



Department of
Education

2024-2025 ESA SERVICE PROVIDERS

Request for Applications (RFA)

Tennessee Department of Education | JUNE 2024

Application Due Date: March 31, 2025

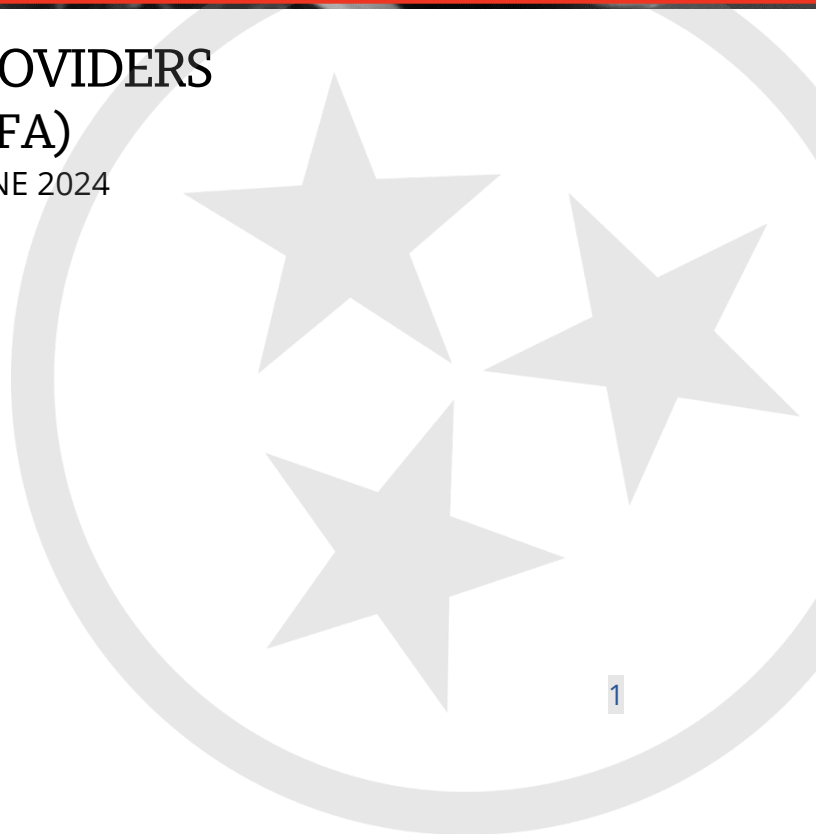


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General Information

Background

Tenn. Code Annotated Title 49, Chap. 6, Part 26 established the TN Education Savings Account (ESA) program. The ESA program allows eligible students who are zoned to attend a Memphis-Shelby County district school, a Metro Nashville public school, a Hamilton County school, or a school in the Achievement School District (ASD) to use state and local money toward education expenses, including tuition and/or fees at approved private schools. Additional districts may be added if the program is expanded under law or otherwise approved for expansion by the State.

The State Board of Education promulgated Chapter 0520-01-16 of its rules to effectuate the Program. Pursuant to those rules, Providers are individuals or businesses that provide educational services in accordance with T.C.A. §§ 49-6-2601, et seq. and that meets the requirements established by the Department and the State Board. Account Holders (families participating the ESA Program) can use their ESA funds on Qualified Expenses for allowable services, including services from tutors, therapists, summer or after-school programs, technology and uniform purchases, or transportation providers.

Procurement Purpose

Through this Request for Applications (RFA), the State will verify that applicants meet the ESA Program requirements for the 2024-25 school year. The State will establish No Cost contracts with up to 100 qualified Providers for these services.

Applicants that submit a complete application and meet all requirements and qualifications will receive a No Cost Contract with the State. Participating families will then be able to select from the qualified vendors and use their ESA funds on allowable services. Payment amounts may vary and will depend on eligible services requested by ESA families.

See the attached pro forma contract that includes a detailed scope of services. This substantially represents the contract document that the awarded Contractor must sign. Redlines and proposals for alternate terms and conditions will not be accepted.

Communications

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

Chad Gordon, ESA Procurement Coordinator
 Division of Choice, Office of Districts and Schools
 Tennessee Department of Education
 710 James Robertson Parkway
 Andrew Johnson Tower, 10th Floor
 Nashville, TN 37243
 Phone (629) 259-1639
 Chad.Gordon@tn.gov

Review Process

All complete application packages meeting the requirements and received by the State on or before the application deadline will be forwarded to a review committee. The committee will score each application based upon the review criteria in the rubric. A copy of the scoring rubric can be found in **Attachment A: Scoring Rubric**. The pass/fail score based on the requirements will serve as the basis for selection. The State reserves the right to request additional information to confirm that the applicant meets requirements.

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

Schedule

Event	Date
RFA Released	June 13, 2024
Vendor questions	June 17 - 21, 2024*Note: applications are accepted on a rolling basis. Additional questions after this initial vendor question window should be submitted to ESA.Finance@tn.gov.
State responses to vendor questions	June 28, 2024 *Note: applications are accepted on a rolling basis. Documentation of additional questions and responses after this initial vendor question window will

	be maintained and available upon request.
Application Deadline	Accepting Applications Ongoing Through March 31, 2025
Proposed Contract Start Date	7 to 21 Business Days After State Approval of Application

Application Procedures

The application must be completed and submitted online. **Paper copies of this application will not be accepted.**

Steps to submitting an application:

Applicants will access the application using the following link:

[2024-25 ESA Service Provider Application Link](#)

Application Components

The State is looking for contractors that meet the listed requirements, to provide any of the following services, as selected by ESA account holders:

1. Tutoring - One-on-one or small group (3 to 1 students per teacher) instruction by a teacher with an active Tennessee teaching license or by a tutoring facility accredited by a State Board of Education approved agency to improve a child’s academic performance. A tutoring facility must be accredited by one (1) of the following:
 - any accreditation division of Cognia,
 - NCA CASI – the North Central Association Commission on Accreditation and School Improvement,
 - NWAC – the Northwest Accreditation Commission,
 - SACS CASI – the Southern Association of Colleges and Schools Council on Accreditation and School Improvement,
 - MSA – the Middle States Association of Colleges and Schools,
 - NEASC – the New England Association of Schools and Colleges,
 - WASC – the Western Association of Schools and Colleges,
 - COE – the Council on Occupational Education

2. Educational therapy - Individualized services designed to develop or improve academic performance through instructional and therapeutic techniques. All therapy services through the ESA Program must be “direct service,” meaning that they must be directly related to the education of the participating student. The therapy service must be

provided by a therapist who meets the requirements set by the State Board of Education and licensed in the State of Tennessee.

3. Transportation - a commercial business that uses company owned vehicles to complete services offered to and from a participating school or educational provider location and is licensed to do business in the state of Tennessee. Family members or ride-share companies, such as Uber or Lyft, are ineligible.
4. Summer programming - Educational group instruction in the summer, that is not childcare, provided by an administrator, teaching assistant or trained instructor to re-enforce lessons learned from the previous school year and provide educational materials to prepare for the coming year. Supporting documentation is needed for this category. Required supporting documentation includes the following,
 - a. Social media or internet presence – Facebook group, website, etc.,
 - b. Publicly published payment and fee schedule,
 - c. Daily schedule of educational events.
5. After-school programming - Educational after-school group instruction, that is not childcare, provided by an administrator, teaching assistant or trained instructor to assist students with schoolwork from the day and provide supplementary materials to re-enforce learning. Supporting documentation is needed for this category. Required supporting documentation includes the following,
 - a. Social media or internet presence – Facebook group, website, etc.
 - b. Publicly published payment and fee schedule
 - c. Daily schedule of educational events
6. Technology Equipment - a commercial business offering approvable technological devices that are to be used for the student's educational needs and directly assist with the student's instruction at or below fair market value. Business must be licensed to operate in the State of Tennessee.

In accordance with State Board Rule 0520-01-16-.09,

(1) Providers at a minimum shall:

- (a) Maintain documentation that any person providing services to participating students has undergone a fingerprint-based criminal history records check conducted by the TBI and forwarded by the TBI to the FBI for processing pursuant to the National Child Protection Act, and
- (b) Maintain documentation of the provider's credentials demonstrating the provider meets the qualifications set by the Department.

(2) Providers and eligible postsecondary institutions shall provide Account Holders with a receipt for all expenses paid to the provider or eligible postsecondary institution using ESA funds.

Contractors MUST sign a State no-cost contract before any services or payments for services begin.

Attachment A: Scoring Rubric

APPLICATION COMPONENT (#1 - #6 is specific to the type of service being provided, #7 & #8 applies to ALL applicants)	PASS/FAIL	NOTES
1. Tutoring – is the applicant licensed in the State of Tennessee or does the agency hold accreditation?		
2. Therapy – is the applicant licensed with the State Medical Board?		
3. Transportation – is it a licensed commercial fee-for-service company?		
4. Summer programming – is it educationally based? Were the following included with the application, <ul style="list-style-type: none"> a. Evidence of social media or internet presence b. Payment and fee schedule c. Schedule of events 		
5. After-school programming – is it educationally based? Were the following included with the application, <ul style="list-style-type: none"> a. Evidence of social media or internet presence b. Payment and fee schedule c. Schedule of events 		
6. Technology Equipment – are devices listed at or below fair market value?		
7. All assurances on the application have been marked Yes.		

Attachment B: Pro Forma Contract

The *pro forma contract* details the State's requirements:

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

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



NO COST CONTRACT

(no cost contract, involving no monetary obligation between the parties, with an individual, business, non-profit, or government entity of another state or country)

Begin Date TBD	End Date TBD	Agency Tracking # 33101-24137DAS1	Edison ID 83235
Contractor Legal Entity Name TBD			Edison Vendor ID (optional) TBD
Service Caption 2024-2025 ESA Service Providers			
Ownership/Control			
<input type="checkbox"/> Minority Business Enterprise (MBE): <input type="checkbox"/> African American <input type="checkbox"/> Asian American <input type="checkbox"/> Hispanic American <input type="checkbox"/> Native American			
<input type="checkbox"/> Woman Business Enterprise (WBE)			
<input type="checkbox"/> Service-Disabled Veteran Enterprise (SDVBE)			
<input type="checkbox"/> Disabled Owned Businesses (DSBE)			
<input type="checkbox"/> Small Business Enterprise (SBE): \$10,000,000.00 averaged over a three (3) year period or employs no more than ninety-nine (99) employees.			
<input type="checkbox"/> Government <input type="checkbox"/> Non-Minority/Disadvantaged <input type="checkbox"/> Other:			
Selection Method & Process Summary (mark the correct response to confirm the associated summary)			
<input type="checkbox"/> Competitive Award	Describe the competitive award process used. Include Solicitation Number, if applicable:		
<input type="checkbox"/> Other	Describe the non-competitive award process used and submit a Special Contract Request with the applicable method described, in addition to selecting the No Cost contract type.		
<i>CPO USE - NC</i>			

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 2024-2025 ESA Service Providers, as further defined in the "SCOPE OF SERVICES." 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 OF SERVICES:

- A.1. The Contractor shall provide all services and deliverables ("Scope") as required, described, and detailed in this Contract.
- A.2. Definitions. For the purposes of this Contract, the definitions set forth in State Board Rule 0520-01-16-.02 Education Savings Account shall apply unless otherwise specified by the State.
- A.3. The Contractor shall provide educational services, as requested by Account Holders, in accordance with T.C.A. §§ 49-6-2601, et seq. and State Board Rule 0520-01-16. Services include the following, as applicable. The Contractor shall meet the requirements as described below and in applicable law and school policy, including those related to student privacy.
- a. Tutoring - One-on-one or small group (3 to 1 students per teacher) instruction by a teacher with an active Tennessee teaching license or by a tutoring facility accredited by a State Board of Education approved agency to improve a child's academic performance. A tutoring facility must be accredited by one (1) of the following:
- any accreditation division of Cognia,
 - NCA CASI – the North Central Association Commission on Accreditation and School Improvement,
 - NWAC – the Northwest Accreditation Commission,
 - SACS CASI – the Southern Association of Colleges and Schools Council on Accreditation and School Improvement,
 - MSA – the Middle States Association of Colleges and Schools,
 - NEASC – the New England Association of Schools and Colleges,
 - WASC – the Western Association of Schools and Colleges,
 - COE – the Council on Occupational Education
- b. Educational therapy - Individualized services designed to develop or improve academic performance through instructional and therapeutic techniques. All therapy services through the ESA Program must be "direct service," meaning that they must be directly related to the education of the participating student. The therapy service must be provided by a therapist who meets the requirements set by the State Board of Education and licensed in the State of Tennessee.
- c. Transportation - a commercial business that uses company owned vehicles to complete services offered to and from a participating school or educational provider location and is

licensed to do business in the state of Tennessee. Family members or ride-share companies, such as Uber or Lyft, are ineligible.

- d. Summer programming - Educational group instruction in the summer, that is not childcare, provided by an administrator, teaching assistant or trained instructor to re-enforce lessons learned from the previous school year and provide educational materials to prepare for the coming year. Supporting documentation is needed for this category. Required supporting documentation includes the following,
 - 1) Social media or internet presence – Facebook group, website, etc.,
 - 2) Publicly published payment and fee schedule,
 - 3) Daily schedule of educational events.
- e. After-school programming - Educational after-school group instruction, that is not childcare, provided by an administrator, teaching assistant or trained instructor to assist students with schoolwork from the day and provide supplementary materials to re-enforce learning. Supporting documentation is needed for this category. Required supporting documentation includes the following,
 - 1) Social media or internet presence – Facebook group, website, etc.
 - 2) Publicly published payment and fee schedule
 - 3) Daily schedule of educational events
- f. Technology Equipment - a commercial business offering approvable technological devices that are to be used for the student's educational needs and directly assist with the student's instruction at or below fair market value. Business must be licensed to operate in the State of Tennessee.

A.4. The Contractor shall apply and be approved as a Provider in accordance with State Board Rule 0520-01-16-.09 and shall maintain status as a Provider in order to request reimbursements for Qualified Expenses for Participating Students. This includes meeting all conditions for approval as outlined in State Board Rule 0520-01-16-.09(1) for the duration of the Contract Term, including as follows:

- a. In order to receive pre-approval as required by T.C.A. § 49-6-2607(b) and State Board Rule 0520-01-16-.09, Providers, at a minimum, shall:
 - 1) Maintain documentation that any person providing services to Participating Students has undergone a fingerprint-based criminal history records check conducted by the TBI and forwarded by the TBI to the FBI for processing pursuant to the National Child Protection Act
 - 2) Maintain documentation of the Provider's credentials demonstrating the Provider meets the qualifications set by the State.
 - 3) The Contractor shall provide written assurance that criminal history records checks have been completed prior to the Contractor providing services.
- b. Providers and Account Holders shall provide additional supporting documentation as required for all expenses paid to the Provider using ESA funds.
- c. Providers shall not, in any manner, refund, rebate, or share ESA funds with an Account Holder or Participating Student.
- d. The State may suspend or terminate a Provider from participating in the Program if the State determines the Provider has failed to comply with the requirements of State law, rules or procedures relating to the ESA Program.
 - 1) If the State suspends or terminates a Provider's participation, the State shall notify the affected Participating Students, the Account Holder, and the Provider of the decision. If a Provider is suspended or terminated or if a Provider withdraws from the Program, affected Participating Students remain eligible to participate in the Program.

- 2) A Provider may appeal the State's decision pursuant to the appeals procedures set forth in State Board Rules.

- A.5. Qualified Expenses. The Contractor shall obtain all necessary pre-approval for all expenditures as required by State Board Rule 0520-01-16 and the State and shall only submit requests for reimbursements for Qualified Expenses for Participating Students. As outlined in State Board Rule 0520-01-16-.08 and .09, the Contractor shall comply with the following:
- a. The funds in an ESA may be used only as provided in SBE Rule 0520-01-16-.05 for educational purposes. The Contractor shall provide Account Holders with a receipt for all qualifying expenses paid to the Contractor using ESA funds.
 - b. The Contractor shall not charge an Account Holder or Participating Student additional fees that are not also charged to non-participating students.
 - c. The Contractor shall not, in any manner, refund, rebate, or share ESA funds with an Account Holder or Participating Student.
 - d. Within five (5) business days of receipt of a Participating Student's notice of termination of services, a participating Provider shall notify the State of the Participating Student's termination of services.

B. TERM OF CONTRACT:

This Contract shall be effective for the period beginning on **DATE** ("Effective Date") and ending on June 30, 2025, ("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:

There shall be no cost to the State for the performance of services under this Contract.

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. Any such communications, regardless of method of transmission, shall be addressed to the respective Party at the appropriate mailing address, facsimile number, or email address as stated below or any other address provided in writing by a Party.

The State:

Chad Gordon, ESA Procurement Coordinator
Tennessee Department of Education
Districts and Schools, Division of Choice
710 James Robertson Parkway, 10th Floor
Chad.Gordon@tn.gov

(629) 259-1639

The Contractor:

Contractor Contact Name & Title

Contractor Name

Address

Email Address

(###) ###-####

All instructions, notices, consents, demands, or other communications shall be considered effectively given 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. 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 effective termination date. Upon such termination, the Contractor shall have no right to any actual general, special, incidental, consequential, or any other damages whatsoever of any description or amount.
- D.5. 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. 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.6. Assignment and Subcontracting. The Contractor shall not assign this Contract or enter into a subcontract for any of the services performed under this Contract without obtaining the prior written approval of the State. Notwithstanding any use of 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 of the use of subcontractors in fulfilling the Contractor's obligations under this Contract.
- D.7. Conflicts of Interest. The Contractor warrants that 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 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.8. 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.9. Prohibition of Illegal Immigrants. The requirements of Tennessee 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 hereby 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 by submitting to the State a completed Attestation (accessible through the Edison Supplier Portal) and included at Attachment A, hereto, 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 Tennessee Code Ann. § 12-3-309 for acts or omissions occurring after its effective date. This law requires the Chief Procurement Officer to prohibit a contractor from contracting with, or submitting an offer, proposal, or bid to contract with the State of Tennessee to supply goods or services for a period of one year after a contractor is discovered to have knowingly used the services of illegal immigrants during the performance of this Contract.
 - e. For purposes of this Contract, "illegal immigrant" shall be defined as any person who is not either a United States citizen, a Lawful Permanent Resident, or a person whose physical presence in the United States is authorized or allowed by the federal Department of Homeland Security and who, under federal immigration laws and/or regulations, is authorized to be employed in the U.S. or is otherwise authorized to provide services under the Contract.
- D.10. Records. The Contractor shall maintain documentation of services rendered under this Contract. The books, records and documents of the Contractor, insofar as they relate to work performed under this Contract, shall be maintained for a period of five (5) full years from the final date of this Contract 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.
- D.11. Monitoring. The Contractor's activities conducted and records maintained pursuant to this Contract shall be subject to monitoring and evaluation by the State, the Comptroller of the Treasury, or their duly appointed representatives.
- D.12. Progress Reports. The Contractor shall submit brief, periodic, progress reports to the State as requested.

- D.13. Strict Performance. Failure by any Party to this Contract to 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 such term, covenant, condition, or provision. No term or condition of this Contract shall be held to be waived, modified, or deleted except by a written amendment signed by the Parties.
- D.14. Independent Contractor. The Parties shall not act as employees, partners, joint venturers, or associates of one another. It is expressly acknowledged by the Parties that such Parties are independent contracting entities and that nothing in this Contract shall be construed to create an employer/employee relationship or to allow either to exercise control or direction over the manner or method by which the other transacts its business affairs or provides its usual services. The employees or agents of one party shall not be deemed or construed to be the employees or agents of the other party for any purpose whatsoever.
- The Contractor, being an independent contractor and not an employee of the State, agrees to carry adequate public liability and other appropriate forms of insurance, including adequate public liability and other appropriate forms of insurance on the Contractor's employees, and to pay all applicable taxes incident to this Contract.
- D.15. 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.16. State 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.
- D.17. Force Majeure. The obligations of the parties to this Contract are subject to prevention by causes beyond the parties' control that could not be avoided by the exercise of due care including, but not limited to, natural disasters, riots, wars, epidemics, or any other similar cause.
- D.18. State and Federal Compliance. The Contractor shall comply with all applicable State and Federal laws and regulations in the performance of this Contract.
- D.19. 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 Tennessee Code Ann. §§ 9-8-101-408.
- D.20. Completeness. This Contract is complete and contains the entire understanding between the parties relating to the subject matter contained herein, including all the terms and conditions of the parties' agreement. This Contract supersedes any and all prior understandings, representations, negotiations, and agreements between the parties relating hereto, whether written or oral.

- D.21. 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.22. Headings. Section headings of this Contract are for reference purposes only and shall not be construed as part of this Contract.
- D.23. 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 of this Contract, these items shall govern in the 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.
 - e. the State solicitation, as may be amended, requesting responses in competition for this Contract;
 - f. any technical specifications provided to proposers during the procurement process to award this Contract; and
 - g.
 - h. the Contractor's response seeking this Contract.
- D.24. 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., 3rd 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.25. 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.26. 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 the 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 such 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.27. 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.28. 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.29. Prohibited Contract Terms. The prohibited contract terms and conditions enumerated in Tenn. Code Ann. § 12-3-515, shall be a material provision of this Contract. The Contractor acknowledges, understands, and agrees that the inclusion of a term or condition prohibited by Tenn. Code Ann. § 12-3-515, 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. 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 shall be regarded as confidential information in accordance with the provisions of applicable state and federal law, state and federal rules and regulations, departmental policy, and ethical standards. Such confidential information shall not be disclosed, and all necessary steps shall be taken by the Contractor to safeguard the confidentiality of such material or information in conformance with applicable state and federal law, state and federal rules and regulations, departmental policy, and ethical standards.

The Contractor's obligations under this section do not apply to information in the public domain; entering the public domain but not from a breach by the Contractor of this Contract; previously possessed by the Contractor without written obligations to the State to protect it; acquired by the Contractor without written restrictions against disclosure from a third party which, to the Contractor's knowledge, is free to disclose the information; independently developed by the Contractor without the use of the State's information; or, disclosed by the State to others without restrictions against disclosure. Nothing in this paragraph shall permit Contractor to disclose any information that is confidential under federal or state law or regulations, 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.

It is expressly understood and agreed the obligations set forth in this section shall survive the termination of this Contract.

- E.3. Disclosure of Personal Identity Information. The Contractor shall report to the State any instances of unauthorized disclosure of confidential information that come to the attention of the Contractor. Any such report shall be made by the Contractor within twenty-four (24) hours after the instance has come to the attention of the Contractor. The Contractor, at the sole discretion of the State, shall provide no cost credit monitoring services for individuals that are deemed to be part of a potential disclosure. The Contractor shall bear the cost of notification to individuals having personal identity information involved in a potential disclosure event, including individual letters and/or public notice.

IN WITNESS WHEREOF,

CONTRACTOR LEGAL ENTITY NAME:

CONTRACTOR SIGNATURE

DATE

PRINTED NAME AND TITLE OF CONTRACTOR SIGNATORY (above)

TENNESSEE DEPARTMENT OF EDUCATION:

LIZZETTE REYNOLDS, COMMISSIONER

DATE

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

SUBJECT CONTRACT NUMBER:	83235
CONTRACTOR LEGAL ENTITY NAME:	TBD
EDISON VENDOR IDENTIFICATION NUMBER:	TBD

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

CONTRACTOR SIGNATURE

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

PRINTED NAME AND TITLE OF SIGNATORY

DATE OF ATTESTATION