



# Program Review of Tennessee Schools for the Deaf REVISED Request for Applications

Tennessee Department of Education | March 2021

All revisions are highlighted in yellow.

**Application Due Date: April 16, 2021**



# Overview

## ***Background***

The Tennessee Department of Education (the department) is currently searching for a director of schools for the Tennessee Schools for the Deaf (TSD) following Dr. Vicki Kirk's announcement that she will retire on June 30, 2021. In response to National Deaf Center reporting on Tennessee's low graduation and employment rate for deaf students, TSD has successfully implemented bilingual programs at the Knoxville and Nashville campuses, but work has not yet begun at the West Tennessee campus in Jackson. Instructional practices and student outcomes vary across the three campuses, and prior to a new director of schools selection, the department will seek an in-depth programmatic review by qualified contractors to ensure that the next director of schools has a firm guide for improving outcomes.

## ***Procurement Purpose***

The department is seeking up to two qualified contractors to conduct a program review at the TSD. This includes the Knoxville campus, Nashville campus, and West Tennessee campus in Jackson. The purpose of the program review is to assess program quality, viability, and facilitate appropriate program improvement.

## ***Scope of Services***

Each awarded contractor will be charged with evaluating strengths and weaknesses of the current education program at Tennessee's three schools for the deaf (Tennessee School for the Deaf-Knoxville, Tennessee School for the Deaf- Nashville, and West Tennessee School for the Deaf-Jackson) and reporting findings and recommendations for improving instructional programs. Specifically, each contractor will compare instructional delivery models at each campus against national models of excellence for serving deaf and hard of hearing students. Additionally, each contractor will evaluate language development practices at each campus and compare to data from peers nationally to identify effective and ineffective practices for developing language and preparing students for matriculation, post-secondary education, and employment. Finally, each contractor will evaluate leadership effectiveness and organizational structures to determine how effectively and efficiently TSD leadership supports student achievement. Additional areas may be pursued within the cost of the contract and included in the summary report.

Reviews will be conducted on site by each contractor by May 21, 2021 and will consist of a minimum of six hours during the instructional day at each campus. Reviews shall include but not be limited to classroom observations, staff and student interviews, data review, and observation of school operations. The awarded contractors shall coordinate three virtual community meetings to gather community feedback on TSD programs and services. There will be one meeting for each region of the state (East, Middle, and West). Awarded contractors may be required to collaborate to conduct these meetings.

To be considered, review teams must consist of at least two experienced (retired or current) leaders from schools for the deaf. Applications must include each review team member's resume, a summary of qualifications as an expert in deaf education, and description of the member's role on the team. Preference will be given to applications for each review team member who served as a superintendent/director of schools for a school for the deaf, and additional preference will be given to those teams that can demonstrate a record of improving student outcomes for deaf and hard of hearing students during their tenure. Additionally, preference will be given to applications with

review teams that also include professionals from national deaf organizations and/or deaf studies faculty from research universities in addition to leaders from schools for the deaf.

Review teams shall submit a comprehensive summary report that includes but is not limited to the following information:

- Introduction
- Summary of review team activities
- Descriptive data collected
- Analysis of data collected
- Summary of findings
- Recommendations for improvement
- Review team members and roles
- Research references

The contractors shall protect confidential and personally identifiable data, including student and teacher information, in accordance with federal and state law and as directed by the State. The contractors must submit one version of the summary report that is “public-facing” (all names and personally identifiable information redacted or removed) and one version that contains all information for State review and use.

## ***Communications***

Prospective contractors must direct communications concerning this request for applications to the following person designated as the solicitation coordinator. **Please submit any questions you have related to the application process, the work being requested, or the pro forma contract.**

Kristen McKeever, state special schools operations coordinator  
(615) 887-1109  
[Kristen.B.McKeever@tn.gov](mailto:Kristen.B.McKeever@tn.gov)

## **Review Process**

All complete application packages meeting the requirements and received by the department on or before the application deadline will be forwarded to an evaluation committee. The committee will provide each application with a technical merit score based upon the review criteria and rubric. Technical merit scores and cost will serve as the foundation for contract award decisions.

The department reserves the right to not award and to negotiate specific contract amounts. **All awards are subject to the availability of funds. Contracts are not final until the contract is executed.**

## **Application Procedures**

The application must be completed and submitted via email to [Kristen.B.McKeever@tn.gov](mailto:Kristen.B.McKeever@tn.gov) by **2 p.m. on April 16, 2021. Paper copies of this application will not be accepted.**

### **Steps to submitting an application:**

1. Address all application components in sequential order.
2. Clearly label each section (i.e., general, technical, budget).
3. Ensure it is clear which items the response corresponds with.

4. Submit application in **one** PDF.
5. Email one PDF by the response deadline.

# Application Guide

## Mandatory Requirements

The applicant must address all mandatory requirement items and provide, in sequence, the information and documentation as required. The solicitation coordinator will review each 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 evaluation team must review the response and attach a written determination.

<b>Applicant Name</b>		
<b>Mandatory Requirement</b>	<b>Solicitation Coordinator Pass/Fail</b>	<b>Evaluator Confirmation</b>
1. Detail the name, e-mail address, mailing address, and telephone number of the person the State should contact regarding the response.		
2. Provide a statement confirming that, if awarded a contract, the applicant will accept and agree to all terms and conditions set out in the <a href="#">Appendix A, Pro Forma Contract</a> . *Note: if the awardee is a TN state or local government entity, we will use the approved State template for those entities. If the awardee is an individual independent contractor, rather than an entity, the insurance provision will be modified to reflect that.		
3. Describe the applicant's form of business (i.e., individual, sole proprietor, corporation, non-profit corporation, partnership, limited liability company) and business location (physical location or domicile).		
4. Review teams must consist of at least two experienced (retired or current) leaders from schools for the deaf. <ol style="list-style-type: none"> <li>a. include each review team member's resume, a summary of qualifications as an expert in deaf education, and description of the member's role on the team.</li> </ol>		
<b>Evaluator Identification:</b>		

## General Qualifications and Experience (6 Points)

The applicant must address all general requirement items and provide, in sequence, the information and documentation as required. The evaluation team members will independently evaluate the responses and assign one score to this section. The solicitation coordinator will calculate the average of the evaluation team scores to determine the final score for this section.

Applicant Name		
General Requirement	Maximum Points	Assigned Points
1. Provide a statement of whether, in the last ten (10) years, the applicant 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.	2	
2. Provide a statement of whether there is any material, pending litigation against the applicant that the applicant should reasonably believe could adversely affect its ability to meet contract requirements pursuant to this solicitation or is likely to have a material adverse effect on the applicant'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 applicant's performance in a contract pursuant to this solicitation.	2	
3. Provide a statement of whether the applicant intends to use subcontractors to meet the requirements of any contract awarded pursuant to this solicitation, and if so, detail: <ul style="list-style-type: none"> <li>• the names of the subcontractors along with the contact person, mailing address, telephone number, and e-mail address for each;</li> <li>• a description of the scope and portions of the services any subcontractor will perform; <u>and</u></li> <li>• a statement specifying that each proposed subcontractor has expressly assented to being proposed as a subcontractor in the applicant's response to this solicitation.</li> </ul>	2	
<b>Score (maximum possible = 6)</b>		

<b>Applicant Name</b>		
<b>General Requirement</b>	<b>Maximum Points</b>	<b>Assigned Points</b>
<b>Evaluator Identification:</b>		

**General Requirements Rubric**

Evaluators will use the below rubric to score applications.

<b>General Requirement</b>	<b>0</b>	<b>2</b>
1. Provide a statement of whether, in the last ten (10) years, the applicant 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.	Applicant has not provided the requested information, or the information provided indicates there may be a risk to the state if the applicant was awarded a contract.	Applicant has not filed for bankruptcy in the last 10 years.
2. Provide a statement of whether there is any material, pending litigation against the applicant that the applicant should reasonably believe could adversely affect its ability to meet contract requirements pursuant to this solicitation or is likely to have a material adverse effect on the applicant'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 applicant's performance in a contract pursuant to this solicitation.	Applicant has not provided the requested information or there is pending litigation against the applicant that could adversely affect ability to meet contract requirements.	There is no pending litigation against the applicant.

General Requirement	0	2
<p>3. Provide a statement of whether the applicant intends to use subcontractors to meet the requirements of contract awarded pursuant to this solicitation, and if so, detail:</p> <ul style="list-style-type: none"> <li>• the names of the subcontractors along with the contact person, mailing address, telephone number, and e-mail address for each;</li> <li>• a description of the scope and portions of the services any subcontractor will perform;</li> <li>• if the subcontractor is a part of the review team, confirm that the subcontractor meets mandatory requirement #4 when counting both the subcontractors and the rest of the review team, include a resume, a summary of qualifications as an expert in deaf education, and description of the member's role on the team; and statement specifying that each proposed subcontractor has expressly assented to being proposed as a subcontractor in the applicant's response to this solicitation.</li> </ul>	<p>Applicant has not provided the requested information, or the applicant proposes to use a subcontractor for the review team whose qualifications do not meet mandatory requirement #4 when counting both the subcontractors and the rest of the review team.</p>	<p>Applicant is not using a subcontractor or has provided documentation that confirms the subcontractor, if part of the review team, meets the qualifications in mandatory requirement #4 when counting both the subcontractors and the rest of the review team.</p>

**Technical Response (74 Points)**

The applicant must address all technical response items and provide, in sequence, the information and documentation as required. The evaluation team members will independently evaluate the

responses and assign a score to each item using the rubric below. The solicitation coordinator will calculate the average of the total scores to determine the final score for this section.

<b>Applicant Name</b>			
<b>Technical Response</b>	<b>Maximum Points</b>	<b>Assigned Points</b>	
1. Provide a narrative that illustrates how the applicant will complete the scope of services and accomplish required objectives.	7		
2. Provide a proposed timeline for completing the scope of services.	7		
3. Provide a narrative that describes the applicant's leadership experience in a school for the deaf and hard-of-hearing.	15		
4. Provide evidence of improving student outcomes for deaf and hard of hearing students during leadership tenure in a school for the deaf and hard-of-hearing.	15		
5. Provide a list of review team members from national deaf organizations and/or deaf studies faculty from research universities in addition to leaders from schools for the deaf and hard-of-hearing.	15		
6. Provide a narrative that details your experience conducting a program review for a school for the deaf and hard of hearing and producing a written report with findings. Details must include the process used and best practices learned.	15		
<b>Score (maximum possible = 74)</b>			
<b>Evaluator Identification:</b>			

### Technical Requirements Rubric

Evaluators will use the below rubric to score applications.

<b>Technical Requirement</b>	<b>0</b>	<b>3 / 7</b>	<b>7 / 15</b>
Provide a narrative that illustrates how the applicant will complete the scope of services and accomplish required objectives.	Applicant has not provided the requested information.	Applicant has submitted a plan, however; it is not detailed, and it is not clear whether the applicant will be able to meet the outcomes.	Applicant has a detailed and comprehensive plan to accomplish all required objectives and it is abundantly clear that outcomes will be met.



<b>Technical Requirement</b>	<b>0</b>	<b>3 / 7</b>	<b>7 / 15</b>
Provide a proposed timeline for completing the scope of services.	Applicant has not provided the requested information.	Applicant has submitted a timeline but does not confirm the both the reviews and report will be completed by the State deadlines.	Applicant has submitted a timeline that confirms the reviews will be completed prior to May 21 and the report will be submitted to the State prior to June 15.
Provide a narrative that describes the applicant's leadership experience in a school for the deaf and hard-of-hearing.	Applicant has not provided the requested information or does not have leadership experience in a deaf school.	Applicant has less than three years leadership experience in an effective school for the deaf and hard-of-hearing.	Applicant has three or more years of successful superintendent experience in an effective school for the deaf and hard-of-hearing.
Provide evidence of improving student outcomes for deaf and hard of hearing students during leadership tenure in a school for the deaf and hard-of-hearing.	Applicant has not provided the requested information, or the data provided does not show improving student outcomes for deaf and hard of hearing students during leadership tenure.	Applicant has provided data that shows improving student outcomes in at least one area (e.g., achievement, graduation, college, and career attainment) during leadership tenure.	Applicant has provided data that shows exceptional student outcomes for achievement, graduation, college, and career attainment during leadership tenure.
Provide a list of review team members from national deaf organizations and/or deaf studies faculty from research universities in addition to leaders from schools for the deaf.	Applicant has not provided the requested information or the applicant's review team does not include an active member of a recognized national deaf organization or a faculty member of an accredited research university.	Applicant's review team includes an active member of a recognized national deaf organization or a faculty member of an accredited research university, but not both.	Applicant's review team includes an active member of a recognized national deaf organization and a faculty member of an accredited research university.
Provide a narrative that details your experience conducting a program review for a school for the deaf and hard-of-hearing and producing a written report with findings. Details must include the process used and best practices learned.	Applicant has not provided the requested information, or no member of the review team have experience conducting a program review for a school for the deaf and hard-of-hearing.	Some but not all review team members have participated in a program review for a school for the deaf and hard-of-hearing and provided findings in a written report.	All review team members have participated in a program review for a school for the deaf and hard-of-hearing, provided findings in a written report including research-based practices for improving student outcomes.

**Cost (20 Points)**

The Solicitation Coordinator will use the total amount of each proposed cost and the formula below to calculate the final budget score. The maximum possible score is 20.

$$\frac{\text{Lowest budget amount from all applications}}{\text{Budget amount being evaluated}} \times 20 = \text{Budget Score}$$

The agency will submit a proposed cost budget, using the template below.

Services Description	Amount
Onsite Reviews	\$ Number / upon completion
Written Report	\$ Number /upon completion by 6/15/2021
Interpreting Services	\$Number

Please note that the contractor will not be reimbursed for travel and all costs associated with onsite reviews must be included in the contractor's cost proposal.

# Appendix A: Pro Forma Contract

The Pro Forma Contract is what will be signed by the awarded applicants. The terms may be subject to state template revisions and the state reserves the right to modify terms prior to contract execution. It contains some “blanks” (signified by descriptions in capital letters) that will be completed with appropriate information in the final contract resulting from this solicitation.

If the contract is awarded to a governmental entity or state agency the standard terms and conditions of the contract shall be revised accordingly.

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

This Contract, by and between the State of Tennessee, Department of Education ("State") and **Contractor Legal Entity Name** ("Contractor"), is for the provision of a program review of the Tennessee Schools for the Deaf, 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. The Contractor shall evaluate the strengths and weaknesses of the current education program at Tennessee's three schools for the deaf (Tennessee School for the Deaf -Knoxville, Tennessee School for the Deaf- Nashville, and West Tennessee School for the Deaf- Jackson) and report findings and recommendations for improving instructional programs. Specifically, the Contractor shall:
- a. Attend a virtual kick-off meeting with the State.
  - b. Compare instructional delivery models at each campus against national models of excellence for serving deaf and hard of hearing students.
  - c. Evaluate language development practices at each campus and compare to data from peers nationally to identify effective and ineffective practices for developing language and preparing students for matriculation, post-secondary education, and employment.
  - d. Evaluate leadership effectiveness and organizational structures to determine how effectively and efficiently Tennessee Schools for the Deaf leadership supports student achievement.
- A.3. The Contractor shall conduct on site reviews by May 21, 2021. The onsite reviews will consist of a minimum of six hours during the instructional day at each campus. Reviews shall include but not be limited to classroom observations, staff interviews, data review, and observation of school operations. The Contractor may ask students questions when evaluating instructional practices, however; any individual student interviews or focus groups must be approved by the State and parental consent obtained.
- A.4. The Contractor shall coordinator three virtual community meetings to gather community feedback on TSD programs and services. There will be one meeting for each region of the state (East, Middle, and West). The Contractor may be required to collaborate with another State contractor to conduct these meetings.
- A.5. The Contractor shall submit a comprehensive summary report by June 15, 2021 that includes but is not limited to the following information. The Contractor shall protect confidential and personally identifiable data, including student and teacher information, in accordance with federal and state law and as directed by the State. The Contractor shall submit one version of the summary report that is "public-facing" (all names and personally identifiable information redacted or removed) and one version that contains all information for State review and use.
- a. Introduction
  - b. Summary of review team activities
  - c. Descriptive data collected
  - d. Analysis of data collected
  - e. Summary of findings

- f. Recommendations for improvement
- g. Review team members and roles
- h. Research references

A.6. If requested by the State, the Contractor shall provide interpreting services for virtual meetings and on-site school visits.

- A.7. Work Product Ownership: All work products developed or produced by the Contractor under this Contract shall constitute “works made for hire” or have similar status under relevant intellectual property law. The State shall have full, final, and perpetual ownership rights to all work products provided by the Contractor for the State under this Contract.
- A.8. All work products developed or produced by the Contractor under this Contract are subject to final approval by the State. The Contractor shall make any revisions requested by the State on a timeline approved by the State.
- A.9. To the extent applicable, the Contractor shall comply with the State’s Acceptable Use Policy, Network Access Rights and Obligations, found here:  
[https://www.tn.gov/content/dam/tn/finance/documents/fa\\_policies/Acceptable%20Use%20Policy.pdf](https://www.tn.gov/content/dam/tn/finance/documents/fa_policies/Acceptable%20Use%20Policy.pdf)
- A.10. The Contractor shall ensure that all services provided under this Contract are compliant with state and federal requirements relating to accessibility, including the Americans with Disabilities Act and Section 504 of the Rehabilitation Act of 1973.
- A.11. Background checks – The Contractor shall never be alone with students. The Contractor shall perform services only when school officials or employees are present and where the activity, assembly, or event is conducted under the supervision of school officials or employees; otherwise, a background check will be required.
- A.12. All data, information and metadata collected by the State, furnished by the State to the Contractor, or collected by the Contractor in the course of the performance of work under this Contract shall be and remain the property of the State, and the Contractor shall neither have nor acquire any rights, title, interest or licenses therein by virtue of this Contract, excepting only a limited license to use the data for purposes reasonably required for the performance of duties under this Contract and subject to confidentiality requirements with respect to the data.
- A.13. Warranty. Contractor represents and warrants that the term of the warranty (“Warranty Period”) shall be the greater of the Term of this Contract or any other warranty generally offered by Contractor, its suppliers, or manufacturers to customers of its goods or services. The goods or services provided under this Contract shall conform to the terms and conditions of this Contract throughout the Warranty Period. Any nonconformance of the goods or services to the terms and conditions of this Contract shall constitute a “Defect” and shall be considered “Defective.” If Contractor receives notice of a Defect during the Warranty Period, then Contractor shall correct the Defect, at no additional charge.

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

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

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

- A.14. 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 for the period beginning on **Date** ("Effective Date") and ending on **Date**, ("Term"). The State shall have no obligation for goods delivered or services provided by the Contractor prior to the Effective Date.

**C. PAYMENT TERMS AND CONDITIONS:**

- C.1. Maximum Liability. In no event shall the maximum liability of the State under this Contract exceed **Written Dollar Amount (\$Number)** ("Maximum Liability"). This Contract does not grant the Contractor any exclusive rights. The State does not guarantee that it will buy any minimum quantity of goods or services under this Contract. Subject to the terms and conditions of this Contract, the Contractor will only be paid for goods or services provided under this Contract after a purchase order is issued to Contractor by the State or as otherwise specified by this Contract.

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

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

- a. The Contractor's compensation shall be contingent upon the satisfactory provision of goods or services as set forth in Section A.
- b. The Contractor shall be compensated based upon the following payment methodology:

Goods or Services Description	Amount (per compensable increment)
On-site Reviews	\$ <b>Number</b> /upon completion
Written Comprehensive Summary Report*	\$ <b>Number</b> /upon completion
<b>Interpreting Services</b>	<b>\$Number</b>

\*\$200 per day will be deducted for late submission. Deadline is June 15, 2021.

- 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:

Kristen McKeever, SSS operations coordinator

[Kristen.B.McKeever@tn.gov](mailto:Kristen.B.McKeever@tn.gov)

(615) 887-1109

- 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: Tennessee Department of Education & State Special Schools;
  - (5) Customer account number (assigned by the Contractor to the above-referenced Customer);
  - (6) Contractor name;
  - (7) Contractor Tennessee Edison registration ID number;
  - (8) Contractor contact for invoice questions (name, phone, or email);
  - (9) Contractor remittance address;
  - (10) Description of delivered goods or services provided and invoiced, including identifying information as applicable;
  - (11) Number of delivered or completed units, increments, hours, or days as applicable, of each good or service invoiced;
  - (12) Applicable payment methodology (as stipulated in Section C.3.) of each good or service invoiced;
  - (13) Amount due for each compensable unit of good or service; and
  - (14) Total amount due for the invoice period.
- b. Contractor's invoices shall:
- (1) Only include charges for goods delivered or services provided as described in Section A and in accordance with payment terms and conditions set forth in Section C;
  - (2) Only be submitted for goods delivered or services completed and shall not include any charge for future goods to be delivered or services to be performed;
  - (3) Not include Contractor's taxes, which includes without limitation Contractor's sales and use tax, excise taxes, franchise taxes, real or personal property taxes, or income taxes; and
  - (4) Include shipping or delivery charges only as authorized in this Contract.
- c. The timeframe for payment (or any discounts) begins only when the State is in receipt of an invoice that meets the minimum requirements of this Section C.5.

- C.6. Payment of Invoice. A payment by the State shall not prejudice the State's right to object to or question any payment, invoice, or other matter. A payment by the State shall not be construed as acceptance of goods delivered, any part of the services provided, or as approval of any amount invoiced.
- C.7. Invoice Reductions. The Contractor's invoice shall be subject to reduction for amounts included in any invoice or payment that is determined by the State, on the basis of audits conducted in accordance with the terms of this Contract, to not constitute proper compensation for goods delivered or services provided.
- C.8. Deductions. The State reserves the right to deduct from amounts, which are or shall become due and payable to the Contractor under this or any contract between the Contractor and the State of Tennessee, any amounts that are or shall become due and payable to the State of Tennessee by the Contractor.
- C.9. Prerequisite Documentation. The Contractor shall not invoice the State under this Contract until the State has received the following, properly completed documentation.

- a. The Contractor shall complete, sign, and present to the State the "Authorization Agreement for Automatic Deposit Form" provided by the State. By doing so, the Contractor acknowledges and agrees that, once this form is received by the State, payments to the Contractor, under this or any other contract the Contractor has with the State of Tennessee, may be made by ACH; and
- b. The Contractor shall complete, sign, and return to the State the State-provided W-9 form. The taxpayer identification number on the W-9 form must be the same as the Contractor's Federal Employer Identification Number or Social Security Number referenced in the Contractor's Edison registration information.

**D. MANDATORY TERMS AND CONDITIONS:**

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

The State:

Josh Mason, Ed.D., Executive Director  
 State Special Schools  
 Office of Districts and Schools  
 Andrew Johnson Tower, 12th Floor  
 710 James Robertson Parkway  
 Nashville, TN 37243  
[Josh.Mason@tn.gov](mailto:Josh.Mason@tn.gov)  
 Telephone # (615) 714-0600

The Contractor:

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

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

- D.3. Modification and Amendment. This Contract may be modified only by a written amendment signed by all Parties and approved by all applicable State officials.
- D.4. Subject to Funds Availability. The Contract is subject to the appropriation and availability of State or federal funds. In the event that the funds are not appropriated or are otherwise unavailable, the State reserves the right to terminate this Contract upon written notice to the Contractor. The State's exercise of its right to terminate this Contract shall not constitute a breach of Contract by the State. Upon receipt of the written notice, the Contractor shall cease all work associated with



the Contract. If the State terminates this Contract due to lack of funds availability, the Contractor shall be entitled to compensation for all conforming goods requested and accepted by the State and for all satisfactory and authorized services completed as of the termination date. Should the State exercise its right to terminate this Contract due to unavailability of funds, the Contractor shall have no right to recover from the State any actual, general, special, incidental, consequential, or any other damages of any description or amount.

- D.5. Termination for Convenience. The State may terminate this Contract for convenience without cause and for any reason. The State shall give the Contractor at least thirty (30) days written notice before the termination date. The Contractor shall be entitled to compensation for all conforming goods delivered and accepted by the State or for satisfactory, authorized services completed as of the termination date. In no event shall the State be liable to the Contractor for compensation for any goods neither requested nor accepted by the State or for any services neither requested by the State nor satisfactorily performed by the Contractor. In no event shall the State's exercise of its right to terminate this Contract for convenience relieve the Contractor of any liability to the State for any damages or claims arising under this Contract.
- D.6. Termination for Cause. If the Contractor fails to properly perform its obligations under this Contract in a timely or proper manner, or if the Contractor materially violates any terms of this Contract ("Breach Condition"), the State shall have the right to immediately terminate the Contract and withhold payments in excess of compensation for completed services or provided goods. Notwithstanding the above, the Contractor shall not be relieved of liability to the State for damages sustained by virtue of any Breach Condition and the State may seek other remedies allowed at law or in equity for breach of this Contract.
- D.7. Assignment and Subcontracting. The Contractor shall not assign this Contract or enter into a subcontract for any of the goods or services provided under this Contract without the prior written approval of the State. Notwithstanding any use of the approved subcontractors, the Contractor shall be the prime contractor and responsible for compliance with all terms and conditions of this Contract. The State reserves the right to request additional information or impose additional terms and conditions before approving an assignment of this Contract in whole or in part or the use of subcontractors in fulfilling the Contractor's obligations under this Contract.
- D.8. Conflicts of Interest. The Contractor warrants that no part of the Contractor's compensation shall be paid directly or indirectly to an employee or official of the State of Tennessee as wages, compensation, or gifts in exchange for acting as an officer, agent, employee, subcontractor, or consultant to the Contractor in connection with any work contemplated or performed under this Contract.
- The Contractor acknowledges, understands, and agrees that this Contract shall be null and void if the Contractor is, or within the past six (6) months has been, an employee of the State of Tennessee or if the Contractor is an entity in which a controlling interest is held by an individual who is, or within the past six (6) months has been, an employee of the State of Tennessee.
- D.9. Nondiscrimination. The Contractor hereby agrees, warrants, and assures that no person shall be excluded from participation in, be denied benefits of, or be otherwise subjected to discrimination in the performance of this Contract or in the employment practices of the Contractor on the grounds of handicap or disability, age, race, creed, color, religion, sex, national origin, or any other classification protected by federal or state law. The Contractor shall, upon request, show proof of nondiscrimination and shall post in conspicuous places, available to all employees and applicants, notices of nondiscrimination.
- D.10. Prohibition of Illegal Immigrants. The requirements of Tenn. Code Ann. § 12-3-309 addressing the use of illegal immigrants in the performance of any contract to supply goods or services to the state of Tennessee, shall be a material provision of this Contract, a breach of which shall be grounds for monetary and other penalties, up to and including termination of this Contract.
- a. The Contractor agrees that the Contractor shall not knowingly utilize the services of an illegal immigrant in the performance of this Contract and shall not knowingly utilize the

services of any subcontractor who will utilize the services of an illegal immigrant in the performance of this Contract. The Contractor shall reaffirm this attestation, in writing, by submitting to the State a completed and signed copy of the document at Attachment A, semi-annually during the Term. If the Contractor is a party to more than one contract with the State, the Contractor may submit one attestation that applies to all contracts with the State. All Contractor attestations shall be maintained by the Contractor and made available to State officials upon request.

- b. Prior to the use of any subcontractor in the performance of this Contract, and semi-annually thereafter, during the Term, the Contractor shall obtain and retain a current, written attestation that the subcontractor shall not knowingly utilize the services of an illegal immigrant to perform work under this Contract and shall not knowingly utilize the services of any subcontractor who will utilize the services of an illegal immigrant to perform work under this Contract. Attestations obtained from subcontractors shall be maintained by the Contractor and made available to State officials upon request.
  - c. The Contractor shall maintain records for all personnel used in the performance of this Contract. Contractor's records shall be subject to review and random inspection at any reasonable time upon reasonable notice by the State.
  - d. The Contractor understands and agrees that failure to comply with this section will be subject to the sanctions of Tenn. Code Ann. § 12-3-309 for acts or omissions occurring after its effective date.
  - e. For purposes of this Contract, "illegal immigrant" shall be defined as any person who is not: (i) a United States citizen; (ii) a Lawful Permanent Resident; (iii) a person whose physical presence in the United States is authorized; (iv) allowed by the federal Department of Homeland Security and who, under federal immigration laws or regulations, is authorized to be employed in the U.S.; or (v) is otherwise authorized to provide services under the Contract.
- D.11. Records. The Contractor shall maintain documentation for all charges under this Contract. The books, records, and documents of the Contractor, for work performed or money received under this Contract, shall be maintained for a period of five (5) full years from the date of the final payment and shall be subject to audit at any reasonable time and upon reasonable notice by the State, the Comptroller of the Treasury, or their duly appointed representatives. The financial statements shall be prepared in accordance with generally accepted accounting principles.
- D.12. Monitoring. The Contractor's activities conducted and records maintained pursuant to this Contract shall be subject to monitoring and evaluation by the State, the Comptroller of the Treasury, or their duly appointed representatives.
- D.13. Progress Reports. The Contractor shall submit brief, periodic, progress reports to the State as requested.
- D.14. Strict Performance. Failure by any Party to this Contract to require, in any one or more cases, the strict performance of any of the terms, covenants, conditions, or provisions of this Contract shall not be construed as a waiver or relinquishment of any term, covenant, condition, or provision. No term or condition of this Contract shall be held to be waived, modified, or deleted except by a written amendment signed by the Parties.
- D.15. Independent Contractor. The Parties shall not act as employees, partners, joint venturers, or associates of one another. The Parties are independent contracting entities. Nothing in this Contract shall be construed to create an employer/employee relationship or to allow either Party to exercise control or direction over the manner or method by which the other transacts its business affairs or provides its usual services. The employees or agents of one Party are not employees or agents of the other Party.

- D.16 Patient Protection and Affordable Care Act. The Contractor agrees that it will be responsible for compliance with the Patient Protection and Affordable Care Act (“PPACA”) with respect to itself and its employees, including any obligation to report health insurance coverage, provide health insurance coverage, or pay any financial assessment, tax, or penalty for not providing health insurance. The Contractor shall indemnify the State and hold it harmless from any costs to the State arising from Contractor’s failure to fulfill its PPACA responsibilities for itself or its employees.
- D.17. Limitation of State’s Liability. The State shall have no liability except as specifically provided in this Contract. In no event will the State be liable to the Contractor or any other party for any lost revenues, lost profits, loss of business, decrease in the value of any securities or cash position, time, goodwill, or any indirect, special, incidental, punitive, exemplary or consequential damages of any nature, whether based on warranty, contract, statute, regulation, tort (including but not limited to negligence), or any other legal theory that may arise under this Contract or otherwise. The State’s total liability under this Contract (including any exhibits, schedules, amendments or other attachments to the Contract) or otherwise shall under no circumstances exceed the Maximum Liability. This limitation of liability is cumulative and not per incident.
- D.18. Limitation of Contractor’s Liability. In accordance with Tenn. Code Ann. § 12-3-701, the Contractor’s liability for all claims arising under this Contract shall be limited to an amount equal to two (2) times the Maximum Liability amount detailed in Section C.1. and as may be amended, PROVIDED THAT in no event shall this Section limit the liability of the Contractor for: (i) intellectual property or any Contractor indemnity obligations for infringement for third-party intellectual property rights; (ii) any claims covered by any specific provision in the Contract providing for liquidated damages; or (iii) any claims for intentional torts, criminal acts, fraudulent conduct, or acts or omissions that result in personal injuries or death. For clarity, except as otherwise expressly set forth in this Section, Contractor’s indemnification obligations and other remedies available under this Contract are subject to the limitations on liability set forth in this Section.
- D.19. Hold Harmless. The Contractor agrees to indemnify and hold harmless the State of Tennessee as well as its officers, agents, and employees from and against any and all claims, liabilities, losses, and causes of action which may arise, accrue, or result to any person, firm, corporation, or other entity which may be injured or damaged as a result of acts, omissions, or negligence on the part of the Contractor, its employees, or any person acting for or on its or their behalf relating to this Contract. The Contractor further agrees it shall be liable for the reasonable cost of attorneys’ fees, court costs, expert witness fees, and other litigation expenses for the State to enforce the terms of this Contract.

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

- D.20. HIPAA Compliance. The State and Contractor shall comply with obligations under the Health Insurance Portability and Accountability Act of 1996 (“HIPAA”), Health Information Technology for Economic and Clinical Health (“HITECH”) Act and any other relevant laws and regulations regarding privacy (collectively the “Privacy Rules”). The obligations set forth in this Section shall survive the termination of this Contract.
- a. Contractor warrants to the State that it is familiar with the requirements of the Privacy Rules, and will comply with all applicable requirements in the course of this Contract.
  - b. Contractor warrants that it will cooperate with the State, including cooperation and coordination with State privacy officials and other compliance officers required by the Privacy Rules, in the course of performance of the Contract so that both parties will be in compliance with the Privacy Rules.

- c. The State and the Contractor will sign documents, including but not limited to business associate agreements, as required by the Privacy Rules and that are reasonably necessary to keep the State and Contractor in compliance with the Privacy Rules. This provision shall not apply if information received or delivered by the parties under this Contract is NOT “protected health information” as defined by the Privacy Rules, or if the Privacy Rules permit the parties to receive or deliver the information without entering into a business associate agreement or signing another document.
  - d. The Contractor will indemnify the State and hold it harmless for any violation by the Contractor or its subcontractors of the Privacy Rules. This includes the costs of responding to a breach of protected health information, the costs of responding to a government enforcement action related to the breach, and any fines, penalties, or damages paid by the State because of the violation.
- D.21. Tennessee Consolidated Retirement System. Subject to statutory exceptions contained in Tenn. Code Ann. §§ 8-36-801, *et seq.*, the law governing the Tennessee Consolidated Retirement System (“TCRS”), provides that if a retired member of TCRS, or of any superseded system administered by TCRS, or of any local retirement fund established under Tenn. Code Ann. §§ 8-35-101, *et seq.*, accepts State employment, the member's retirement allowance is suspended during the period of the employment. Accordingly and notwithstanding any provision of this Contract to the contrary, the Contractor agrees that if it is later determined that the true nature of the working relationship between the Contractor and the State under this Contract is that of “employee/employer” and not that of an independent contractor, the Contractor, if a retired member of TCRS, may be required to repay to TCRS the amount of retirement benefits the Contractor received from TCRS during the Term.
- D.22. Tennessee Department of Revenue Registration. The Contractor shall comply with all applicable registration requirements contained in Tenn. Code Ann. §§ 67-6-601 – 608. Compliance with applicable registration requirements is a material requirement of this Contract.
- D.23. Debarment and Suspension. The Contractor certifies, to the best of its knowledge and belief, that it, its current and future principals, its current and future subcontractors and their principals:
- a. are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any federal or state department or agency;
  - b. have not within a three (3) year period preceding this Contract been convicted of, or had a civil judgment rendered against them from commission of fraud, or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, state, or local) transaction or grant under a public transaction; violation of federal or state antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification, or destruction of records, making false statements, or receiving stolen property;
  - c. are not presently indicted or otherwise criminally or civilly charged by a government entity (federal, state, or local) with commission of any of the offenses detailed in section b. of this certification; and
  - d. have not within a three (3) year period preceding this Contract had one or more public transactions (federal, state, or local) terminated for cause or default.
- The Contractor shall provide immediate written notice to the State if at any time it learns that there was an earlier failure to disclose information or that due to changed circumstances, its principals or the principals of its subcontractors are excluded, disqualified, or presently fall under any of the prohibitions of sections a-d.
- D.24. Force Majeure. “Force Majeure Event” means fire, flood, earthquake, elements of nature or acts of God, wars, riots, civil disorders, rebellions or revolutions, acts of terrorism or any other similar

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

- D.25. State and Federal Compliance. The Contractor shall comply with all State and federal laws and regulations applicable to Contractor in the Contractor's performance of this Contract.
- D.26. Governing Law. This Contract shall be governed by and construed in accordance with the laws of the State of Tennessee, without regard to its conflict or choice of law rules. The Tennessee Claims Commission or the state or federal courts in Tennessee shall be the venue for all claims, disputes, or disagreements arising under this Contract. The Contractor acknowledges and agrees that any rights, claims, or remedies against the State of Tennessee or its employees arising under this Contract shall be subject to and limited to those rights and remedies available under Tenn. Code Ann. §§ 9-8-101 - 408.
- D.27. Entire Agreement. This Contract is complete and contains the entire understanding between the Parties relating to its subject matter, including all the terms and conditions of the Parties' agreement. This Contract supersedes any and all prior understandings, representations, negotiations, and agreements between the Parties, whether written or oral.
- D.28. Severability. If any terms and conditions of this Contract are held to be invalid or unenforceable as a matter of law, the other terms and conditions of this Contract shall not be affected and shall remain in full force and effect. The terms and conditions of this Contract are severable.
- D.29. Headings. Section headings of this Contract are for reference purposes only and shall not be construed as part of this Contract.
- D.30. Incorporation of Additional Documents. Each of the following documents is included as a part of this Contract by reference. In the event of a discrepancy or ambiguity regarding the Contractor's duties, responsibilities, and performance under this Contract, these items shall govern in order of precedence below:
- a. any amendment to this Contract, with the latter in time controlling over any earlier amendments;
  - b. this Contract with any attachments or exhibits (excluding the items listed at subsections c. through f., below), which includes Attachment A;
  - c. any clarifications of or addenda to the Contractor's proposal seeking this Contract;
  - d. the State solicitation, as may be amended, requesting responses in competition for this Contract;

- e. any technical specifications provided to proposers during the procurement process to award this Contract; and
  - f. the Contractor's response seeking this Contract.
- D.31. Iran Divestment Act. The requirements of Tenn. Code Ann. § 12-12-101, *et seq.*, addressing contracting with persons as defined at Tenn. Code Ann. §12-12-103(5) that engage in investment activities in Iran, shall be a material provision of this Contract. The Contractor certifies, under penalty of perjury, that to the best of its knowledge and belief that it is not on the list created pursuant to Tenn. Code Ann. § 12-12-106.
- D.32. Insurance. Contractor shall maintain insurance coverage as specified in this Section. The State reserves the right to amend or require additional insurance coverage, coverage amounts, and endorsements required under this Contract. 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.33. Major Procurement Contract Sales and Use Tax. Pursuant to Tenn. Code Ann. § 4-39-102 and to the extent applicable, the Contractor and the Contractor's subcontractors shall remit sales and use taxes on the sales of goods or services that are made by the Contractor or the Contractor's subcontractors and that are subject to tax.

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

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

**E. SPECIAL TERMS AND CONDITIONS:**

E.1. Conflicting Terms and Conditions. Should any of these special terms and conditions conflict with any other terms and conditions of this Contract, the special terms and conditions shall be subordinate to the Contract's other terms and conditions.

E.2. State Ownership of Goods. The State shall have ownership, right, title, and interest in all goods provided by Contractor under this Contract including full rights to use the goods and transfer title in the goods to any third parties.

E.3. Family Educational Rights and Privacy Act & Tennessee Data Accessibility, Transparency and Accountability Act. The Contractor shall comply with the Family Educational Rights and Privacy Act of 1974 (20 U.S.C. 1232(g)) and its accompanying regulations (34 C.F.R. § 99) ("FERPA"). The Contractor warrants that the Contractor is familiar with FERPA requirements and that it will comply with these requirements in the performance of its duties under this Contract. The Contractor agrees to cooperate with the State, as required by FERPA, in the performance of its duties under this Contract. The Contractor agrees to maintain the confidentiality of all education records and student information. The Contractor shall only use such records and information for the exclusive purpose of performing its duties under this Contract. The obligations set forth in this Section shall survive the termination of this Contract.

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



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

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

- E.4. State Furnished Property. The Contractor shall be responsible for the correct use, maintenance, and protection of all articles of nonexpendable, tangible personal property furnished by the State for the Contractor's use under this Contract. Upon termination of this Contract, all property furnished by the State shall be returned to the State in the same condition as when received, less ordinary wear and tear. Should the property be destroyed, lost, or stolen, the Contractor shall be responsible to the State for the fair market value of the property at the time of loss.
- E.5. Personally Identifiable Information. While performing its obligations under this Contract, Contractor may have access to Personally Identifiable Information held by the State ("PII"). For the purposes of this Contract, "PII" includes "Nonpublic Personal Information" as that term is defined in Title V of the Gramm-Leach-Bliley Act of 1999 or any successor federal statute, and the rules and regulations thereunder, all as may be amended or supplemented from time to time ("GLBA") and personally identifiable information and other data protected under any other applicable laws, rule or regulation of any jurisdiction relating to disclosure or use of personal information ("Privacy Laws"). Contractor agrees it shall not do or omit to do anything which would cause the State to be in breach of any Privacy Laws. Contractor shall, and shall cause its employees, agents and representatives to: (i) keep PII confidential and may use and disclose PII only as necessary to carry out those specific aspects of the purpose for which the PII was disclosed to Contractor and in accordance with this Contract, GLBA and Privacy Laws; and (ii) implement and maintain appropriate technical and organizational measures regarding information security to: (A) ensure the security and confidentiality of PII; (B) protect against any threats or hazards to the security or integrity of PII; and (C) prevent unauthorized access to or use of PII. Contractor shall immediately notify State: (1) of any disclosure or use of any PII by Contractor or any of its employees, agents and representatives in breach of this Contract; and (2) of any disclosure of any PII to Contractor or its employees, agents and representatives where the purpose of such disclosure is not known to Contractor or its employees, agents and representatives. The State reserves the right to review Contractor's policies and procedures used to maintain the security and confidentiality of PII and Contractor shall, and cause its employees, agents and representatives to, comply with all reasonable requests or directions from the State to enable the State to verify or ensure that Contractor is in full compliance with its obligations under this Contract in relation to PII. Upon termination or expiration of the Contract or at the State's direction at any time in its sole discretion, whichever is earlier, Contractor shall immediately return to the State any and all PII which it has received under this Contract and shall destroy all records of such PII.

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

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 DEPARTMENT OF EDUCATION:

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PENNY SCHWINN, COMMISSIONER

DATE

**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**