



**STATE OF TENNESSEE**  
**Tennessee Emergency Management Agency**

**REQUEST FOR PROPOSALS**  
**FOR**  
**Learning Management System (LMS)**

**RFP # 34101-90210**

**Release 2**

**RFP CONTENTS**

**SECTIONS:**

1. INTRODUCTION
2. RFP SCHEDULE OF EVENTS
3. RESPONSE REQUIREMENTS
4. GENERAL CONTRACTING INFORMATION & REQUIREMENTS
5. EVALUATION & CONTRACT AWARD

**ATTACHMENTS:**

- 6.1. Response Statement of Certifications & Assurances
- 6.2. Technical Response & Evaluation Guide
- 6.3. Cost Proposal & Scoring Guide
- 6.4. Reference Questionnaire
- 6.5. Score Summary Matrix
- 6.6. *Pro Forma* Contract

## 1. INTRODUCTION

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The State of Tennessee, Tennessee Emergency Management Agency, hereinafter referred to as “the State,” issues this Request for Proposals (RFP) to define minimum contract requirements; solicit responses; detail response requirements; and, outline the State’s process for evaluating responses and selecting a contractor to provide the needed goods or services.

Through this RFP, the State seeks to procure necessary goods or services at the most favorable, competitive prices and to give ALL qualified respondents, including those that are owned by minorities, women, service-disabled veterans, persons with disabilities and small business enterprises, an opportunity to do business with the state as contractors, subcontractors or suppliers.

### 1.1. Statement of Procurement Purpose

The Tennessee Emergency Management Agency (TEMA), seeks a data/learning management system to administer, schedule, track, and report training and exercise events sponsored by the agency. This system is used by Tennessee’s first responders, emergency management personnel, community preparedness partners, and the public. This system must have an inviting and intuitive web presence for the end user yet be robust enough to generate detailed reports for the administrators.

1.1.2. The maximum liability for this Contract will exceed \$300,000.

### 1.2. Scope of Service, Contract Period, & Required Terms and Conditions

The RFP Attachment 6.6., *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 contract document the successful Respondent must sign.

### 1.3. Nondiscrimination

No person shall be excluded from participation in, be denied benefits of, or be otherwise subjected to discrimination in the performance of a Contract pursuant to this RFP 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, Tennessee state constitutional, or statutory law. The Contractor pursuant to this RFP shall, upon request, show proof of such nondiscrimination and shall post in conspicuous places, available to all employees and applicants, notices of nondiscrimination.

### 1.4. RFP Communications

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

**RFP # 34101-90210**

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

1.4.2.1. Prospective Respondents must direct communications concerning this RFP to the following person designated as the Solicitation Coordinator:

Sharon Pope  
 Department of General Services  
 STREET ADDRESS  
 615-741-9588  
 Sharon.Pope@tn.gov

1.4.2.2. Notwithstanding the foregoing, Prospective Respondents may alternatively contact:

- a. staff of the Governor's Office of Diversity Business Enterprise for assistance available to minority-owned, woman-owned, service-disabled veteran-owned, businesses owned by persons with disabilities, and small businesses as well as general, public information relating to this RFP (visit <https://www.tn.gov/generalservices/procurement/central-procurement-office--cpo-/governor-s-office-of-diversity-business-enterprise--godbe--/godbe-general-contacts.html> for contact information); and
- b. the following individual designated by the State to coordinate compliance with the nondiscrimination requirements of the State of Tennessee, Title VI of the Civil Rights Act of 1964, the Americans with Disabilities Act of 1990, and associated federal regulations:

Helen Crowley  
 Central Procurement Office  
 Department of General Services  
 WRS Tennessee Tower, 3rd Floor  
 312 Rosa L. Parks Ave., Nashville, Tennessee 37243  
 615-741-3836  
 Helen.Crowley@tn.gov

- 1.4.3. Only the State's official written responses and communications with Respondents are binding with regard to this RFP. Oral communications between a State official and one or more Respondents are unofficial and non-binding.
- 1.4.4. Potential Respondents must ensure that the State receives all written questions and comments, including questions and requests for clarification, no later than the Written Questions & Comments Deadline detailed in the RFP Section 2, Schedule of Events.
- 1.4.5. Respondents must assume the risk of the method of dispatching any communication or response to the State. The State assumes no responsibility for delays or delivery failures resulting from the Respondent's method of dispatch. Actual or digital "postmarking" of a communication or response to the State by a specified deadline is not a substitute for the State's actual receipt of a communication or response. It is encouraged for Respondents to submit bids digitally.
- 1.4.6. The State will convey all official responses and communications related to this RFP to the prospective Respondents from whom the State has received a Notice of Intent to Respond (refer to RFP Section 1.8).
- 1.4.7. The State reserves the right to determine, at its sole discretion, the method of conveying official, written responses and communications related to this RFP. Such written communications may be transmitted by mail, hand-delivery, facsimile, electronic mail, Internet posting, or any other means deemed reasonable by the State. For internet posting, please refer to the following website: <https://www.tn.gov/generalservices/procurement/central-procurement-office--cpo-/supplier-information/request-for-proposals--rfp--opportunities1.html>.

- 1.4.8. The State reserves the right to determine, at its sole discretion, the appropriateness and adequacy of responses to written comments, questions, and requests related to this RFP. The State's official, written responses will constitute an amendment of this RFP.
- 1.4.9. Any data or factual information provided by the State (in this RFP, an RFP amendment or any other communication relating to this RFP) is for informational purposes only. The State will make reasonable efforts to ensure the accuracy of such data or information, however it is the Respondent's obligation to independently verify any data or information provided by the State. The State expressly disclaims the accuracy or adequacy of any information or data that it provides to prospective Respondents.

#### 1.5. **Assistance to Respondents With a Handicap or Disability**

Prospective Respondents with a handicap or disability may receive accommodation relating to the communication of this RFP and participating in the RFP process. Prospective Respondents may contact the Solicitation Coordinator to request such reasonable accommodation no later than the Disability Accommodation Request Deadline detailed in the RFP Section 2, Schedule of Events.

#### 1.6. **Respondent Required Review & Waiver of Objections**

- 1.6.1. Each prospective Respondent must carefully review this RFP, including but not limited to, attachments, the RFP Attachment 6.6., *Pro Forma* Contract, and any amendments, for questions, comments, defects, objections, or any other matter requiring clarification or correction (collectively called "questions and comments").
- 1.6.2. Any prospective Respondent having questions and comments concerning this RFP must provide them in writing to the State no later than the Written Questions & Comments Deadline detailed in the RFP Section 2, Schedule of Events.
- 1.6.3. Protests based on any objection to the RFP shall be considered waived and invalid if the objection has not been brought to the attention of the State, in writing, by the Written Questions & Comments Deadline.

#### 1.7. **Pre-Response Conference**

A Pre-response Conference will be held at the time and date detailed in the RFP Section 2, Schedule of Events. Pre-response Conference attendance is not mandatory, and prospective Respondents may be limited to a maximum number of attendees depending upon overall attendance and space limitations.

The conference will be held at:

Microsoft Teams meeting

**Join on your computer, mobile app or room device**

[Click here to join the meeting](#)

Meeting ID: 250 797 118 310

Passcode: QChDiB

[Download Teams](#) | [Join on the web](#)

**Join with a video conferencing device**

stateoftn@m.webex.com

Video Conference ID: 115 285 112 2

[Alternate VTC instructions](#)

**Or call in (audio only)**

[+1 629-209-4396,,190802964#](#) United States, Nashville

Phone Conference ID: 190 802 964#

[Find a local number](#) | [Reset PIN](#)

The purpose of the conference is to discuss the RFP scope of goods or services. The State will entertain questions, however prospective Respondents must understand that the State's oral response to any question at the Pre-response Conference shall be unofficial and non-binding. Prospective Respondents must submit all questions, comments, or other concerns regarding the RFP in writing prior to the Written Questions & Comments Deadline date detailed in the RFP Section 2, Schedule of Events. The State will send the official response to these questions and comments to prospective Respondents from whom the State has received a Notice of Intent to respond as indicated in RFP Section 1.8 and on the date detailed in the RFP Section 2, Schedule of Events.

**1.8. Notice of Intent to Respond**

Before the Notice of Intent to Respond Deadline detailed in the RFP Section 2, Schedule of Events, prospective Respondents should submit to the Solicitation Coordinator a Notice of Intent to Respond (in the form of a simple e-mail or other written communication). Such notice should include the following information:

- the business or individual's name (as appropriate);
- a contact person's name and title; and
- the contact person's mailing address, telephone number, facsimile number, and e-mail address.

**A Notice of Intent to Respond creates no obligation and is not a prerequisite for submitting a response, however, it is necessary to ensure receipt of any RFP amendments or other notices and communications relating to this RFP.**

**1.9. Response Deadline**

A Respondent must ensure that the State receives a response no later than the Response Deadline time and date detailed in the RFP Section 2, Schedule of Events. The State will not accept late responses, and a Respondent's failure to submit a response before the deadline will result in disqualification of the response. It is the responsibility of the Respondent to ascertain any additional security requirements with respect to packaging and delivery to the State of Tennessee. Respondents should be mindful of any potential delays due to security screening procedures, weather, or other filing delays whether foreseeable or unforeseeable.

## 2. RFP SCHEDULE OF EVENTS

2.1. The following RFP Schedule of Events represents the State's best estimate for this RFP.

EVENT	TIME (central time zone)	DATE
1. RFP Issued		February 13, 2024
2. Disability Accommodation Request Deadline	2:00 p.m.	February 22, 2024
3. Pre-response Conference	10:00 a. m.	February 23, 2024
4. Notice of Intent to Respond Deadline	2:00 p.m.	February 26, 2024
5. Written "Questions & Comments" Deadline	2:00 p.m.	February 29, 2024
6. State Response to Written "Questions & Comments"		March 21, 2024
7. Response Deadline	2:00 p.m.	March 28, 2024
8. State Schedule Respondent Oral Presentations		April 3, 2024
9. Respondent Oral Presentations (Virtual)	8:30 a.m. - 4:00 p.m.	April 11 - 12, 2024
10. State Completion of Technical Response Evaluations		April 15, 2024
11. State Opening & Scoring of Cost Proposals	2:00 p.m.	April 16, 2024
12. Negotiations (Optional)	2:00 p.m.	April 17 - 18, 2024
13. State Notice of Intent to Award Released <u>and</u> RFP Files Opened for Public Inspection	2:00 p.m.	April 22, 2024
14. End of Open File Period		April 29, 2024
15. State sends contract to Contractor for signature		April 30, 2024
16. Contractor Signature Deadline	2:00 p.m.	May 3, 2024

2.2. **At its sole discretion, The State reserves the right to adjust the RFP Schedule of Events as it deems necessary.** Any adjustment of the Schedule of Events shall constitute an RFP amendment, and the State will communicate such to prospective Respondents from whom the State has received a Notice of Intent to Respond (refer to section 1.8).

### 3. RESPONSE REQUIREMENTS

#### 3.1. Response Form

A response to this RFP must consist of two parts, a Technical Response and a Cost Proposal.

- 3.1.1. **Technical Response.** RFP Attachment 6.2., Technical Response & Evaluation Guide provides the specific requirements for submitting a response. This guide includes mandatory requirement items, general qualifications and experience items, and technical qualifications, experience, and approach items all of which must be addressed with a written response and, in some instances, additional documentation.

**NOTICE: A technical response must not include any pricing or cost information. If any pricing or cost information amounts of any type (even pricing relating to other projects) is included in any part of the technical response, the state may deem the response to be non-responsive and reject it.**

- 3.1.1.1. A Respondent should duplicate and use the RFP Attachment 6.2., Technical Response & Evaluation Guide to organize, reference, and draft the Technical Response by duplicating the attachment, adding appropriate page numbers as required, and using the guide as a table of contents covering the Technical Response.
- 3.1.1.2. A response should be economically prepared, with emphasis on completeness and clarity. A response, as well as any reference material presented, must be written in English and must be written on standard 8 ½" x 11" pages (although oversize exhibits are permissible) and use a 12 point font for text. All response pages must be numbered.
- 3.1.1.3. All information and documentation included in a Technical Response should correspond to or address a specific requirement detailed in the RFP Attachment 6.2., Technical Response & Evaluation Guide. All information must be incorporated into a response to a specific requirement and clearly referenced. Any information not meeting these criteria will be deemed extraneous and will not contribute to evaluations.
- 3.1.1.4. The State may determine a response to be non-responsive and reject it if:
- a. the Respondent fails to organize and properly reference the Technical Response as required by this RFP and the RFP Attachment 6.2., Technical Response & Evaluation Guide; or
  - b. the Technical Response document does not appropriately respond to, address, or meet all of the requirements and response items detailed in the RFP Attachment 6.2., Technical Response & Evaluation Guide.
- 3.1.2. **Cost Proposal.** A Cost Proposal must be recorded on an exact duplicate of the RFP Attachment 6.3., Cost Proposal & Scoring Guide.

**NOTICE: If a Respondent fails to submit a cost proposal exactly as required, the State may deem the response to be non-responsive and reject it.**

- 3.1.2.1. A Respondent must only record the proposed cost exactly as required by the RFP Attachment 6.3., Cost Proposal & Scoring Guide and must NOT record any other rates, amounts, or information.

- 3.1.2.2. The proposed cost shall incorporate ALL costs for services under the contract for the total contract period, including any renewals or extensions.
- 3.1.2.3. A Respondent must sign and date the Cost Proposal.
- 3.1.2.4. A Respondent must submit the Cost Proposal to the State in a sealed package separate from the Technical Response (as detailed in RFP Sections 3.2.3., *et seq.*).

## 3.2. Response Delivery

- 3.2.1. A Respondent must ensure that both the original Technical Response and Cost Proposal documents meet all form and content requirements, including all required signatures, as detailed within this RFP, as may be amended.
- 3.2.2. A Respondent must submit original Technical Response and Cost Proposal documents and copies as specified below.

### 3.2.1.1. Digital Media Submission

#### 3.2.1.1.1. Technical Response

The Technical Response document should be in the form of one (1) digital document in "PDF" format properly recorded on its own otherwise blank, standard CD-R recordable disc or USB flash drive and should be clearly identified as the:

**"RFP # 34101-90210 TECHNICAL RESPONSE ORIGINAL"**

and two (1) digital copies of the Technical Response each in the form of one (1) digital document in "PDF" format properly recorded on its own otherwise blank, standard CD-R recordable disc or USB flash drive and should be clearly identified as the:

**"RFP # 34101-90210 TECHNICAL RESPONSE COPY"**

The customer references should be delivered by each reference in accordance with RFP Attachment 6.4, Reference Questionnaire.

#### 3.2.2.1.2. Cost Proposal

The Cost Proposal should be in the form of one (1) digital document in "PDF" or "XLS" format properly recorded on a separate, otherwise blank, standard CD-R recordable disc or USB flash drive clearly labeled:

**"RFP # 34101-90210 COST PROPOSAL COPY"**

An electronic or facsimile signature, as applicable, on the Cost Proposal is acceptable.

### 3.2.2.2. E-mail Submission

#### 3.2.2.2.1 Technical Response

The Technical Response document should be in the form of one (1) digital document in "PDF" format or other easily accessible digital format attached to an e-mail to the Solicitation Coordinator. Both the subject and file name should be clearly identified as follows:

**"RFP # 34101-90210 TECHNICAL RESPONSE"**

The customer references should be delivered by each reference in accordance with RFP Attachment 6.4. Reference Questionnaire.

#### 3.2.2.2. Cost Proposal:

The Cost Proposal should be in the form of one (1) digital document in “PDF” or “XLS” format or other easily accessible digital format attached to an e-mail to the Solicitation Coordinator. Both the subject and file name should be clearly identified as follows:

**“RFP # 34101-90210 COST PROPOSAL”**

An electronic or facsimile signature, as applicable, on the Cost Proposal is acceptable.

3.2.3. For e-mail submissions, the Technical Response and Cost Proposal documents must be dispatched to the Solicitation Coordinator in separate e-mail messages. For digital media submissions, a Respondent must separate, seal, package, and label the documents and copies for delivery as follows:

3.2.3.1. The Technical Response and copies must be placed in a sealed package that is clearly labeled:

**“DO NOT OPEN... RFP # 34101-90210 TECHNICAL RESPONSE FROM  
[RESPONDENT LEGAL ENTITY NAME]”**

3.2.3.2. The Cost Proposal must be placed in a separate, sealed package that is clearly labeled:

**“DO NOT OPEN... RFP # 34101-90210 COST PROPOSAL FROM [RESPONDENT  
LEGAL ENTITY NAME]”**

3.2.3.3. The separately, sealed Technical Response and Cost Proposal components may be enclosed in a larger package for mailing or delivery, provided that the outermost package is clearly labeled:

**“RFP # 34101-90210 SEALED TECHNICAL RESPONSE & SEALED COST  
PROPOSAL FROM [RESPONDENT LEGAL ENTITY NAME]”**

3.2.3.4. Any Respondent wishing to submit a Response in a format other than digital may do so by contacting the Solicitation Coordinator.

3.2.4. A Respondent must ensure that the State receives a response no later than the Response Deadline time and date detailed in the RFP Section 2, Schedule of Events at the following address:

**Sharon Pope** | Sourcing Account Specialist  
Central Procurement Office  
Tennessee Tower, 3rd Floor  
312 Rosa L. Parks Ave., Nashville, TN 37243  
p. 615-741-9588  
[Sharon.Pope@tn.gov](mailto:Sharon.Pope@tn.gov)

### 3.3. Response & Respondent Prohibitions

- 3.3.1. A response must not include alternate contract terms and conditions. If a response contains such terms and conditions, the State, at its sole discretion, may determine the response to be a non-responsive counteroffer and reject it.
- 3.3.2. A response must not restrict the rights of the State or otherwise qualify either the offer to deliver goods or provide services as required by this RFP or the Cost Proposal. If a response restricts the rights of the State or otherwise qualifies either the offer to deliver goods or provide services as required by this RFP or the Cost Proposal, the State, at its sole discretion, may determine the response to be a non-responsive counteroffer and reject it.
- 3.3.3. A response must not propose alternative goods or services (*i.e.*, offer services different from those requested and required by this RFP) unless expressly requested in this RFP. The State may consider a response of alternative goods or services to be non-responsive and reject it.
- 3.3.4. A Cost Proposal must be prepared and arrived at independently and must not involve any collusion between Respondents. The State will reject any Cost Proposal that involves collusion, consultation, communication, or agreement between Respondents. Regardless of the time of detection, the State will consider any such actions to be grounds for response rejection or contract termination.
- 3.3.5. A Respondent must not provide, for consideration in this RFP process or subsequent contract negotiations, any information that the Respondent knew or should have known was materially incorrect. If the State determines that a Respondent has provided such incorrect information, the State will deem the Response non-responsive and reject it.
- 3.3.6. A Respondent must not submit more than one Technical Response and one Cost Proposal in response to this RFP, except as expressly requested by the State in this RFP. If a Respondent submits more than one Technical Response or more than one Cost Proposal, the State will deem all of the responses non-responsive and reject them.
- 3.3.7. A Respondent must not submit a response as a prime contractor while also permitting one or more other Respondents to offer the Respondent as a subcontractor in their own responses. Such may result in the disqualification of all Respondents knowingly involved. This restriction does not, however, prohibit different Respondents from offering the same subcontractor as a part of their responses (provided that the subcontractor does not also submit a response as a prime contractor).
- 3.3.8. The State shall not consider a response from an individual who is, or within the past six (6) months has been, a State employee. For purposes of this RFP:
  - 3.3.8.1. An individual shall be deemed a State employee until such time as all compensation for salary, termination pay, and annual leave has been paid.
  - 3.3.8.2. A contract with or a response from a company, corporation, or any other contracting entity in which a controlling interest is held by any State employee shall be considered to be a contract with or proposal from the employee; and
  - 3.3.8.3. A contract with or a response from a company, corporation, or any other contracting entity that employs an individual who is, or within the past six (6) months has been, a State employee shall not be considered a contract with or a proposal from the employee and shall not constitute a prohibited conflict of interest.
- 3.3.9. This RFP is also subject to Tenn. Code Ann. § 12-4-101—105.

### 3.4. **Response Errors & Revisions**

A Respondent is responsible for any and all response errors or omissions. A Respondent will not be allowed to alter or revise response documents after the Response Deadline time and date detailed in the RFP Section 2, Schedule of Events unless such is formally requested, in writing, by the State.

### 3.5. **Response Withdrawal**

A Respondent may withdraw a submitted response at any time before the Response Deadline time and date detailed in the RFP Section 2, Schedule of Events by submitting a written request signed by an authorized Respondent representative. After withdrawing a response, a Respondent may submit another response at any time before the Response Deadline. After the Response Deadline, a Respondent may only withdraw all or a portion of a response where the enforcement of the response would impose an unconscionable hardship on the Respondent.

### 3.6. **Additional Services**

If a response offers goods or services in addition to those required by and described in this RFP, the State, at its sole discretion, may add such services to the contract awarded as a result of this RFP. Notwithstanding the foregoing, a Respondent must not propose any additional cost amounts or rates for additional goods or services. Regardless of any additional services offered in a response, the Respondent's Cost Proposal must only record the proposed cost as required in this RFP and must not record any other rates, amounts, or information.

**NOTICE: If a Respondent fails to submit a Cost Proposal exactly as required, the State may deem the response non-responsive and reject it.**

### 3.7. **Response Preparation Costs**

The State will not pay any costs associated with the preparation, submittal, or presentation of any response.

#### 4. GENERAL CONTRACTING INFORMATION & REQUIREMENTS

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##### 4.1. RFP Amendment

The State at its sole discretion may amend this RFP, in writing, at any time prior to contract award. However, prior to any such amendment, the State will consider whether it would negatively impact the ability of potential Respondents to meet the response deadline and revise the RFP Schedule of Events if deemed appropriate. If an RFP amendment is issued, the State will convey it to potential Respondents who submitted a Notice of Intent to Respond (refer to RFP Section 1.8). A response must address the final RFP (including its attachments) as amended.

##### 4.2. RFP Cancellation

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

##### 4.3. State Right of Rejection

- 4.3.1. Subject to applicable laws and regulations, the State reserves the right to reject, at its sole discretion, any and all responses.
- 4.3.2. The State may deem as non-responsive and reject any response that does not comply with all terms, conditions, and performance requirements of this RFP. Notwithstanding the foregoing, the State reserves the right to waive, at its sole discretion, minor variances from full compliance with this RFP. If the State waives variances in a response, such waiver shall not modify the RFP requirements or excuse the Respondent from full compliance, and the State may hold any resulting Contractor to strict compliance with this RFP.

##### 4.4. Assignment & Subcontracting

- 4.4.1. The Contractor may not subcontract, transfer, or assign any portion of the Contract awarded as a result of this RFP without prior approval of the State. The State reserves the right to refuse approval, at its sole discretion, of any subcontract, transfer, or assignment.
- 4.4.2. If a Respondent intends to use subcontractors, the response to this RFP must specifically identify the scope and portions of the work each subcontractor will perform (refer to RFP Attachment 6.2., Section B, General Qualifications & Experience Item B.14.).
- 4.4.3. Subcontractors identified within a response to this RFP will be deemed as approved by the State unless the State expressly disapproves one or more of the proposed subcontractors prior to signing the Contract.
- 4.4.4. After contract award, a Contractor may only substitute an approved subcontractor at the discretion of the State and with the State's prior, written approval.
- 4.4.5. Notwithstanding any State approval relating to subcontracts, the Respondent who is awarded a contract pursuant to this RFP will be the prime contractor and will be responsible for all work under the Contract.

##### 4.5. Right to Refuse Personnel or Subcontractors

The State reserves the right to refuse, at its sole discretion and notwithstanding any prior approval, any personnel of the prime contractor or a subcontractor providing goods or services in the performance of a contract resulting from this RFP. The State will document in writing the reason(s) for any rejection of personnel.

#### 4.6. Insurance

The State will require the awarded Contractor to provide a Certificate of Insurance issued by an insurance company licensed or authorized to provide insurance in the State of Tennessee. Each Certificate of Insurance shall indicate current insurance coverages meeting minimum requirements as may be specified by this RFP. A failure to provide a current, Certificate of Insurance will be considered a material breach and grounds for contract termination.

#### 4.7. Professional Licensure and Department of Revenue Registration

- 4.7.1. All persons, agencies, firms, or other entities that provide legal or financial opinions, which a Respondent provides for consideration and evaluation by the State as a part of a response to this RFP, shall be properly licensed to render such opinions.
- 4.7.2. Before the Contract resulting from this RFP is signed, the apparent successful Respondent (and Respondent employees and subcontractors, as applicable) must hold all necessary or appropriate business or professional licenses to provide the goods or services as required by the contract. The State may require any Respondent to submit evidence of proper licensure.
- 4.7.3. Before the Contract resulting from this RFP is signed, the apparent successful Respondent must be registered with the Tennessee Department of Revenue for the collection of Tennessee sales and use tax. The State shall not award a contract unless the Respondent provides proof of such registration or provides documentation from the Department of Revenue that the Contractor is exempt from this registration requirement. The foregoing is a mandatory requirement of an award of a contract pursuant to this solicitation. To register, please visit the Department of Revenue's Tennessee Taxpayer Access Point (TNTAP) website for Online Registration and the Vendor Contract Questionnaire. These resources are available at the following:  
<https://tntap.tn.gov/eservices/#1>

#### 4.8. Disclosure of Response Contents

- 4.8.1. All materials submitted to the State in response to this RFP shall become the property of the State of Tennessee. Selection or rejection of a response does not affect this right. By submitting a response, a Respondent acknowledges and accepts that the full response contents and associated documents will become open to public inspection in accordance with the laws of the State of Tennessee.
- 4.8.2. The State will hold all response information, including both technical and cost information, in confidence during the evaluation process.
- 4.8.3. Upon completion of response evaluations, indicated by public release of a Notice of Intent to Award, the responses and associated materials will be open for review by the public in accordance with Tenn. Code Ann. § 10-7-504(a)(7).

#### 4.9. Contract Approval and Contract Payments

- 4.9.1. After contract award, the Contractor who is awarded the contract must submit appropriate documentation with the Department of Finance and Administration, Division of Accounts.
- 4.9.2. This RFP and its contractor selection processes do not obligate the State and do not create rights, interests, or claims of entitlement in either the Respondent with the apparent best-evaluated response or any other Respondent. State obligations pursuant to a contract award shall commence only after the Contract is signed by the State agency head and the Contractor and after the Contract is approved by all other state officials as required by applicable laws and regulations.
- 4.9.3. No payment will be obligated or made until the relevant Contract is approved as required by applicable statutes and rules of the State of Tennessee.

- 4.9.3.1. The State shall not be liable for payment of any type associated with the Contract resulting from this RFP (or any amendment thereof) or responsible for any goods delivered or services rendered by the Contractor, even goods delivered or services rendered in good faith and even if the Contractor is orally directed to proceed with the delivery of goods or the rendering of services, if it occurs before the Contract Effective Date or after the Contract Term.
- 4.9.3.2. All payments relating to this procurement will be made in accordance with the Payment Terms and Conditions of the Contract resulting from this RFP (refer to RFP Attachment 6.6., *Pro Forma* Contract, Section C).
- 4.9.3.3. If any provision of the Contract provides direct funding or reimbursement for the competitive purchase of goods or services as a component of contract performance or otherwise provides for the reimbursement of specified, actual costs, the State will employ all reasonable means and will require all such documentation that it deems necessary to ensure that such purchases were competitive and costs were reasonable, necessary, and actual. The Contractor shall provide reasonable assistance and access related to such review. Further, the State shall not remit, as funding or reimbursement pursuant to such provisions, any amounts that it determines do not represent reasonable, necessary, and actual costs.

#### 4.10. **Contractor Performance**

The Contractor who is awarded a contract will be responsible for the delivery of all acceptable goods or the satisfactory completion of all services set out in this RFP (including attachments) as may be amended. All goods or services are subject to inspection and evaluation by the State. The State will employ all reasonable means to ensure that goods delivered or services rendered are in compliance with the Contract, and the Contractor must cooperate with such efforts.

#### 4.11. **Contract Amendment**

After Contract award, the State may request the Contractor to deliver additional goods or perform additional services within the general scope of the Contract and this RFP, but beyond the specified Scope, and for which the Contractor may be compensated. In such instances, the State will provide the Contractor a written description of the additional goods or services. The Contractor must respond to the State with a time schedule for delivering the additional goods or accomplishing the additional services based on the compensable units included in the Contractor's response to this RFP. If the State and the Contractor reach an agreement regarding the goods or services and associated compensation, such agreement must be effected by means of a contract amendment. Further, any such amendment requiring additional goods or services must be signed by both the State agency head and the Contractor and must be approved by other state officials as required by applicable statutes, rules, policies and procedures of the State of Tennessee. The Contractor must not provide additional goods or render additional services until the State has issued a written contract amendment with all required approvals.

Notwithstanding the above, *pro forma* Contract section A.6 provides for limited service "change orders" without a formal Contract Amendment upon the documented mutual agreement by the Parties.

#### 4.12. **Severability**

If any provision of this RFP is declared by a court to be illegal or in conflict with any law, said decision will not affect the validity of the remaining RFP terms and provisions, and the rights and obligations of the State and Respondents will be construed and enforced as if the RFP did not contain the particular provision held to be invalid.

**4.13. Next Ranked Respondent**

The State reserves the right to initiate negotiations with the next ranked Respondent should the State cease doing business with any Respondent selected via this RFP process.

## 5. EVALUATION & CONTRACT AWARD

### 5.1. Evaluation Categories & Maximum Points

The State will consider qualifications, experience, technical approach, and cost in the evaluation of responses and award points in each of the categories detailed below (up to the maximum evaluation points indicated) to each response deemed by the State to be responsive.

EVALUATION CATEGORY	MAXIMUM POINTS POSSIBLE
<b>General Qualifications &amp; Experience</b> (refer to RFP Attachment 6.2., Section B)	<b>20</b>
<b>Technical Qualifications, Experience &amp; Approach</b> (refer to RFP Attachment 6.2., Section C)	<b>40</b>
<b>Oral Presentation</b> (refer to RFP Attachment 6.2., Section D)	<b>10</b>
<b>Cost Proposal</b> (refer to RFP Attachment 6.3.)	<b>30</b>

### 5.2. Evaluation Process

The evaluation process is designed to award the contract resulting from this RFP not necessarily to the Respondent offering the lowest cost, but rather to the Respondent deemed by the State to be responsive and responsible who offers the best combination of attributes based upon the evaluation criteria. ("Responsive Respondent" is defined as a Respondent that has submitted a response that conforms in all material respects to the RFP. "Responsible Respondent" is defined as a Respondent that has the capacity in all respects to perform fully the contract requirements, and the integrity and reliability which will assure good faith performance.)

5.2.1. **Technical Response Evaluation.** The Solicitation Coordinator and the Proposal Evaluation Team (consisting of three (3) or more State employees) will use the RFP Attachment 6.2., Technical Response & Evaluation Guide to manage the Technical Response Evaluation and maintain evaluation records.

5.2.1.1. The State reserves the right, at its sole discretion, to request Respondent clarification of a Technical Response or to conduct clarification discussions with any or all Respondents. Any such clarification or discussion will be limited to specific sections of the response identified by the State. The subject Respondent must put any resulting clarification in writing as may be required and in accordance with any deadline imposed by the State.

5.2.1.2. The Solicitation Coordinator will review each Technical Response to determine compliance with RFP Attachment 6.2., Technical Response & Evaluation Guide, Section A—Mandatory Requirements. If the Solicitation Coordinator determines that a response failed to meet one or more of the mandatory requirements, the Proposal Evaluation Team will review the response and document the team's determination of whether:

- a. the response adequately meets RFP requirements for further evaluation;
- b. the State will request clarifications or corrections for consideration prior to further evaluation; or,
- c. the State will determine the response to be non-responsive to the RFP and reject it.

- 5.2.1.3. Proposal Evaluation Team members will independently evaluate each Technical Response (that is responsive to the RFP) against the evaluation criteria in this RFP, and will score each in accordance with the RFP Attachment 6.2., Technical Response & Evaluation Guide.
- 5.2.1.4. For each response evaluated, the Solicitation Coordinator will calculate the average of the Proposal Evaluation Team member scores for RFP Attachment 6.2., Technical Response & Evaluation Guide, and record each average as the response score for the respective Technical Response section.
- 5.2.1.5. The Solicitation Coordinator will invite each apparently responsive and responsible Respondent to make an Oral Presentation.
  - 5.2.1.5.1. The Oral Presentations are mandatory. The Solicitation Coordinator will schedule Respondent Presentations during the period indicated by the RFP Section 2, Schedule of Events. The Solicitation Coordinator will make every effort to accommodate each Respondent's schedules. When the Respondent Presentation schedule has been determined, the Solicitation Coordinator will contact Respondents with the relevant information as indicated by RFP Section 2, Schedule of Events.
  - 5.2.1.5.2. Respondent Presentations are only open to the invited Respondent, Proposal Evaluation Team members, the Solicitation Coordinator, and any technical consultants who are selected by the State to provide assistance to the Proposal Evaluation Team.
  - 5.2.1.5.3. Oral Presentations provide an opportunity for Respondents to explain and clarify their responses and for the State to test to better understand the practical application of the good or service as applicable. Respondents must not materially alter their responses and Presentations will be limited to addressing the items detailed in RFP Attachment 6.2., Technical Response & Evaluation Guide. Respondent pricing shall not be discussed or provided during Oral Presentations.
  - 5.2.1.5.4. The State will maintain an accurate record of each Respondent's Oral Presentation session. The record of the Respondent's Oral Presentation or Field Test shall be available for review when the State opens the procurement files for public inspection.
  - 5.2.1.5.5. Proposal Evaluation Team members will independently evaluate each Oral Presentation Test in accordance with the RFP Attachment 6.2., Technical Response & Evaluation Guide, Section D.
  - 5.2.1.5.6. The Solicitation Coordinator will calculate and document the average of the Proposal Evaluation Team member scores for RFP Attachment 6.2., Technical Response & Evaluation Guide, Section D, and record that number as the score for Respondent's Technical Response section.
- 5.2.1.5. Before Cost Proposals are opened, the Proposal Evaluation Team will review the Technical Response Evaluation record and any other available information pertinent to whether or not each Respondent is responsive and responsible. If the Proposal Evaluation Team identifies any Respondent that does not meet the responsive and responsible thresholds such that the team would not recommend the Respondent for Cost Proposal Evaluation and potential contract award, the team members will fully document the determination.

- 5.2.2. Cost Proposal Evaluation. The Solicitation Coordinator will open for evaluation the Cost Proposal of each Respondent deemed by the State to be responsive and responsible and calculate and record each Cost Proposal score in accordance with the RFP Attachment 6.3., Cost Proposal & Scoring Guide.
- 5.2.3. Clarifications and Negotiations: The State reserves the right to award a contract on the basis of initial responses received, therefore, each response shall contain the Respondent's best terms and conditions from a technical and cost standpoint. The State reserves the right to conduct clarifications or negotiations with one or more Respondents. All communications, clarifications, and negotiations shall be conducted in a manner that supports fairness in response improvement.
- 5.2.3.1. Clarifications: The State may identify areas of a response that may require further clarification or areas in which it is apparent that there may have been miscommunications or misunderstandings as to the State's specifications or requirements. The State may seek to clarify those issues identified during one or multiple clarification rounds. Each clarification sought by the State may be unique to an individual Respondent, provided that the process is conducted in a manner that supports fairness in response improvement.
- 5.2.3.2. Negotiations: The State may elect to negotiate with one or more Respondents by requesting revised responses, negotiating costs, or finalizing contract terms and conditions. The State reserves the right to conduct multiple negotiation rounds or no negotiations at all.
- 5.2.3.3. Cost Negotiations: All Respondents, selected for negotiation by the State, will be given equivalent information with respect to cost negotiations. All cost negotiations will be documented for the procurement file. Additionally, the State may conduct target pricing and other goods or services level negotiations. Target pricing may be based on considerations such as current pricing, market considerations, benchmarks, budget availability, or other methods that do not reveal individual Respondent pricing. During target price negotiations, Respondents are not obligated to reduce their pricing to target prices, but no Respondent is allowed to increase prices.
- 5.2.3.4. If the State determines that it is unable to successfully negotiate terms and conditions of a contract with the apparent best evaluated Respondent, the State reserves the right to bypass the apparent best evaluated Respondent and enter into terms and conditions contract negotiations with the next apparent best evaluated Respondent.
- 5.2.4 **Total Response Score.** The Solicitation Coordinator will calculate the sum of the Technical Response section scores and the Cost Proposal score and record the resulting number as the total score for the subject Response (refer to RFP attachment 6.5., Score Summary Matrix).

### 5.3. **Contract Award Process**

- 5.3.1 The Solicitation Coordinator will submit the Proposal Evaluation Team determinations and scores to the head of the procuring agency for consideration along with any other relevant information that might be available and pertinent to contract award.
- 5.3.2. The Solicitation Coordinator will determine the apparent best-evaluated Response using the scoring provided by the Proposal Evaluation Team. To effect a contract award to a Respondent other than the one receiving the highest evaluation process score, the Solicitation Coordinator must provide written justification and obtain the written approval of the Chief Procurement Officer and the Comptroller of the Treasury.
- 5.3.3. The State will issue a Notice of Intent to Award identifying the apparent best-evaluated response and make the RFP files available for public inspection at the time and date specified in the RFP

Section 2, Schedule of Events.

**NOTICE: The Notice of Intent to Award shall not create rights, interests, or claims of entitlement in either the apparent best-evaluated Respondent or any other Respondent.**

- 5.3.4. The Respondent identified as offering the apparent best-evaluated response must sign a contract drawn by the State pursuant to this RFP. The Contract shall be substantially the same as the RFP Attachment 6.6., *Pro Forma* Contract. The Respondent must sign the contract by the Contractor Signature Deadline detailed in the RFP Section 2, Schedule of Events. If the Respondent fails to provide the signed Contract by this deadline, the State may determine that the Respondent is non-responsive to this RFP and reject the response.
- 5.3.5. Notwithstanding the foregoing, the State may, at its sole discretion, entertain limited terms and conditions or pricing negotiations prior to Contract signing and, as a result, revise the *pro forma* contract terms and conditions or performance requirements in the State's best interests, PROVIDED THAT such revision of terms and conditions or performance requirements shall NOT materially affect the basis of response evaluations or negatively impact the competitive nature of the RFP and contractor selection process.
- 5.3.6. If the State determines that a response is non-responsive and rejects it after opening Cost Proposals, the Solicitation Coordinator will re-calculate scores for each remaining responsive Cost Proposal to determine (or re-determine) the apparent best-evaluated response.

**RFP ATTACHMENT 6.1.****RFP # 34101-90210 STATEMENT OF CERTIFICATIONS AND ASSURANCES**

The Respondent must sign and complete the Statement of Certifications and Assurances below as required, and it must be included in the Technical Response (as required by RFP Attachment 6.2., Technical Response & Evaluation Guide, Section A, Item A.1.).

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

1. The Respondent will comply with all of the provisions and requirements of the RFP.
2. The Respondent will provide all services as defined in the Scope of the RFP Attachment 6.6., *Pro Forma* Contract for the total Contract Term.
3. The Respondent, except as otherwise provided in this RFP, accepts and agrees to all terms and conditions set out in the RFP Attachment 6.6., *Pro Forma* Contract.
4. The Respondent acknowledges and agrees that a contract resulting from the RFP shall incorporate, by reference, all proposal responses as a part of the Contract.
5. The Respondent will comply with:
  - (a) the laws of the State of Tennessee;
  - (b) Title VI of the federal Civil Rights Act of 1964;
  - (c) Title IX of the federal Education Amendments Act of 1972;
  - (d) the Equal Employment Opportunity Act and the regulations issued there under by the federal government; and,
  - (e) the Americans with Disabilities Act of 1990 and the regulations issued there under by the federal government.
6. To the knowledge of the undersigned, the information detailed within the response submitted to this RFP is accurate.
7. The response submitted to this RFP was independently prepared, without collusion, under penalty of perjury.
8. No amount shall be paid directly or indirectly to an employee or official of the State of Tennessee as wages, compensation, or gifts in exchange for acting as an officer, agent, employee, subcontractor, or consultant to the Respondent in connection with this RFP or any resulting contract.
9. Both the Technical Response and the Cost Proposal submitted in response to this RFP shall remain valid for at least 120 days subsequent to the date of the Cost Proposal opening and thereafter in accordance with any contract pursuant to the RFP.
10. The Respondent affirms the following statement, as required by the Iran Divestment Act Tenn. Code Ann. § 12-12-111: "By submission of this bid, each bidder and each person signing on behalf of any bidder certifies, and in the case of a joint bid each party thereto certifies as to its own organization, under penalty of perjury, that to the best of its knowledge and belief that each bidder is not on the list created pursuant to §12-12-106." For reference purposes, the list is currently available online at: <https://www.tn.gov/generalservices/procurement/central-procurement-office--cpo-/library-/public-information-library.html>.

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

**DO NOT SIGN THIS DOCUMENT IF YOU ARE NOT LEGALLY AUTHORIZED TO BIND THE RESPONDENT**

**SIGNATURE:**

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**PRINTED NAME & TITLE:**

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**DATE:**

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**RESPONDENT LEGAL ENTITY  
NAME:**

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**RFP ATTACHMENT 6.2. — Section A****TECHNICAL RESPONSE & EVALUATION GUIDE**

**SECTION A: MANDATORY REQUIREMENTS.** The Respondent must address all items detailed below and provide, in sequence, the information and documentation as required (referenced with the associated item references). The Respondent must also detail the response page number for each item in the appropriate space below.

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

<b>RESPONDENT LEGAL ENTITY NAME:</b>			
<b>Response Page # (Respondent completes)</b>	<b>Item Ref.</b>	<b>Section A— Mandatory Requirement Items</b>	<b>Pass/Fail</b>
		The Response must be delivered to the State no later than the Response Deadline specified in the RFP Section 2, Schedule of Events.	
		The Technical Response and the Cost Proposal documentation must be packaged separately as required (refer to RFP Section 3.2., <i>et. seq.</i> ).	
		The Technical Response must NOT contain cost or pricing information of any type.	
		The Technical Response must NOT contain any restrictions of the rights of the State or other qualification of the response.	
		A Respondent must NOT submit alternate responses (refer to RFP Section 3.3.).	
		A Respondent must NOT submit multiple responses in different forms (as a prime and a subcontractor) (refer to RFP Section 3.3.).	
	<b>A.1.</b>	Provide the Statement of Certifications and Assurances (RFP Attachment 6.1.) completed and signed by an individual empowered to bind the Respondent to the provisions of this RFP and any resulting contract. The document must be signed without exception or qualification.	
	<b>A.2.</b>	Provide a statement, based upon reasonable inquiry, of whether the Respondent or any individual who shall cause to deliver goods or perform services under the contract has a possible conflict of interest ( <i>e.g.</i> , employment by the State of Tennessee) and, if so, the nature of that conflict.  NOTE: Any questions of conflict of interest shall be solely within the discretion of the State, and the State reserves the right to cancel any award.	
	<b>A.3.</b>	Provide at least one of the following financial documents dated within the last three (3) months: (1) an official document or letter from an accredited credit bureau, indicating a satisfactory credit score for the Respondent (NOTE: A credit bureau report number without the full report is insufficient and will <u>not</u> be considered responsive.); (2) income statement, indicating the Respondent's financial operations; or (3) balance sheet, showing the Respondent's flow of funds.  Any documentation disclosing the amount of cash flows from operating activities should be for the Respondent's most current operating period and must indicate whether the cash flows are positive or negative. If the cash	

<b>RESPONDENT LEGAL ENTITY NAME:</b>			
<b>Response Page # (Respondent completes)</b>	<b>Item Ref.</b>	<b>Section A— Mandatory Requirement Items</b>	<b>Pass/Fail</b>
		<p>flows are negative for the most recent operating period, the documentation must include a detailed explanation of the factors contributing to the negative cash flows.</p> <p>NOTICE: All persons, agencies, firms, or other entities that provide opinions regarding the Respondent's financial status <u>must</u> be properly licensed to render such opinions. The State may require the Respondent to submit proof of such licensure detailing the state of licensure and licensure number for each person or entity that renders the opinions.</p>	
	<b>A.4.</b>	Provide a current bank reference indicating that the Respondent maintains a satisfactory business relationship with the financial institution. Such reference must be written in the form of a standard business letter, signed, and dated within the past three (3) months.	
	<b>A.5.</b>	Provide two current positive credit references from vendors with which the Respondent has done business written in the form of standard business letters, signed, and dated within the past three (3) months.	
<i>State Use – Solicitation Coordinator Signature, Printed Name &amp; Date:</i>			

## RFP ATTACHMENT 6.2. — SECTION B

## TECHNICAL RESPONSE &amp; EVALUATION GUIDE

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

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

## RFP ATTACHMENT 6.2. — SECTION B (continued)

<b>RESPONDENT LEGAL ENTITY NAME:</b>		
<b>Response Page #</b> (Respondent completes)	<b>Item Ref.</b>	<b>Section B— General Qualifications &amp; Experience Items</b>
		NOTE: All persons, agencies, firms, or other entities that provide legal opinions regarding the Respondent must be properly licensed to render such opinions. The State may require the Respondent to submit proof of license for each person or entity that renders such opinions.
	<b>B.11.</b>	Provide a brief, descriptive statement detailing evidence of the Respondent's ability to deliver the goods or services sought under this RFP (e.g., prior experience, training, certifications, resources, program and quality management systems, etc.).
	<b>B.12.</b>	Provide a narrative description of the proposed project team, its members, and organizational structure along with an organizational chart identifying the key people who will be assigned to deliver the goods or services required by this RFP.
	<b>B.13.</b>	Provide a personnel roster listing the names of key people who the Respondent will assign to meet the Respondent's requirements under this RFP along with the estimated number of hours that each individual will devote to that performance. Follow the personnel roster with a resume for each of the people listed. The resumes must detail the individual's title, education, current position with the Respondent, and employment history.
	<b>B.14.</b>	Provide a statement of whether the Respondent intends to use subcontractors to meet the Respondent's requirements of any contract awarded pursuant to this RFP, and if so, detail: (a) the names of the subcontractors along with the contact person, mailing address, telephone number, and e-mail address for each; (b) a description of the scope and portions of the goods each subcontractor involved in the delivery of goods or performance of the services each subcontractor will perform; <u>and</u> (c) a statement specifying that each proposed subcontractor has expressly assented to being proposed as a subcontractor in the Respondent's response to this RFP.
	<b>B.15.</b>	Provide documentation of the Respondent's commitment to diversity as represented by the following: (a) <u>Business Strategy</u> . Provide a description of the Respondent's existing programs and procedures designed to encourage and foster commerce with business enterprises owned by minorities, women, service-disabled veterans, persons with disabilities, and small business enterprises. Please also include a list of the Respondent's certifications as a diversity business, if applicable. (b) <u>Business Relationships</u> . Provide a listing of the Respondent's current contracts with business enterprises owned by minorities, women, service-disabled veterans, persons with disabilities, and small business enterprises. Please include the following information: (i) contract description; (ii) contractor name and ownership characteristics (i.e., ethnicity, gender, service-disabled veteran-owned or persons with disabilities); (iii) contractor contact name and telephone number. (c) <u>Estimated Participation</u> . Provide an estimated level of participation by business enterprises owned by minorities, women, service-disabled veterans, persons with disabilities and small business enterprises if a contract is awarded to the Respondent pursuant to this RFP. Please include the following information: (i) a percentage (%) indicating the participation estimate. (Express the estimated participation number as a percentage of the total estimated contract value that will be dedicated to business with subcontractors and supply contractors having such ownership characteristics only and <b>DO NOT INCLUDE DOLLAR AMOUNTS</b> ); (ii) anticipated goods or services contract descriptions; (iii) names and ownership characteristics (i.e., ethnicity, gender, service-disabled veterans, or disability) of anticipated subcontractors and supply contractors.

## RFP ATTACHMENT 6.2. — SECTION B (continued)

<b>RESPONDENT LEGAL ENTITY NAME:</b>		
<b>Response Page #</b> (Respondent completes)	<b>Item Ref.</b>	<b>Section B— General Qualifications &amp; Experience Items</b>
		<p>NOTE: In order to claim status as a Diversity Business Enterprise under this contract, businesses must be certified by the Governor's Office of Diversity Business Enterprise (Go-DBE). Please visit the Go-DBE website at <a href="https://tn.diversitysoftware.com/FrontEnd/StartCertification.asp?TN=tn&amp;XID=9810">https://tn.diversitysoftware.com/FrontEnd/StartCertification.asp?TN=tn&amp;XID=9810</a> for more information.</p> <p>(d) <u>Workforce</u>. Provide the percentage of the Respondent's total current employees by ethnicity and gender.</p> <p>NOTE: Respondents that demonstrate a commitment to diversity will advance State efforts to expand opportunity to do business with the State as contractors and subcontractors. Response evaluations will recognize the positive qualifications and experience of a Respondent that does business with enterprises owned by minorities, women, service-disabled veterans, persons with disabilities, and small business enterprises and who offer a diverse workforce.</p>
	<b>B.16.</b>	<p>Provide a statement of whether or not the Respondent has any current contracts with the State of Tennessee or has completed any contracts with the State of Tennessee within the previous five (5) year period. If so, provide the following information for all of the current and completed contracts:</p> <p>(a) the name, title, telephone number and e-mail address of the State contact knowledgeable about the contract;</p> <p>(b) the procuring State agency name;</p> <p>(c) a brief description of the contract's scope of services;</p> <p>(d) the contract period; and</p> <p>(e) the contract number.</p>
	<b>B.17.</b>	<p>Provide a statement and any relevant details addressing whether the Respondent is any of the following:</p> <p>(a) is presently debarred, suspended, proposed for debarment, or voluntarily excluded from covered transactions by any federal or state department or agency;</p> <p>(b) has within the past three (3) years, been convicted of, or had a civil judgment rendered against the contracting party from commission of fraud, or a criminal 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;</p> <p>(c) is presently indicted or otherwise criminally or civilly charged by a government entity (federal, state, or local) with commission of any of the offenses detailed above; and</p> <p>(d) has within a three (3) year period preceding the contract had one or more public transactions (federal, state, or local) terminated for cause or default.</p>
		<p><b>SCORE (for <u>all</u> Section B—Qualifications &amp; Experience Items above):</b> (maximum possible score = 20)</p>
State Use – Evaluator Identification:		

## RFP ATTACHMENT 6.2. — SECTION C

## TECHNICAL RESPONSE &amp; EVALUATION GUIDE

**SECTION C: TECHNICAL QUALIFICATIONS, EXPERIENCE & APPROACH.** The Respondent must address all items (below) and provide, in sequence, the information and documentation as required (referenced with the associated item references). The Respondent must also detail the response page number for each item in the appropriate space below.

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

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

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

RESPONDENT LEGAL ENTITY NAME:					
Response Page # (Respondent completes)	Item Ref.	Section C— Technical Qualifications, Experience & Approach Items	Item Score	Evaluation Factor	Raw Weighted Score
	C.1.	Provide a narrative that illustrates the Respondent's understanding of the State's requirements and project schedule. (Ref. Pro Forma Section(s) A.3)		2	
	C.2.	Provide a narrative that illustrates how the Respondent will complete the scope of services, accomplish required objectives, and meet the State's project schedule. (Ref. Pro Forma Sections A.3. and A.4.)		2	
	C.3.	Provide a narrative that illustrates how the Respondent will manage the project, ensure completion of the scope of services, and accomplish required objectives within the State's project schedule. (Ref. Pro Forma Section(s) A.3)		2	
	C.4.	Provide a narrative that illustrates how your solution will be a Production Ready System and Software as a Service (SaaS) so that only minimal customization and general configuration will be required, including TEMA branding. It must include a LMS specific ID and Password. (Ref. Pro Forma Section(s) A.3)		5	
	C.5.	Describe how your solution can include password reset upon demand by end users. (Ref. Pro Forma Section(s) A.3.j)		3	
	C.6.	Describe how your solution can be mobile-enabled and built with capabilities to scale to the device in use. (Ref. Pro Forma Section(s) A.3.a)		4	
	C.7.	Describe how your solution can be a scalable platform for capturing and storing current and historical Training Data. (Ref. Pro Forma Section(s) A.3.a / A.3.h)		4	

**RFP ATTACHMENT 6.2. — SECTION C (continued)**

	<b>C.8.</b>	Describe how your solution captures and retains internal and external training event records, including testing results, attendance, and certificates. It must include the ability to store instructor lesson plans, handouts, and other course materials including but not limited to MP4, MP3, Word, Excel, PDF, and PowerPoint files).  (Ref. Pro Forma Section(s) A.3.h)		5	
	<b>C.9.</b>	Describe how your solution can incorporate third-party and TEMA-authored content.  (Ref. Pro Forma Section(s) A.3.j)		3	
	<b>C.10.</b>	Describe how your solution can provide an interface that allows learners to easily navigate through the platform to self-register for classes, access, print, and export transcripts and certificates, and manually add items to their transcript as separate events/classes. (Ref. Pro Forma Section(s) A.3.b)		4	
	<b>C.11.</b>	Describe how your solution can provide a main page of interface that includes a month-to-month calendar view of classes with the ability for learners to enroll from the main page.  (Ref. Pro Forma Section(s) A.3.j)		3	
	<b>C.12.</b>	Describe how your solution allows administrators to edit text on the interface's main page to include updating contact information and special notifications.  (Ref. Pro Forma Section(s) A.3.g / A.3.i / A.3.j)		3	
	<b>C.13.</b>	Describe how your solution allows learner transcripts to include TEMA and third-party branding. (Ref. Pro Forma Section(s) A.3.e)		3	
	<b>C.14.</b>	Describe how your solution gives administrators the ability to manage logistical tasks, such as but not limited to: <ul style="list-style-type: none"> <li>• Creating and managing learner profiles.</li> <li>• Assigning mandatory entry fields.</li> <li>• Resetting passwords.</li> <li>• Enrolling and unenrolling learners from classes.</li> <li>• Creating courses and classes.</li> <li>• Adding class locations.</li> <li>• Creating class rosters.</li> <li>• Controlling course settings.</li> <li>• Sending automated and manual notifications to learners on class enrollment.</li> <li>• Move learners from different class statuses (i.e., waitlist to enrolled); and</li> <li>• Adding instructors for upcoming courses.</li> <li>• Adding and removing credentialing from instructor profiles.</li> <li>• Provide evaluations on instructor profiles.</li> </ul> (Ref. Pro Forma Section(s) A.3.g / A.3.i)		4	

## RFP ATTACHMENT 6.2. — SECTION C (continued)

	<b>C.15.</b>	Describe how your solution manages instructor profiles and records with the ability to provide instructors with a view of their scheduled courses, course certifications, courses taught, etc.  (Ref. Pro Forma Section(s) A.3.f / A.3.i)		3	
	<b>C.16.</b>	Describe how your solution captures, reconciles, and merges duplicate user profiles and transcript records. (Ref. Pro Forma Section(s) A.4.d)		2	
	<b>C.17.</b>	Describe how your solution assigns mandatory and elective courses, creates or customizes individual learner paths, and provides tools for class testing, class evaluations, skills tracking and job competencies, career mapping, and certifications tracking. (Ref. Pro Forma Section(s) A.3.i / A.3.m)		3	
	<b>C.18.</b>	Describe how your solution allows for the creation of student, instructor, and administrator profiles that can be managed easily. The profiles shall include, but are not limited to: <ul style="list-style-type: none"> <li>• Name</li> <li>• Job title</li> <li>• Organization/Agency</li> <li>• LMS Title, (student, administrator, instructor, etc.)</li> <li>• Instructor credentialing as applicable</li> <li>• Access to training records</li> </ul> (Ref. Pro Forma Section(s) A.3.e / A.3.f)		4	
	<b>C.19.</b>	Describe how your solution shall be able to import training records. This shall include CSV documents from a third party using a unique profile identifier in learner transcripts. The solution should also allow administrators to create new courses to include the course number and name not in the LMS and incorporate them into learner transcripts. The solution shall be able to backlog records that are not matched via the profile identifier and import them using the unique profile identifier into learner transcripts once a profile is created or reconciled.  (Ref. Pro Forma Section(s) A.3.e)		3	
	<b>C.20.</b>	Describe how your solution gives the ability to add required prerequisites to existing and new classes and waitlist learners who are missing prerequisites.  (Ref. Pro Forma Section(s) A.3.m)		2	
	<b>C.21.</b>	Describe how your solution can waitlist learners based on profile information (i.e., preferential seating to in-state learners and waitlist out-of-state) with the administrator's ability to view and add learners to a class roster.  (Ref. Pro Forma Section(s) A.3.m)		1	
	<b>C.22.</b>	Describe how your solution allows you to create an instructor dashboard with the ability to store instructor trainee training requirements and updates for specific course curricula and post dashboard messages, i.e., upcoming seminars, reminders, scheduling changes, etc.  (Ref. Pro Forma Section(s) A.3.i)		4	

**RFP ATTACHMENT 6.2. — SECTION C (continued)**

	<b>C.23.</b>	Describe how your solution can support multiple concurrent connections, with access and playback through multiple formats consistent with asynchronous learning. Including, but not limited to, HTML5, MP4, Word, Excel, PDF, PowerPoint, live, online, and virtual classes.  (Ref. Pro Forma Section(s) A.3.e / A.4)		4	
	<b>C.24.</b>	Describe how your solution can give the ability to archive user profile and records that have had no activity for more than 3 years. In active user profile and records should be archived with the ability for users to reactivate their profiles upon login.  (Ref. Pro Forma Section(s) A.3.f)		3	
	<b>C.25.</b>	Describe how the solution can provide the ability to create a report to show the number of user-profiles and records that are active and inactive.  (Ref. Pro Forma Section(s) A.3.f / A.3.k)		2	
	<b>C.26.</b>	Describe how the solution provides system user manuals, videos, or other documentation users would have access to throughout the Term of the contract. The offeror shall update and maintain all resource materials as updates or changes are made to the solution.  (Ref. Pro Forma Section(s) A.3.c)		2	
	<b>C.27.</b>	Describe how the solution shall provide an interface that tracks no-shows and prevents future registration for a specified amount of time.  (Ref. Pro Forma Section(s) A.3.m)		2	
	<b>C.28.</b>	Describe how the solution shall provide tracking of course progress for learners (i.e., learners must be able to stop part way into a course and pick up where they left off later). Learners must be able to retake courses unlimited times unless restricted by an administrative user.  (Ref. Pro Forma Section(s) A.3.m)		3	
	<b>C.29.</b>	Describe how the solution shall provide an individualized learner dashboard that includes scheduled or assigned courses, certifications coming due, career path tracking, or any individualized learning plan requirements.  (Ref. Pro Forma Section(s) A.3.i)		4	
	<b>C.30.</b>	Describe how your solution shall provide the ability to host external events, to include event registration, issuing certificates, and tracking course or event costs.  (Ref. Pro Forma Section(s) A.3.n)		4	
	<b>C.31.</b>	Describe how the solution can support viewing and replacing uploaded e-learning content.  (Ref. Pro Forma Section(s) A.3.n)		2	
	<b>C.32.</b>	Describe how the solution can support offline downloading of course data (e.g., mobile device, computer) and synchronize data at a later time.  (Ref. Pro Forma Section(s) A.3.a)		3	

**RFP ATTACHMENT 6.2. — SECTION C (continued)**

	<b>C.33.</b>	Describe how the solution will provide the ability to print selected content from e-learning courses. (Ref. Pro Forma Section(s) A.3.h)		2	
	<b>C.34.</b>	Describe how the solution will allow uploading of all Legacy Training Records in CSV, TXT, and PDF formats. (Ref. Pro Forma Section(s) A.3.e / A.3.h)		5	
	<b>C.35.</b>	Provide a narrative for the implementation, including configuration, setup of the solution. Offeror shall provide a mutually agreed upon implementation schedule that includes but is not limited to deliverables identified in the gap analysis, and an initial test and acceptance period not to exceed 180 days. (Ref. Pro Forma Section(s) A.3.d)		4	
	<b>C.36.</b>	Describe how your solution will provide training for a minimum of 10 Administrative users. Proposal shall include your proposed training plan including but not limited to the agenda for administrative user training, delivery method, delivery location, materials used during training, and training design. Administrative user training shall cover all aspects needed to manage the solution. (Ref. Pro Forma Section(s) A.3.g / A.3.c / A.3.m)		4	
	<b>C.37.</b>	Provide a narrative that shows your process for providing a dedicated, experienced project manager (PM), a business analyst, and system architect to work with TEMA's Administrative users and STS as needed to implement the solution. (Ref. Pro Forma Section(s) A.3.d)		5	
	<b>C.38.</b>	Describe how your solution shall provide project management support through Go Live, the acceptance period, and to ensure a smooth transition and solution stabilization. (Ref. Pro Forma Section(s) A.3.d)		5	
	<b>C.40.</b>	Describe how your solution can offer a test platform, the maintenance of which includes updating and refreshing the test platform before system updates are applied in production. (Ref. Pro Forma Section(s) A.3.o)		3	
	<b>C.41.</b>	Describe how your solution shall provide standard reports commonly used in the learning and development field – such as rosters, completion and compliance rates, attendance, course scores, tests, and assessments, etc.  Offeror solution must allow for reporting outcomes on individuals, groups, and Instructors (hours instructed, courses instructed, and evaluations). (Ref. Pro Forma Section(s) A.3.k)		4	

**RFP ATTACHMENT 6.2. — SECTION C (continued)**

	<b>C.42.</b>	Describe how your solution generates data to measure engagement and usage (e.g., capable of web analytics or of measuring the activity and behavior of users). (Ref. Pro Forma Section(s) A.3.k)		3	
	<b>C.43.</b>	Describe how your solution generates learner feedback that can be used before, during, and after training takes place, such as surveys, in-class polls, or course reviews/ratings. Can this feedback include a tiered approach, i.e., level 1 is immediate, level 2 30 days post course, level 3 is six months post course. (Ref. Pro Forma Section(s) A.3.k)		4	
	<b>C.44.</b>	Describe how your solution provides ad hoc and custom reporting capabilities, including tracking learning and career paths and user activity, such as timestamps, success/failure of transactions, and originating PC. (Ref. Pro Forma Section(s) A.3.k)		3	
	<b>C.45.</b>	Describe how your solution provides customer service and technical support during Normal Business Hours (8 am to 5 pm CT) via a ticket creation process or telephone support. The solution shall provide searchable help, FAQs, and online tutorials that support each user role. (Ref. Pro Forma Section(s) A.3.c)		4	
	<b>C.46.</b>	Provide a narrative on how the solution shall provide content creation tools. The solution shall provide the ability to create courses and add lesson materials such as Word and Excel files, PowerPoint presentations, integrate audio and video files (ex: MP3 and MP4 formats), and eLearning-authored content. The Offeror shall state the eLearning Standards to which the solution conforms (SCORM, AICC, xAPI, or cmi5, etc.). (Ref. Pro Forma Section(s) A.3.n)		5	
	<b>C.47.</b>	Describe how the solution can provide chat rooms, discussion forums, or other such tools for Learners to share their knowledge and experience with each other during the learning process, as well as provide the functionality to submit assignments to instructors, or it shall be compatible with Microsoft Teams or SharePoint. (Ref. Pro Forma Section(s) A.3.n)		2	
	<b>C.48.</b>	Describe how the solution can interface with a knowledge management system now or in the future. (Ref. Pro Forma Section(s) A.3.h, A.3.p.)		3	
	<b>C.49.</b>	Provide a narrative of the solution's ability to embed hyperlinks into the dashboards of the LMS. (Ref. Pro Forma Section(s) A.3.l)		5	
	<b>C.50.</b>	Describe how the solution allows the public to view the LMS training calendar without a user license, i.e., the solution allows for embedding the LMS training calendar link on the TEMA training website. (Ref. Pro Forma Section(s) A.3.l)		3	

**RFP ATTACHMENT 6.2. — SECTION C (continued)**

	<b>C.52</b>	Provide a narrative of the solution's ability to generate ten thousand (10,000) user profiles annually, of which, at minimum, five thousand (5,000) user profiles can log into the asynchronous learning environment simultaneously. The solution must be able to increase the number of user profiles as needed.  (Ref. Pro Forma Section(s) A.4)		5	
	<b>C.53.</b>	Provide a narrative on the solution's current or future capability to share and receive data from a third-party partner LMS that can be incorporated into student training records and generate future reports.  (Ref. Pro Forma Section(s) A.3.p)		4	
	<b>C.54.</b>	Provide a narrative on the solution's capability to provide upload and download support of all LMS software in rural environments.  (Ref. Pro Forma Section(s) A.3.a)		5	
<i>The Solicitation Coordinator will use this sum and the formula below to calculate the section score. All calculations will use and result in numbers rounded to two (2) places to the right of the decimal point.</i>					<b>Total Raw Weighted Score:</b> <i>(sum of Raw Weighted Scores above)</i>
<div style="display: flex; justify-content: space-between;"> <div> <b>Total Raw Weighted Score</b>  <hr/> <b>Maximum Possible Raw Weighted Score</b>  <i>(i.e., 5 x the sum of item weights above)</i> </div> <div> <b>X 40</b>  <i>(maximum possible score)</i> </div> </div>					
<i>State Use – Evaluator Identification:</i>					
<i>State Use – Solicitation Coordinator Signature, Printed Name &amp; Date:</i>					

## RFP ATTACHMENT 6.2.— SECTION D

## TECHNICAL RESPONSE &amp; EVALUATION GUIDE

**SECTION D: ORAL PRESENTATION.** The Respondent must address ALL Oral Presentation Items (below).

A Proposal Evaluation Team, made up of three or more State employees, will independently evaluate and score the oral presentation or field test response to each item. Each evaluator will use the following whole-number, raw point scale for scoring each item:

**0 = little value**

**1 = poor**

**2 = fair**

**3 = satisfactory**

**4 = good**

**5 = excellent**

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

<b>RESPONDENT LEGAL ENTITY NAME:</b>			
<b>Oral Presentation Items</b>	<b>Item Score</b>	<b>Evaluation Factor</b>	<b>Raw Weighted Score</b>
<b>D.1.</b> Present and describe how your solution can provide an interface that allows learners to easily navigate through the platform to self-register for classes, access, print, and export transcripts and certificates, and manually add items to their transcripts as separate events/classes. (Ref. RFP C.10. (Ref. Pro Forma Section(s) A.3.b))		<b>4</b>	
<b>D.2.</b> Present and describe how the solution will capture and store analytics, i.e., surveys, in-class polls, course reviews, and instructor feedback forms. (Ref. RFP C.42-C.43 (Ref. Pro Forma Section(s) A.3.k))		<b>5</b>	
<b>D.3.</b> Present and describe how the students can import training records into the LMS learning transcript using identifiers and the solution capability for administrators to create new course material. (Ref. RFP C.19 (Ref. Pro Forma Section(s) A.3.e))		<b>3</b>	
<b>D.4.</b> Present and describe the process for navigating between LMS dashboards, i.e., from the main landing page to the administrator, instructor, and student dashboards. (Ref. RFP C.12, C.15, C.22 (Ref. Pro Forma Section(s) A.3.i))		<b>3</b>	
<b>D.5.</b> Present or describe the current or future capability to consolidate the LMS learning transcript into a digital wallet that our partner agencies can view. (Ref. RFP C.51. (Ref. Pro Forma Section(s) A.3.h))		<b>3</b>	
<b>Total Raw Weighted Score</b> (sum of Raw Weighted Scores above): The Solicitation Coordinator will use this sum and the formula below to calculate the score. Numbers rounded to two (2) places to the right of the decimal point will be standard for calculations.			
<div style="display: flex; justify-content: space-between; align-items: center;"> <div style="text-align: center;"> <b>total raw weighted score</b>  <hr style="width: 50%; margin: 0 auto;"/> <b>maximum possible raw weighted score</b>  <i>(i.e., 5 x the sum of item weights above)</i> </div> <div style="text-align: center;"> <b>X 10</b>  <i>(maximum section score)</i> </div> <div style="text-align: center;"> <b>= SCORE:</b> </div> </div>			
State Use – Evaluator Identification:			

*State Use – Solicitation Coordinator Signature, Printed Name & Date:*

**COST PROPOSAL & SCORING GUIDE****NOTICE: THIS COST PROPOSAL MUST BE COMPLETED EXACTLY AS REQUIRED**

**COST PROPOSAL SCHEDULE—** The Cost Proposal, detailed below, shall indicate the proposed price for goods or services defined in the Scope of Services of the RFP Attachment 6.6., *Pro Forma* Contract and for the entire contract period. The Cost Proposal shall remain valid for at least one hundred twenty (120) days subsequent to the date of the Cost Proposal opening and thereafter in accordance with any contract resulting from this RFP. All monetary amounts shall be in U.S. currency and limited to two (2) places to the right of the decimal point.

**NOTICE:** The Evaluation Factor associated with each cost item is for evaluation purposes only. The evaluation factors do NOT and should NOT be construed as any type of volume guarantee or minimum purchase quantity. The evaluation factors shall NOT create rights, interests, or claims of entitlement in the Respondent.

Notwithstanding the cost items herein, pursuant to the second paragraph of the *Pro Forma* Contract section C.1. (refer to RFP Attachment 6.6.), "The State is under no obligation to request work from the Contractor in any specific dollar amounts or to request any work at all from the Contractor during any period of this Contract."

This Cost Proposal must be signed, in the space below, by an individual empowered to bind the Respondent to the provisions of this RFP and any contract awarded pursuant to it. If said individual is not the *President* or *Chief Executive Officer*, this document must attach evidence showing the individual's authority to legally bind the Respondent.

<b>RESPONDENT SIGNATURE:</b>			
<b>PRINTED NAME &amp; TITLE:</b>			
<b>DATE:</b>			
<b>RESPONDENT LEGAL ENTITY NAME:</b>			
Cost Item Description	Proposed Cost	State Use Only	
		Evaluation Factor	Evaluation Cost (cost x factor)
Completion of Go-Live of the Learning Management System Ref. Pro Forma Section A.4.d, A.4.n.	\$ _____	1	
Annual recurring cost for the provision/maintenance of the LMS software.	\$ _____ per year	5	
Develop comprehensive online training resources.	\$ _____ per hour	20	
Develop additional online training resources.	\$ _____ per hour	40	
User Profiles for the implementation of the LMS.	\$ _____ per user	10000	
Adding additional User Profiles.	\$ _____ per user	2000	
Cost of Data Storage	\$ _____	200	
Change Order Performance	\$ _____ per hour	100	
<b>EVALUATION COST AMOUNT</b> (sum of evaluation costs above):			

<b>RESPONDENT LEGAL ENTITY NAME:</b>			
<b>Cost Item Description</b>	<b>Proposed Cost</b>	<b>State Use Only</b>	
		<b>Evaluation Factor</b>	<b>Evaluation Cost</b> (cost x factor)
The Solicitation Coordinator will use this sum and the formula below to calculate the Cost Proposal Score. Numbers rounded to two (2) places to the right of the decimal point will be standard for calculations.			
$\frac{\text{lowest evaluation cost amount from all proposals}}{\text{evaluation cost amount being evaluated}} \times 30 = \text{SCORE:}$ <p style="text-align: center;">(maximum section score)</p>			
<i>State Use – Solicitation Coordinator Signature, Printed Name &amp; Date:</i>			

**RFP ATTACHMENT 6.4.****REFERENCE QUESTIONNAIRE**

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

The Respondent will be solely responsible for obtaining completed reference questionnaires as detailed below.. Provide references from individuals who are not current State employees of the procuring State Agency for projects similar to the goods or services sought under this RFP and which represent:

- two (2) contracts Respondent currently services that are similar in size and scope to the services required by this RFP; and
- three (3) completed contracts that are similar in size and scope to the services required by this RFP.

References from at least three (3) different individuals are required to satisfy the requirements above, e.g., an individual may provide a reference about a completed project and another reference about a currently serviced account. The individual contact reference provided for each contract or project shall not be a current State employee of the procuring State agency. Procuring State agencies that accept references from another State agency shall document, in writing, a plan to ensure that no contact is made between the procuring State agency and a referring State agency. The standard reference questionnaire, should be used and completed, and is provided on the next page of this RFP Attachment 6.4.

In order to obtain and submit the completed reference questionnaires following one of the two processes below.

Written:

- (a) Add the Respondent's name to the standard reference questionnaire at RFP Attachment 6.4. and make a copy for each reference.
- (b) Send a reference questionnaire and new, standard #10 envelope to each reference.
- (c) Instruct the reference to:
  - (i) complete the reference questionnaire;
  - (ii) sign and date the completed reference questionnaire;
  - (iii) seal the completed, signed, and dated reference questionnaire within the envelope provided;
  - (iv) sign his or her name in ink across the sealed portion of the envelope; and
  - (v) return the sealed envelope directly to the Respondent (the Respondent may wish to give each reference a deadline, such that the Respondent will be able to collect all required references in time to include them within the sealed Technical Response).
- (d) Do NOT open the sealed references upon receipt.
- (e) Enclose all sealed reference envelopes within a larger, labeled envelope for inclusion in the Technical Response as required.

Email:

- (a) Add the Respondent's name to the standard reference questionnaire at RFP Attachment 6.4. and make a copy for each reference.
- (b) E-mail a reference questionnaire to each reference.
- (c) Instruct the reference to:
  - (i) complete the reference questionnaire;
  - (ii) sign and date the completed reference questionnaire;
  - (iii) E-mail the reference directly to the Solicitation Coordinator by the RFP Technical Response Deadline with the Subject line of the e-mail as "[Respondent's Name] Reference for RFP # **34101-90210**".

NOTES:

- The State will not accept late references or references submitted by any means other than the two which are described above, and each reference questionnaire submitted must be completed as required.
- The State will not review more than the number of required references indicated above.

- While the State will base its reference check on the contents of the reference e-mails or sealed reference envelopes included in the Technical Response package, the State reserves the right to confirm and clarify information detailed in the completed reference questionnaires and may consider clarification responses in evaluating references.
- The State is under no obligation to clarify any reference information.

**RFP # 34101-90210 REFERENCE QUESTIONNAIRE****REFERENCE SUBJECT:** RESPONDENT NAME (completed by Respondent before reference is requested)

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

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

- complete this questionnaire (either using the form provided or an exact duplicate of this document);
- sign and date the completed questionnaire and follow either process outlined below;

**Physical:**

- seal the completed, signed, and dated questionnaire in a new standard #10 envelope;
- sign in ink across the sealed portion of the envelope; and
- return the completed questionnaire's sealed envelope directly to the reference subject.

**E-Mail:**

- e-mail the completed questionnaire to:  
Sharon Pope  
Sharon.Pope@tn.gov

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

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

<b>NAME:</b>	
<b>TITLE:</b>	
<b>TELEPHONE #</b>	
<b>E-MAIL ADDRESS:</b>	

(3) **What goods or services does/did the reference subject provide to your company or organization?**

- (4) If the goods or services that the reference subject provided to your company or organization are completed, were the goods or services provided in compliance with the terms of the contract, on time, and within budget? If not, please explain.
- (5) If the reference subject is still providing goods or services to your company or organization, are these goods or services being provided in compliance with the terms of the contract, on time, and within budget? If not, please explain.
- (6) How satisfied are you with the reference subject's ability to perform based on your expectations and according to the contractual arrangements?

**REFERENCE SIGNATURE:**

(by the individual completing this  
request for reference information)

---

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

**DATE:**

## RFP ATTACHMENT 6.5.

## SCORE SUMMARY MATRIX

	<i>RESPONDENT NAME</i>		<i>RESPONDENT NAME</i>		<i>RESPONDENT NAME</i>	
<b>GENERAL QUALIFICATIONS &amp; EXPERIENCE</b> (maximum: 20)						
<i>Evaluator 1</i>						
<i>Evaluator 2</i>						
<i>Evaluator 3</i>						
<i>Evaluator 4</i>						
<i>Evaluator 5</i>						
<i>Evaluator 6</i>						
<i>Evaluator 7</i>						
	<b>AVERAGE:</b>		<b>AVERAGE:</b>		<b>AVERAGE:</b>	
<b>TECHNICAL QUALIFICATIONS, EXPERIENCE &amp; APPROACH</b> (maximum: 40)						
<i>Evaluator 1</i>						
<i>Evaluator 2</i>						
<i>Evaluator 3</i>						
<i>Evaluator 4</i>						
<i>Evaluator 5</i>						
<i>Evaluator 6</i>						
<i>Evaluator 7</i>						
	<b>AVERAGE:</b>		<b>AVERAGE:</b>		<b>AVERAGE:</b>	
<b>ORAL PRESENTATION</b> (maximum: 10)						
<i>Evaluator 1</i>						
<i>Evaluator 2</i>						
<i>Evaluator 3</i>						
<i>Evaluator 4</i>						
<i>Evaluator 5</i>						

<i>Evaluator 6</i>						
<i>Evaluator 7</i>						
	<b>AVERAGE:</b>		<b>AVERAGE:</b>		<b>AVERAGE:</b>	
<b>COST PROPOSAL</b> (maximum: 30)	<b>SCORE:</b>		<b>SCORE:</b>		<b>SCORE:</b>	
<b>TOTAL RESPONSE EVALUATION SCORE:</b> (maximum: 100)						
<i>Solicitation Coordinator Signature, Printed Name &amp; Date:</i>						

**RFP # 34101-90210 *PRO FORMA* CONTRACT**

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

**CONTRACT**  
**BETWEEN THE STATE OF TENNESSEE,**  
**THE TENNESSEE EMERGENCY MANAGEMENT AGENCY**  
**AND**  
**CONTRACTOR NAME**

This Contract, by and between the State of Tennessee, the Tennessee Emergency Management Agency ("State") and **Contractor Legal Entity Name** ("Contractor"), is for the provision of the Tennessee Emergency Management Agency Learning Management System, as further defined in the "SCOPE." State and Contractor may be referred to individually as a "Party" or collectively as the "Parties" to this Contract.

The Contractor is **a/an Individual, For-Profit Corporation, Non-Profit Corporation, Special Purpose Corporation or Association, Partnership, Joint Venture, Or Limited Liability Company.**  
 Contractor Place of Incorporation or Organization: **Location**  
 Contractor Edison Registration ID # **Number**

**A. SCOPE**

- A.1. The Contractor shall provide all goods or services and deliverables as required, described, and detailed below and shall meet all service and delivery timelines as specified by this Contract.
- A.2. Definitions. For purposes of this Contract, definitions shall be as follows and as set forth in the Contract:
- a. "Account User" means a person with a unique log-in and password who can access the web-based system for the duration of the contract or the account is terminated.
  - b. "Tennessee Emergency Management Agency" or "TEMA" means the state agency responsible for coordinating preparedness, response, and recovery from man-made, natural, and technological hazards in a professional and efficient manner in concert with our stakeholders.
  - c. "User Profile Identifier" means the numerical number assigned to each user profile created within the learning management system that links users to their learner transcripts that does not include PII.
  - d. Project Delivery Schedule means the schedule of events submitted by the Contractor to the State, including the necessary events needed to implement the Contractor's learning management system successfully.
  - e. "Learning Management System (LMS) Title" means the role that the LMS user has been assigned within the platform (i.e., student administrator, user).
  - f. "TEMA Administrative User" means the TEMA personnel that have been identified to perform the duties and responsibilities of a learning management system administrator.
  - g. "TEMA Training Transcripts" means the legacy student transcripts currently used by TEMA to consolidate student training records.
  - h. "Go LIVE" means the implementation period for the learning management system to be incorporated into a fully functioning system for TEMA. This period includes all training necessary to manage and operate the system by TEMA and identify any gaps that need to be fixed.
  - i. Training Data means student applications, course attendance lists, test scores, course certificates, completed courses, training reports, completed exercises, training event, and pass/fail reports.

- j. Production Ready System means a system that can incorporate the required processes needed to meet the requirements of the outlined contract with minimal changes to the software.

### A.3. TEMA LMS.

The Contractor shall provide a secure, vendor-hosted and maintained cloud-based learning management system, allowing TEMA to efficiently manage, deliver, and track training programs and educational resources for TEMA personnel, emergency responders, and affiliated stakeholders. The Contractor understands that all data utilized within the learning management system is under the ownership of the state and the Tennessee Emergency Management Agency.

- a. The Contractor shall provide a scalable LMS that can be mobile enabled on iOS or Android, from any location with built-in capabilities to scale to the device in use. The Contractor shall ensure that Contractor's learning management system possesses offline downloading capabilities that allow users to download course data from a mobile device, computer, or tablet and synchronize the data at a later time. The Contract shall provide an LMS to support a minimum upload and download speed to enable TEMA partners in rural areas to utilize the software.
- b. The Contractor's online learning management system shall provide an interface that allows learners to easily navigate through the platform to self-register for classes, access, print, and export transcripts and certificates, and manually add items to their transcript as separate events/classes.
- c. The Contractor shall provide comprehensive user support for the platform, including system user manuals and videos. All user help resources must cover how-to guides for the learning management system, as well as navigation tutorials. The Contractor is responsible for updating and maintaining all resource materials as updates or changes are made to the solution. The Contractor's online learning management system shall provide customer service and technical support during regular business hours Monday through Friday, excluding State holidays (8 am to 5 pm CT) via a ticket creation process or toll-free telephone support. The online learning management system shall include a help page that supports each user's role with FAQs and online tutorials.
- d. Project Milestones.
  - i. Milestone 1: The Contractor shall provide a mutually agreed-upon learning management system product delivery schedule within ten days of the Effective Date of the Contract. The Contractor's product delivery schedule must include, but is not limited to, the configuration, setup, an initial test of the learning management system, and an acceptance period (Go Live) not to exceed 07 June 2024 and the implementation period. This product delivery schedule can translate the process to system design or inform on system design limitations that may be imposed upon the process.
  - ii. Milestone 2: The Go Live date marks the end of the testing phase and the beginning of the implementation period.
  - iii. Milestone 3: The implementation of the learning management system shall begin after the Go Live date and shall not exceed 180 days. The implementation shall allow users to import their training transcripts upon creating the user profile.
- e. Project Management Support: The Contractor shall provide project management support, including a project manager, business analyst, and a system architect for the acceptance period and throughout the contract's life. The Contractor's project management support shall work with TEMA's Administrative users and STS to implement and maintain the solution.
- f. The online learning management system shall support importing and exporting all TEMA Training Transcripts in CSV, TXT, and PDF formats from TEMA or a third party utilizing a unique user profile key. The Contractor shall ensure this user profile key is linked to user transcript records. The Contractor shall provide the ability for TEMA Administrative users to create new courses (to include course number and name) not within the LMS and incorporate them into the learner transcripts that include TEMA and third-party branding. Third-party branding shall include our partner agency logos on course certificates and student transcripts.

- g. The online learning management system shall allow for creating student, instructor, and administrator profiles with unique non-PII user profile identifiers. The user profiles shall include but are not limited to name, job title, organization/agency affiliation, LMS title (student, instructor, administrator, etc.), instructor credentialing as applicable, and access to LMS training records. The LMS will provide the capability to generate a unique TEMA ID number for each user profile. Each user profile (student, instructor, administrator, etc.) shall be able to view user/role-specific material such as but not limited to scheduled courses, course certifications, courses taught, and courses completed. The Contractor's online learning management system shall allow user profiles without activity for more than three years to be archived. The Contractor shall ensure that inactive user profiles are archived and allow users to re-activate their profiles upon login.
- h. The Contractor's online learning management system shall provide TEMA administrative users with their own dashboard. The Contractor shall ensure that a proposed training plan is presented and mutually agreed upon by the state. The Contractor's proposed TEMA administrative user training shall include, but is not limited to, the training agenda, delivery method, delivery location, materials used for training, and training design for a minimum of ten (10) administrators. The training shall cover all aspects of administrative tasks to manage the solution with minimal oversight. The Contractor shall ensure that TEMA administrative users can manage logistical tasks within the learning management system that include but are not limited to creating and managing learner profiles, assigning mandatory entry fields, resetting passwords, enrolling and unenrolling learners from classes, creating courses and classes, adding class locations, creating class rosters, controlling course settings, sending automated and manual notifications to learners on class enrollment, move learners from different class statuses (i.e., the waitlist to enrolled), assign instructors for upcoming courses, add or remove credentialing from instructor profiles, and upload documents to instructor and student profiles (i.e., evaluations and certificates). Password resets shall adhere to the State's standard of 8-12 characters, 1 uppercase (min), 1 lowercase (min), 1 special character (min), and 1 numeral (min).
- i. The learning management system shall provide a scalable platform that allows users to capture and store current and historical training data. No historical training data will be transferred from current TEMA systems into the learning management system. TEMA Administrators will upload all training data into the learning management system. The learning management system shall provide a knowledge library that categorizes and stores training records that include but is not limited to testing results, attendance records, certificates, instructor lesson plans, course handouts, training transcripts, and course manuals. The training record storage capability shall house records formatted to include but are not limited to MP4, MP3, Microsoft Word documents, Microsoft Excel spreadsheets, PDF files, Microsoft PowerPoint files, and CSV. All files integrated into the learning management system shall be printable and able to be utilized for user record purposes and course preparation. All Training Records shall be stored and maintained for the duration of the contract.
- j. The learning management system shall create dashboards for individualized learners, instructors, and administrators. All users within the learning management system shall be able to utilize the individualized learner dashboard. The dashboard shall allow navigation access to include but not be limited to scheduled or enrolled courses, certifications coming due, career path tracking, or any individualized learning plan requirements, and print course handouts and training records. Navigating to the individualized learner dashboard shall be a seamless transition from the homepage of the learning management system. The instructor dashboard shall include but not be limited to providing the ability to store the instructor and instructor trainee requirements, view and create updates for specific course curricula, view or navigate to stored instructor task books, view or navigate to all course material, and provide dashboard messages, i.e., upcoming seminars, reminders, scheduling changes, etc. Navigating to the instructor dashboard shall be a seamless process from the homepage and allow users to switch roles from instructor to individualized learner easily. Administrative users shall be able to perform all the functions outlined in section A.4.g of this contract. The administrative dashboard shall enable users to see reports, generate ad hoc messages for the learning management system, and include the tools and resources necessary for the administrator functions. Both instructor and administrator roles shall be able to assign mandatory and elective courses and create or customize individual learner paths. Both dashboards

shall have access to the tools needed for class testing (virtual and in-person), course-specific evaluations, instructor evaluations, skills tracking and job competencies, career mapping, and certifications tracking.

- k. The learning management system's design shall include a username and password-enabled login page. The Contractor shall ensure that users can request a username and password reset on demand, including but not limited to email verification, or administrative support. The learning management system shall direct users to the main landing page upon successful login. The main page shall include a month-to-month calendar view of all upcoming courses that administrative users can update. The main page of the learning management system shall include but is not limited to all user dashboard navigational tools, access to help desk resources, the ability to enroll in upcoming courses on the calendar, view posted updates, receive and view all ad hoc special notifications, and have navigational access to the resource/knowledge library. The learning management system shall incorporate TEMA branding to include but not be limited to logos, color schemes, and authored content such as policies and doctrine. The Contractor is responsible for ensuring that the learning management system interface is visually attractive and easy for users to navigate.
- l. The learning management system shall capture, store, and generate data to produce reports at the administrator level. The learning management system shall export reports using CSV formatting as a baseline for seamless integration with other TEMA systems. These reports shall include but are not limited to course rosters, completion/compliance rates, attendance, usage metrics, test scores, instructor evaluations, hours instructed, courses instructed, and types of courses offered.
- m. The learning management system shall track and store real-time data to generate reports at a minimum of a weekly basis. The learning management system shall have the capability to tag or categorize courses based upon the program they fall under (i.e., HAZMAT, Search and Rescue, etc.) that allows TEMA administrators to generate program-specific course reports that can also be tagged by which grant is funding the course. The learning management system shall generate learner and instructor feedback by creating forms, in-class polls, surveys, or course reviews or by integrating and uploading TEMA and third-party authored feedback forms. The learning management system shall store student and instructor feedback materials to generate future reports. The learning management system shall provide ad hoc messaging capabilities to notify users with custom messaging that is time-stamped of any system maintenance/downtime and any updates from administrators or instructors. All ad hoc messages shall populate as a banner message for all users.
- n. The learning management system shall allow administrators and instructors to embed external hyperlinks on the central dashboards of the solution and throughout all e-learning courses generated within the LMS. The learning management system shall have the ability to allow administrators to export learning management system hyperlinks and embed them into other TEMA-utilized websites. The learning management system shall allow TEMA partner agencies and the public to utilize these hyperlinks with viewing rights only without needing a user license. The learning management system shall share hyperlinks to include but not limited to the LMS training calendar and the LMS knowledge library. The learning management system shall have the ability to host public classes where certain users can access the various courses without logging on or creating a profile.
- o. The learning management system shall allow administrators to create training programs that learners need to complete while allowing all users to see the progress of their learning path. Administrators shall be able to assign prerequisites to existing and new LMS courses with the ability to waitlist learners that do not meet the required prerequisites. The learning management system shall allow administrators to waitlist learners based on profile information, i.e., preferential seating to in-state learners over out-of-state learners and completion of required prerequisites with the administrator's ability to view and add learners to the class roster once seating becomes available. The learning management system shall track no-shows and record classroom attendance rates while providing the ability to deny users enrollment into future courses without an administrator's approval.

- p. The learning management system shall provide all the tools necessary to create, update, and replace courses and eLearning content, including but not limited to lesson plans and PowerPoint presentations, and video files, and provide the ability to integrate audio and video files for the asynchronous learning environment. The learning management system shall allow instructors to utilize and present audio and visual presentations to learners in in-person settings and eLearning courses. The learning management system shall incorporate the use of chat rooms and discussion forums to engage students during virtual classroom courses to share knowledge and experience with each other and submit assignments to the instructor. The learning management system shall generate break-out rooms to allow instructors to split learners into small groups to conduct learner activities, or it shall be compatible with third-party software, including Microsoft Teams, ZOOM, Webex, or SharePoint. The learning management system shall track and host external real-world events, including but not limited to seminars, out-of-state training, and procured private training events. Administrators shall be able to input these types of events into the LMS, register them using the learning management system, and provide the ability to track, upload, and issue certificates, and list event cost details based upon grant requirements.
- q. The implementation phase shall utilize a test platform for the learning management system. The test platform shall be utilized during the GO Live phase to update the learning management system and test the software's functionality as new content is uploaded into the system. The project manager and the state administrators shall be able to access the test platform to collaborate and ensure that the content functions as intended. The Contractor's project management team shall work with the state to ensure that the LMS software is fully functional before the end of the GO Live period.
- r. The learning management system shall provide data storage for 10,000 user accounts during the implementation of the system and additional storage for 2,000 user profiles over the term of the contract. This storage includes but is not limited to student transcripts and course materials. The learning management shall ensure that the LMS knowledge library has adequate storage space to house all of the learning material, including but not limited to student handouts, course manuals, instructor guides, how-to guides, course reports, course certificates student surveys, instructor surveys, course surveys, and videos. All course reports and student transcripts shall be maintained for the contract's life. All of the course material shall be maintained in accordance with TEMA Policy 17.

#### A.4. User Profiles.

The Contractor shall initially provide ten thousand (10,000) user profiles to the State for the Contractor's online learning management system annually, with the ability to increase the number of user profiles by two thousand (2,000) over the term of the contract as demand arises. The Contractor shall ensure that:

- a. The learning management system is capable of fully functioning while five thousand (5,000) of the registered user profiles access the system simultaneously. All ten thousand (10,000) users must have access to the learning management system for the duration of the contracts life.
- b. The learning management system shall be fully functioning for all Account Users ninety-nine-point nine percent (99.5%) of the time, twenty-four (24) hours per day, every day of the week, exclusive of pre-announced scheduled downtime or events outside the Contractor's span of control, as described in Section D.24. of this Contract.
- c. All courses and asynchronous learning materials are uploaded to the user profiles when the accounts are created.
- d. Duplicate user profiles can be identified within the learning management system and generated into a report or similar function so that administrators can merge the user profile and training records.

#### A.5. Change Orders.

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 only perform additional service once 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). It shall be incorporated, hereby, as a part of this Contract.

- b. Change Order Performance— Subsequent to creating 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.
- A.6. Warranty. The 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.7. Inspection and Acceptance. The State shall have the right to inspect all goods or services provided by Contractor under this Contract. If, upon inspection, the State determines that the goods or services are Defective, the State shall notify Contractor, and Contractor shall re-deliver the goods or provide the services at no additional cost to the State. If after a period of thirty (30) days following delivery of goods or performance of services the State does not provide a notice of any Defects, the goods or services shall be deemed to have been accepted by the State.

**B. TERM OF CONTRACT:**

This Contract shall be effective on ("Effective Date") and extend for a period of sixty (60) months after the Effective Date ("Term"). The State shall have no obligation for goods or services the Contractor provides before 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 the **Written Dollar Amount (\$Number)** ("Maximum Liability"). This Contract does not grant the Contractor any exclusive rights. The State does not guarantee that it will buy any minimum quantity of goods or services under this Contract. Subject to the terms and conditions of this Contract, the Contractor will only be paid for goods or services provided under this Contract after a purchase order is issued to the 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 to 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>Goods or Services Description</b>	<b>Amount</b> (per compensable increment)
Total Go-Live Cost of the Learning Management System (Reference Pro Forma Section A.3.d.)  May be invoiced upon the State's written of the acceptance period (Go Live)	\$ _____
Develop comprehensive online training resources. (Reference Pro Forma Section A.3.c.)	\$ _____ per hour
Develop additional online training resources. (Reference Pro Forma Section A.3.c.)	\$ _____ per hour

User Profiles. (Reference Pro Forma Section A.4.)	\$_____per user
Adding additional User Profiles. (Reference Pro Forma Section A.4.)	\$_____per user
Cost of Data Storage (Reference Pro Forma Section A.3.p.)	\$_____

**b. The Contractor's compensation below shall be paid in advance:**

Annual recurring cost for the provision/maintenance of the LMS software.  (Reference Pro Forma Section A.3.k.)  May be invoiced upon the Contract's Effective Date and annually thereafter 30 days in advance of the anniversary of the Contract's Effective Date.	\$_____per year
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- c. The Contractor shall be compensated for changes requested and performed pursuant to Contract Section A.6, without a formal amendment of this Contract based upon the payment rates detailed in the schedule below and as agreed pursuant to Section C.3, PROVIDED THAT compensation to the Contractor for such "change order" work shall not exceed SEVEN PERCENT (7 %) of the Total Go-Live Cost detailed in Section C.3.a., above. 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.

Goods or Services Description	Amount (per compensable increment)
Change Order Performance	\$_____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:

Tennessee Emergency Management Agency  
3041 Sidco Drive  
Nashville, Tennessee 37204

- 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 Military: Tennessee Emergency Management Agency
  - (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 include without limitation Contractor's sales and use tax, excise taxes, franchise taxes, real or personal property taxes, or income taxes; and
- (4) Include shipping or delivery charges only as authorized in this Contract.

c. The timeframe for payment (or any discounts) begins only when the State is in receipt of an invoice that meets the minimum requirements of this Section C.5.

C.6. Payment of Invoice. A payment by the State shall not prejudice the State's right to object to or question any payment, invoice, or other matter. A payment by the State shall not be construed as acceptance of goods delivered, any part of the services provided, or as approval of any amount invoiced.

C.7. Invoice Reductions. The Contractor's invoice shall be subject to reduction for amounts included in any invoice or payment that is determined by the State, on the basis of audits conducted in accordance with the terms of this Contract, not to 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:

Adam Stewart | Training and Exercise Branch Administrator  
 Tennessee Emergency Management Agency  
 3041 Sidco Drive, Nashville TN, 37041  
 adam.stewart@tn.gov  
 Telephone # 615-306-0686

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. The 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, during the 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. is 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. is not presently indicted or otherwise criminally or civilly charged by a government entity (federal, state, or local) with commission of any of the offenses detailed in section b. of this certification; and
  - d. has 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 non-performing Party cannot reasonably circumvent the default or delay 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 performing 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. Contractor's failure to maintain or submit evidence of insurance coverage, as required, is a material breach of this Contract. If Contractor loses insurance coverage, fails to renew coverage, or for any reason becomes uninsured during the

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

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

Contractor shall provide the State a certificate of insurance ("COI") evidencing the coverages and amounts specified in this Section. The COI must be on a form approved by the TDCI (standard ACORD form preferred). The COI must list each insurer's National Association of Insurance Commissioners (NAIC) number and be signed by an authorized representative of the insurer. The COI must list the State of Tennessee – CPO Risk Manager, 312 Rosa L. Parks Ave., 3<sup>rd</sup> floor Central Procurement Office, Nashville, TN 37243 as the certificate holder. Contractor shall provide the COI ten (10) business days prior to the Effective Date and again thirty (30) calendar days before renewal or replacement of coverage. Contractor shall provide the State evidence that all subcontractors maintain the required insurance or that subcontractors are included under the Contractor's policy. At any time, the State may require Contractor to provide a valid COI. The Parties agree that failure to provide evidence of insurance coverage as required is a material breach of this Contract. If Contractor self-insures, then a COI will not be required to prove coverage. Instead Contractor shall provide a certificate of self-insurance or a letter, on Contractor's letterhead, detailing its coverage, policy amounts, and proof of funds to reasonably cover such expenses. The State reserves the right to require complete copies of all required insurance policies, including endorsements required by these specifications, at any time.

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

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

**minimum insurance requirements of the Contract are sufficient to cover the obligations of the Contractor arising under this Contract. The Contractor shall obtain and maintain, at a minimum, the following insurance coverages and policy limits.**

a. Commercial General Liability ("CGL") Insurance

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

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

b. Workers' Compensation and Employer Liability Insurance

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

c. Automobile Liability Insurance

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

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

- 1) The Contractor shall maintain technology professional liability (errors & omissions)/cyber liability insurance appropriate to the Contractor's profession in an amount not less than 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, 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.

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.

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

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

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

- D.35. Boycott of Israel. The Contractor certifies that it is not currently engaged in, and covenants that it will not, for the duration of the Contract, engage in a Boycott of Israel, as that term is defined in Tenn. Code Ann. § 12-4-119.
- D.36. Prohibited Contract Terms. The prohibited contract terms and conditions enumerated in Pub. Ch. 113, § 5, shall be a material provision of this Contract. The Contractor acknowledges, understands, and agrees that the inclusion of a term or condition prohibited by Pub. Ch. 113, § 5, shall be null and void and the Contract shall be enforceable as if the Contract did not contain such term or condition.

**E. SPECIAL TERMS AND CONDITIONS:**

- E.1. Conflicting Terms and Conditions. Should any of these special terms and conditions conflict with any other terms and conditions of this Contract, the special terms and conditions shall be subordinate to the Contract's other terms and conditions.
- E.2. Contractor Commitment to Diversity. The Contractor shall comply with and make reasonable business efforts to exceed the commitment to diversity represented by the Contractor's Response to RFP 34101-90210 RFP Attachment 6.2 – Section B. Item B.15 and resulting in this Contract.

The Contractor shall assist the State in monitoring the Contractor's performance of this commitment by providing, as requested, a monthly report of participation in the performance of this Contract by small business enterprises and businesses owned by minorities, women, service-disabled veterans, and persons with disabilities. Such reports shall be provided to the State of Tennessee Governor's Office of Diversity Business Enterprise in the TN Diversity Software available online at:

<https://tn.diversitysoftware.com/FrontEnd/StartCertification.asp?TN=tn&XID=9810>.

- E.3. Additional lines, items, or options.

At its sole discretion, the State may make written requests to the Contractor to add 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 the following:
  - (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
- 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 an MOU between the Parties, and the lines, items, or options shall be incorporated into the Contract as if set forth verbatim.
- d. Only after an MOU has been executed shall the Contractor perform or deliver the new items or options.

- E.4. Contractor Hosted Services Confidential Data, Audit, and Other Requirements

- 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:

- (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 or 140-3 (current applicable version) validated encryption technologies. The State shall control all access to encryption keys. The Contractor shall provide installation and maintenance support at no cost to the State.
- (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.

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 certifications, authorizations, or audits as these are included in the Maximum Liability of this Contract.

- (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: [24 hours]**
  - 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: [24 hours]
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.

E.5. 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 Unique Entity Identifier (UEI) number and maintain its UEI number for the term of this Contract. More information about obtaining a UEI Number can be found at: the System for Award Management (SAM.gov).

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.

**E.6. Prohibited Advertising or Marketing.** The Contractor shall not suggest or imply in advertising or marketing materials that Contractor's goods or services are endorsed by the State. The restrictions on Contractor advertising or marketing materials under this Section shall survive the termination of this Contract.

**E.7. 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.

- E.8. 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.
- E.9. 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.
- E.10. Extraneous Terms and Conditions. Contractor shall fill all orders submitted by the State under this Contract. No purchase order, invoice, or other documents associated with any sales, orders, or supply of any good or service under this Contract shall contain any terms or conditions other than as set forth in the Contract. Any such extraneous terms and conditions shall be void, invalid and unenforceable against the State. Any refusal by Contractor to supply any goods or services under this Contract conditioned upon the State submitting to any extraneous terms and conditions shall be a material breach of the Contract and constitute an act of bad faith by Contractor.
- E.11. 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, the Contractor shall immediately return to the State any and all PII it has received under this Contract and 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.12. 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 [TN Department of Military | TEMA] mark:



- i. Exclusivity. None.
  - ii. Territory. Worldwide.
- b. Term. Contractor shall begin to use the Property as set out in Contract Section A.4 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 [34101-90210] Section A.4.i. 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:  
  
[TN Department of Military | TEMA] 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.

IN WITNESS WHEREOF,

**CONTRACTOR LEGAL ENTITY NAME:**

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**CONTRACTOR SIGNATURE**

**DATE**

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

**TENNESSEE EMEGENCY MANAGEMENT AGENCY**

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**PATRICK SHEEHAN, DIRECTOR**

**DATE**

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

<b>SUBJECT CONTRACT NUMBER:</b>	
<b>CONTRACTOR LEGAL ENTITY NAME:</b>	
<b>EDISON VENDOR IDENTIFICATION NUMBER:</b>	

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

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**CONTRACTOR SIGNATURE**

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

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**PRINTED NAME AND TITLE OF SIGNATORY**

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**DATE OF ATTESTATION**