the Contract are required to be paid that is not already encumbered to pay other obligations;
2. the contracting agency maintains documentation of a fair and impartial contractor selection in full compliance with the approved procurement methodology as indicated by the summary cover sheet; and,
3. the proposed Scope is clear and correct, adequate for all legal and enforcement purposes, and sufficiently detailed to ensure Contractor accountability and results.