

CONTRACT #4
RFS # 331.36-00114
FA # NA
Edison # 36543

Department of Education
Division of Special Education
and Special Populations

VENDOR:
Public Consulting Group, Inc.



BILL HASLAM
GOVERNOR

STATE OF TENNESSEE
DEPARTMENT OF EDUCATION
6th FLOOR, ANDREW JOHNSON TOWER
710 JAMES ROBERTSON PARKWAY
NASHVILLE, TN 37243-0375

KEVIN HUFFMAN
COMMISSIONER

SUBMITTED VIA ELECTRONIC MAIL

TO: Lucien Guise, Fiscal Review Committee

FROM: Kevin Huffman, Commissioner *KH*

DATE: April 29, 2013

RE: Request to appear before the fiscal review committee regarding non-competitive contract for agency tracking # 33136-00114

Please consider the enclosed request for non-competitive contract with Public Consulting Group, Inc. This contract provides an internet based data collection and reporting tool, EasyIEP, used by all local education agencies (LEAs) in Tennessee when writing individual education plans (IEPs) for students with disabilities and by the Tennessee Department of Education (TDOE) for federal and state reporting purposes.

Federal law (Public Law 108-446 – Individuals with Disabilities Education Act (IDEA)) requires states to make annual reports regarding students with disabilities to the U.S. Secretary of Education, to the public, and to LEAs. Individual student data for students with disabilities is collected through EasyIEP and reported in order to comply with the requirements set forth in this law.

- All LEAs in Tennessee use EasyIEP, including the state special schools, the Achievement School District, and education programs operated by other state agencies
- Approximately 29,000 special educators use EasyIEP to develop IEPs for students with disabilities, monitor and report their progress, and annually update the IEP
- Approximately 149,500 students with disabilities have IEPs in EasyIEP

It is in the best interest of LEAs, special educators, and students with disabilities to pursue a non-competitive contract with this vendor in order to maintain a stable and reliable system during this time of education reform. Transitioning to another special education data system could cause loss of data integrity and quality at a time when TDOE is using data to make critical program and policy decisions and measure the impact of First to the Top reform efforts.

Thank you for your consideration.

Supplemental Documentation Required for
Fiscal Review Committee

| | | | |
|---|---|--|----------------------|
| *Contact Name: | Allison Davey | *Contact Phone: | (615) 741-7796 |
| *Original Contract Number: | None | *Original RFS Number: | 33136-00114 |
| Edison Contract Number: <i>(if applicable)</i> | 36543 | Edison RFS Number: <i>(if applicable)</i> | None |
| *Original Contract Begin Date: | July 1, 2013 | *Current End Date: | July 31, 2015 |
| Current Request Amendment Number: <i>(if applicable)</i> | NA | | |
| Proposed Amendment Effective Date: <i>(if applicable)</i> | NA | | |
| *Department Submitting: | Education | | |
| *Division: | Division of Special Education and Special Populations | | |
| *Date Submitted: | 4/29/13 | | |
| *Submitted Within Sixty (60) days: | Yes | | |
| <i>If not, explain:</i> | NA | | |
| *Contract Vendor Name: | Public Consulting Group, Inc. | | |
| *Current Maximum Liability: | \$5,993,000 | | |
| *Current Contract Allocation by Fiscal Year: <i>(as Shown on Most Current Fully Executed Contract Summary Sheet)</i> | | | |
| FY: 2014 | FY: 2015 | FY: | FY: |
| \$3,035,000 | \$2,958,000 | \$ | \$ |
| *Current Total Expenditures by Fiscal Year of Contract: <i>(attach backup documentation from STARS or FDAS report)</i> | | | |
| FY: | FY: | FY: | FY: |
| \$ | \$ | \$ | \$ |
| IF Contract Allocation has been greater than Contract Expenditures, please give the reasons and explain where surplus funds were spent: | NA | | |
| IF surplus funds have been carried forward, please give the reasons and provide the authority for the carry forward provision: | NA | | |
| IF Contract Expenditures exceeded Contract Allocation, please give the reasons and explain how funding was acquired to pay the overage: | NA | | |
| *Contract Funding Source/Amount: | State: | \$1,000,000 | Federal: \$4,993,000 |
| Interdepartmental: | | | Other: |
| If "other" please define: | | | |

Supplemental Documentation Required for
Fiscal Review Committee

| Dates of All Previous Amendments or Revisions: <i>(if applicable)</i> | Brief Description of Actions in Previous Amendments or Revisions: <i>(if applicable)</i> |
|--|--|
| | |
| | |
| | |
| Method of Original Award: <i>(if applicable)</i> | Non-competitive |
| *What were the projected costs of the service for the entire term of the contract prior to contract award? | Unknown |

Supplemental Documentation Required for
Fiscal Review Committee

For all new non-competitive contracts and any contract amendment that changes Sections A or C.3. of the original or previously amended contract document, provide estimates based on information provided the Department by the vendor for determination of contract maximum liability. Add rows as necessary to provide all information requested.

If it is determined that the question is not applicable to your contract document attach detailed explanation as to why that determination was made.

Planned expenditures by fiscal year by deliverable. Add rows as necessary to indicate all estimated contract expenditures.

| Deliverable description: | FY: 2014 | FY: 2015 | FY: | FY: | FY: |
|--|----------------|----------------|-----|-----|-----|
| System Hosting; A.4. | \$275,000.00 | \$275,000.00 | | | |
| System License, Maintenance, & Modifications, A.3, A.5, A.6, A.7, A.11 | \$350,000.00 | \$350,000.00 | | | |
| System Support, A.7 | \$1,175,000.00 | \$1,175,000.00 | | | |
| EIS Data Transfer/Funding Algorith Maintenance and Support/SSMS Imports, A.9, A.11 | \$375,000.00 | \$375,000.00 | | | |
| Query Tool License, A.3.g | \$50,000.00 | \$50,000.00 | | | |
| PaperClip, A.3.h | \$350,000.00 | \$350,000.00 | | | |
| User Type Support, A.16 | \$18,500.00 | \$18,500.00 | | | |
| EasyTRAC Related Services Setup and Design, A.13 | \$50,000.00 | \$0.00 | | | |
| EasyTRAC Related Service Tracking, A.13 | \$360,000.00 | \$360,000.00 | | | |
| EasyTRAC Service Log (Medicaid) Report, A.13 | \$10,000.00 | \$0.00 | | | |
| TEIDS Data Import, A.10 | \$4,500.00 | \$4,500.00 | | | |
| Restraint and Isolation | \$17,000.00 | \$0.00 | | | |

Supplemental Documentation Required for
Fiscal Review Committee

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|--|-----------------------|-----------------------|-----|-----|-----|
| Interface and Report Modification, A.3.k | | | | | |
| TOTAL: | \$3,035,000.00 | \$2,958,000.00 | | | |
| <p align="center">Proposed savings to be realized per fiscal year by entering into this contract. If amendment to an existing contract, please indicate the proposed savings to be realized by the amendment. Add rows as necessary to define all potential savings per deliverable.</p> <p align="center">No cost savings determined.</p> | | | | | |
| Deliverable description: | FY: 2014 | FY: 2015 | FY: | FY: | FY: |
| | | | | | |
| | | | | | |
| <p align="center">Comparison of cost per fiscal year of obtaining this service through the proposed contract or amendment vs. other options. List other options available (including other vendors), cost of other options, and source of information for comparison of other options (e.g. catalog, Web site). Add rows as necessary to indicate price differentials between contract deliverables.</p> <p align="center">Cost comparison is not applicable because this vendor is maintaining the existing system they have previously created for Tennessee. A new vendor will have to create a new system. A competitive process will be started within the next year to identify potential vendors.</p> | | | | | |
| Proposed Vendor Cost: (name of vendor) | FY: 2014 | FY: 2015 | FY: | FY: | FY: |
| | | | | | |
| Other Vendor Cost: (name of vendor) | FY: 2014 | FY: 2015 | FY: | FY: | FY: |
| | | | | | |
| Other Vendor Cost: (name of vendor) | FY: 2014 | FY: 2015 | FY: | FY: | FY: |
| | | | | | |

Non-Competitive Contract Request

NOT required for a contract with a federal, Tennessee, or Tennessee local government entity or a grant.
Route a completed request, as one file in PDF format, via e-mail attachment sent to: Agsprs.Agsprs@state.tn.us

| |
|---|
| <p>APPROVED</p>  |
| <p>CENTRAL PROCURMENT OFFICER</p> |

| | |
|---|--|
| Request Tracking # | 33136-00114 |
| 1. Contracting Agency | Education (TDOE) |
| 2. Proposed Contractor | Public Consulting Group, Inc. (PCG) |
| 3. Proposed Contract Period – with ALL options to extend exercised <i>The proposed contract start date shall follow the approval date of this request.</i> | 24 months |
| 4. Maximum Contract Cost – with ALL options to extend exercised | \$5,993,000.00 |
| 5. Office for Information Resources Endorsement – information technology (N/A to THDA) | <input type="checkbox"/> Not Applicable <input checked="" type="checkbox"/> Attached |
| 6. eHealth Initiative Support – health-related professional, pharmaceutical, laboratory, or imaging | <input checked="" type="checkbox"/> Not Applicable <input type="checkbox"/> Attached |
| 7. Human Resources Support – state employee training | <input checked="" type="checkbox"/> Not Applicable <input type="checkbox"/> Attached |
| 8. Has the contracting agency bought the subject service before? | |
| <input type="checkbox"/> NO <input checked="" type="checkbox"/> YES, it was procured by... <input checked="" type="checkbox"/> RFP <input type="checkbox"/> Another Competitive Method <input checked="" type="checkbox"/> Non-Competitive Negotiation | |
| 9. Service Description – brief <u>summary</u> only – do NOT restate the proposed scope of service | |
| <p>The proposed contractor will provide an EdPlan/EasyIEP, an internet based data collection and reporting tool, to be used by all local education agencies (LEAs) in Tennessee. LEAs will use the system when writing individual education plans (IEPs) for students with disabilities and by the TDOE for federal and state reporting purposes.</p> | |
| 10. Explanation of Need for or Requirement Placed on the State to Acquire the Service | |
| <p>Federal law (Public Law 108-446 – Individuals with Disabilities Education Act (IDEA)) requires states to make annual reports regarding students with disabilities to the U.S. Secretary of Education, to the public, and to LEAs. Individual student data for students with disabilities is collected through this data collection tool and reported in order to comply with the requirements set forth in this law. TDOE lacks the capacity to manage the collection of this data and therefore must contract for these services.</p> | |
| 11. Name & Address of the Contractor’s Principal Owner(s) – NOT required for a TN state education institution | |

| | |
|---|-------------|
| Request Tracking # | 33136-00114 |
| <p>William M. Masakowski, President 148 State Street Boston MA 02109</p> | |
| <p>12. Evidence Contractor's Experience & Length Of Experience Providing the Service</p> <ul style="list-style-type: none"> • Built the TDOE special education data management tool (EdPlan/EasyIEP) used to collect data for all federal special education reports in Tennessee LEAs. • Currently in the 9th year of providing this service to Tennessee. • Attended Office of Special Education Programs (OSEP) EDFacts meetings with TDOE data manager for the past five years. • Fully customized EasyIEP to meet all Tennessee specific policy and data requirements including over 50 state and local reports and Federal Office of Special Education Programs (OSEP) Tables 1 & 3, 2, and 4. • Opened a local/centralized office in Nashville to be closer to the state agency and LEAs. | |
| <p>13. Efforts to Identify Reasonable, Competitive, Procurement Alternatives</p> <p>Procurement alternatives have not been sought. However, immediately upon approval to move forward with the two year non-competitive contract with PCG, TDOE will start a competitive process to seek out vendors who are able to provide this service. TDOE anticipates the contract resulting from the competitive process to start May 2014 allowing for 14 months of overlap between the two contracts. This is needed to ensure ample transition time to train LEAs and transfer all current and historical data seamlessly to a new system should the competitive process result in a new vendor to provide this service beginning July 1, 2015.</p> | |
| <p>14. Justification – specifically explain why non-competitive negotiation is in the best interest of the state</p> <p>At this time, non-competitive negotiation is in the best interest of the state to avoid placing undue burden on Tennessee public school special education teachers and allow for consistency in federal and state reporting. Massive educational reform efforts are underway in Tennessee and teachers must be given time to focus on the many changes occurring now (TEAM evaluation, Common Core State Standards, student assessment) before the TDOE adds to the demands already being placed on them. Transitioning to another special education data system at this time could also cause loss of data integrity and quality at a time when TDOE is using data to make critical program and policy decisions and measure the impact of all First to the Top reform efforts.</p> | |
| <p>Agency Head Signature and Date – <i>MUST be signed by the ACTUAL agency head as detailed on the current Signature Certification. Signature by an authorized signatory is acceptable only in documented exigent circumstances</i></p> <p> 4/25/13</p> | |



OIR Pre-Approval Endorsement Request E-Mail Transmittal

TO : Jane Chittenden, OIR Procurement & Contract Management Director
Department of Finance & Administration
E-mail : Jane.Chittenden@tn.gov

FROM : Jessica Stephens, Sourcing Analyst, Central Procurement Office
E-mail : Jessica.Stephens@tn.gov

DATE : March 11, 2013

RE : Request for OIR Pre-Approval Endorsement

Applicable RFS # 33136-00114

OIR Endorsement Signature & Date:

Mark Bengel (gc)
Chief Information Officer

3/12/13

NOTE: Proposed contract/grant support is applicable to the subject IT service technical merit.

Office for Information Resources (OIR) pre-approval endorsement appears to be required pursuant to professional service contracting regulations pertaining to procurements with information technology as a component of the scope of service. This request seeks to ensure that OIR is aware of and has an opportunity to review the procurement detailed below and in the attached documents.

Please document OIR endorsement of the described procurement (with the appropriate signature above), and return this document via e-mail at your earliest convenience.

| Contracting Agency | Education |
|--|--|
| Agency Contact (name, phone, e-mail) | Allison Davey Associate Director of Special Education Allison.Davey@tn.gov (615)741-7796 |
| Subject Procurement Document (mark one) | |
| <input type="checkbox"/> RFP(RFQ) | <input type="checkbox"/> Contract |
| <input type="checkbox"/> Competitive Negotiation Request | <input type="checkbox"/> Contract Amendment |
| <input type="checkbox"/> Alternative Procurement Method Request | <input type="checkbox"/> Grant |
| <input checked="" type="checkbox"/> Non-Competitive Contract Request | <input type="checkbox"/> Grant Amendment |
| <input type="checkbox"/> Non-Competitive Amendment Request | |
| Information Systems Plan (ISP) Project Applicability | |
| <input checked="" type="checkbox"/> Not Applicable to this Request | |

Applicable RFS # 33136-00114

Applicable– ISP Project#

Response Confirmed by IT Director/Staff

(Kristen McKeever – in reference to past contract Edison #2280)

Required Attachments (as applicable – copies without signatures acceptable)

- RFP, Competitive Negotiation Request, Alternative Procurement Method Request,
Non-Competitive Contract Request, Non-Competitive Amendment Request
- Original Contract/Grant or Amendment
- Proposed Contract/Grant or Amendment

Subject Information Technology Service Description

(Brief summary of information technology services involved. Clearly identify included technologies such as system development/maintenance, security, networking, *etc.* As applicable, identify the contract & solicitation sections related to the IT services.)

Easy IEP is a Statewide Student Management System (SSMS) that maintains federal and state mandated information concerning individual education plans (IEPs) for TDOE Special Education. This is a SAAS contract.

**CONTRACT**

(fee-for-service contract with an individual, business, non-profit, or governmental entity of another state)

| | | | | | |
|---|----------------------------------|--|---------------------------------------|---------------|------------------------------|
| Begin Date July 1, 2013 | End Date June 30, 2015 | Agency Tracking # 33136-00114 | Edison Record ID 36543 | | |
| Contractor Legal Entity Name Public Consulting Group, Inc. | | | Edison Vendor ID 0000004919 | | |
| Service Caption (one line only) Provision of an internet based student data collection and reporting tool | | | | | |
| Subrecipient or Vendor <input type="checkbox"/> Subrecipient <input checked="" type="checkbox"/> Vendor | | CFDA # 84.027 | | | |
| Funding — | | | | | |
| FY | State | Federal | Interdepartmental | Other | TOTAL Contract Amount |
| 2014 | \$500,000.00 | \$2,535,000.00 | \$0.00 | \$0.00 | \$3,035,000.00 |
| 2015 | \$500,000.00 | \$2,458,000.00 | \$0.00 | \$0.00 | \$2,958,000.00 |
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| | | | | | |
| TOTAL: | \$1,000,000.00 | \$4,993,000.00 | \$0.00 | \$0.00 | \$5,993,000.00 |
| American Recovery and Reinvestment Act (ARRA) Funding: <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO | | | | | |
| Ownership/Control | | | | | |
| <input type="checkbox"/> African American <input type="checkbox"/> Asian <input type="checkbox"/> Hispanic <input type="checkbox"/> Native American <input type="checkbox"/> Female <input type="checkbox"/> Person w/Disability <input type="checkbox"/> Small Business <input type="checkbox"/> Government <input checked="" type="checkbox"/> NOT Minority/Disadvantaged <input type="checkbox"/> Other: | | | | | |
| Selection Method & Process Summary (mark the correct response to confirm the associated summary) | | | | | |
| <input type="checkbox"/> RFP | | The procurement process was completed in accordance with the approved RFP document and associated regulations. | | | |
| <input type="checkbox"/> Competitive Negotiation | | The predefined, competitive, impartial, negotiation process was completed in accordance with the associated, approved procedures and evaluation criteria. | | | |
| <input type="checkbox"/> Alternative Competitive Method | | The predefined, competitive, impartial, procurement process was completed in accordance with the associated, approved procedures and evaluation criteria. | | | |
| <input checked="" type="checkbox"/> Non-Competitive Negotiation | | The non-competitive contractor selection was completed as approved, and the procurement process included a negotiation of best possible terms & price. | | | |
| <input type="checkbox"/> Other | | The contractor selection was directed by law, court order, settlement agreement, or resulted from the state making the same agreement with <u>all</u> interested parties or <u>all</u> parties in a predetermined "class." | | | |
| Budget Officer Confirmation: There is a balance in the appropriation from which obligations hereunder are required to be paid that is not already encumbered to pay other obligations. | | | | | |
| Speed Chart (optional) Various | | Account Code (optional) 70803000/70899000 | | | |

S U P P L E M E N T A L S U M M A R Y S H E E T

| | |
|-------------------|-------------|
| RFS Number | 33136-00114 |
|-------------------|-------------|

| | |
|------------------|-------|
| Edison ID | 36543 |
|------------------|-------|

| Fiscal Year | Department ID | Speedchart Number | Program Code | Account Code | Fund | Project/Grant Code | CFDA # | Amount |
|--------------------|----------------------|--------------------------|---------------------|---------------------|-------------|---------------------------|---------------|----------------|
| 2014 | 33111 | ED00000458 | 781000 | 70899000 | 25000 | NA | NA | \$500,000.00 |
| 2014 | 33136 | ED00000177 | 644400 | 70803000 | 25000 | LL/ACX | 84.027 | \$25,000.00 |
| 2014 | 33136 | ED00000177 | 644400 | 70899000 | 25000 | LL/ACX | 84.027 | \$2,510,000.00 |
| | | | | | | | | |
| 2015 | 33111 | ED00000458 | 781000 | 70899000 | 25000 | NA | NA | \$500,000.00 |
| 2015 | 33136 | ED00000177 | 644400 | 70803000 | 25000 | LL/ACX | 84.027 | \$25,000.00 |
| 2015 | 33136 | ED00000177 | 644400 | 70899000 | 25000 | LL/ACX | 84.027 | \$2,433,000.00 |
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| TOTAL | | | | | | | | \$5,993,000.00 |

**CONTRACT
BETWEEN THE STATE OF TENNESSEE,
DEPARTMENT OF EDUCATION
AND
PUBLIC CONSULTING GROUP, INC.**

This Contract, by and between the State of Tennessee, Department of Education, hereinafter referred to as the "State" and Public Consulting Group, Inc., hereinafter referred to as the "Contractor," is for the provision of an internet based student data collection and reporting tool, as further defined in the "SCOPE OF SERVICES."

The Contractor is a For-Profit Corporation.

Contractor Place of Incorporation or Organization: Massachusetts

Contractor Edison Registration ID # 0000004919

A. SCOPE OF SERVICES:

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

A.2. Definitions:

- a. **Individual Education Plan (IEP)** – A document that defines a child's special education program and is designed to meet the unique educational needs of that child, who may have a disability, as defined by federal regulations. The IEP is intended to help children reach educational goals more easily than they otherwise would. In all cases the IEP must be tailored to the individual student's needs as identified by the IEP evaluation process, and must especially help teachers and related service providers understand the student's disability and how the disability affects the learning process.
- b. **EdPlan/EasyIEP™ (EasyIEP™)** - Special education internet based data collection and reporting tool used by all local education agencies (LEAs) in Tennessee when planning and writing IEPs for children with disabilities.
- c. **Paperclip** – A component of the **EasyIEP™** Service that allows users to upload external documents to a student's secure electronic record.
- d. **EIS** – State of Tennessee Educational Information System
- e. **Modifications** – Any revision of **EasyIEP™** which includes adding features and which generally will be designated by a new version number either to the left of the decimal point (e.g., from v2.03 to v3.00) or one decimal place to the right of the decimal point (e.g., from v2.03 to v2.10); revisions to correct operational errors; revisions as a result of technology changes that include corrections and minor modifications to existing features.
- f. **Query Tool**– A web-based tool designed and developed by the Contractor to allow designated State level users access to current and historic data as captured within EdPlan/EasyIEP.
- g. **Tennessee Early Intervention Data System (TEIDS)** - A real-time, web-based data system which houses a Part C eligible child's official educational record. This record contains: demographic and parent information, the child's Individualized Family Service Plan (IFSP), contact log for communications, service log for early intervention providers who deliver IFSP services, accounts payable information for the reimbursement of delivered services, transition information as children exit Part C and transfer to Part B, 619.
- h. **High Priority Programming Need**- Any issue in the system that prevents the creation of an IEP, IEP Addendum, or Eligibility Determination document, as well as the on-time submission of any Federal Report.
- i. **Part B** - School age and preschool programs for children with disabilities ages three through five and six through 21 provided through the Individuals with Disabilities Education Act (IDEA).

- j. **Part C** - A statewide, comprehensive, coordinated, multidisciplinary, interagency system to provide early intervention services for infants and toddlers with disabilities and their families through IDEA.
 - k. **Technical Support** – User friendly assistance for users having technical problems with the system when the system is not functioning properly. The technical support team shall be composed of specialists that are familiar with the system, are able to troubleshoot and resolve the issue within the specified timeframe.
 - l. **User Support** – Direct support to users provided by the State to address how to navigate and use the system efficiently as well as provide guidance related to IEP development and correct entry into the system.
 - m. **Resolution of Technical Issues** – Time at which the State has signed off on acceptance of the results of their testing of any release of the correction of a high priority issue.
 - n. **Approval of Modifications** - Time at which the State has provided written confirmation of all testing of any release, modification, and any other change requested by the state that results in a modification to the EasyIEP™ system. Testing includes the confirmation that all current systems and reports continue to function as they were prior to the modification (regression testing)
 - o. **EasyTrac™**- Component of the EdPlan™ system that allows service providers to documents services logging and services session notes in the student's secure electronic record.
- A.3 The Contractor shall provide **EasyIEP™** which is a statewide web based software system used for online IEPs. The system shall:
- a. Allow all Tennessee public LEAs access.
 - b. Provide the State with a private account accessed through the Internet.
 - c. Serve as the primary data system for students with a disability.
 - d. Create required documentation such as the IEP, IEP Report Card, IEP Amendment, letters, Services Plan and Services Plan amendments.
 - e. Provide a user-friendly flexible interface system which allows for seamless system enhancements based on Federal law and state policy changes surrounding IDEA requirements, and suggestions provided by LEAs. Such enhancements could include, but are not limited to, format changes to documents, additional data fields for Federal or state required reporting purposes and additional student documents or reports.
 - f. Apply State branding, as approved by the State to provide consistency to all pages and documents.
 - g. Contain a Query Tool.
 - h. Shall contain the paperclip feature which allows the uploading and secure storage of and access to stored electronic documents to the student's electronic IEP file, accommodates .pdf, .doc, .xlsx, .txt, .rtf, .ppt, .tif, .jpg, .png; and ensures that all documentation uploaded to a student's file remains with that student should the record be transferred across LEAs within the state.
 - i. Add a field to allow users to enter witnesses or participants for isolation and restraint data.
- A.4. The Contractor shall provide hosting for all current and historical data retained in **EasyIEP™**.
- A.5. The Contractor shall provide **EasyIEP™** as a Software as a Service (SaaS) solution. In delivering this SaaS solution, the contractor shall:
- a. Have measures in place that ensure that all data records are transported, stored and accessed in a secure manner. All data is property of the State of Tennessee. The system must be compliant with best practices for secure application development as defined in ISO/IEC 27000 series. The policies can be found at the following link: <http://www.tn.gov/finance/oir/security/docs/PUBLIC-Enterprise-Information-Security-Policies-v1-6.pdf>
 - b. Utilize best practice authentication methods to prevent access from unauthorized individuals and entities.

- c. Provide the State with criterion for classifying Disaster Recovery situations and procedures for managing Disaster Recovery situations.
 - d. Provide an industry standard application related to privacy and security of a web-based system that requires only a web-browser and an Internet connection to use with the addition of an Adobe Acrobat web-browser plug-in.
 - e. Maintain a secure host site with 99 percent annual availability.
 - f. Maintain nightly data backups of all data.
 - g. Provide adequate server processing capacity to keep user response times within normal latency boundaries as specified.
- A.6. The Contractor shall provide the State with 200 programming hours annually to make modifications to **EasyIEP™** at no charge and shall:
- a. Provide an advance notice of at least of 30 business days for any modification.
 - b. Provide information related to enhancements that they have made to other contracted state's IEP systems for the State to determine if these enhancements are warranted for use in Tennessee.
 - c. Provide modifications based on suggestions and input from the State and LEAs.
 - d. All modifications must receive prior written approval from the State Director of Data Services.
 - e. Provide a timeline and detailed process for the implementation of any modification.
 - f. Provide any training required to the State and/or LEAs as a result of the modification at no additional charge to the State. All trainings shall be web-based.
- A.7. The Contractor shall provide technical support to State and LEAs by:
- a. Resolve high priority programming needs within 48 hours of written notification from the State of the problem, unless the State Director of Data Services provides written approval for an extension of this deadline. High priority is defined as referenced in Section A.2.h.
 - (1) If the 48 hours deadline cannot be met, the Contractor shall provide a description of how the problem will be corrected and date it will be corrected, to be approved in writing by the State Director of Data Services.
 - b. Resolve low priority programming needs within three (3) business days of written notification from the State of the problem, unless the State Director of Data Services provides written approval for an extension of this deadline. Low priority is defined as a problem that does not directly impact the LEA or prevent document creation.
 - (1) If the three (3) business days deadline cannot be met, the Contractor shall provide a description of how the problem will be corrected and date it will be corrected, to be approved in writing by the State Director of Data Services.
 - c. Co-facilitate the State's LEA support calls a minimum of six times during each school year as a matter of support to the State at no additional cost;
 - d. Maintaining a secure message board page available within **EasyIEP™**.
 - e. Maintaining a help desk with a toll free and local phone number. This support shall be available between 8 a.m. and 5 p.m. CST Monday through Friday throughout the life of the contract.
- A.8. The Contractor shall maintain accurate data and calculations including but not limited to:
- a. Maintain accurate calculations within all existing state and federal reports surrounding IDEA when requirements change based on state law and policy. Calculation revisions shall be made within five business days after written notification and request of the State or by the effective date of the change, whichever comes first. The timeline requirement of 5 days is fully dependant on the State's testing and verification of accuracy prior to release.

- b. Provide additional data and calculations as requested by the State based on state and federal policy changes surrounding IDEA requirements.
 - c. See Attachment A for links to 2012 State and Federal regulations
- A.9. The Contractor shall extract and transfer files from to the State's EIS for the purpose of calculating funding options for LEAs.
- a. Specific files are the special education option files (named file 92) and the special education disabilities files (named file 93) for all special education students to EIS.
- A.10. The Contractor shall provide semi-monthly data uploads from TEIDS to **EasyIEP™** of the Part C early childhood transition data as requested by the State. Files received from TEIDS will contain all the required fields and be in the format specified by PCG through a secure data transfer process.
- A.11. The Contractor shall maintain the State's funding options algorithm within **EasyIEP™** that correlates to specific services documented in each student's IEP.
- A.12. The State and LEAs shall have current ownership, right, title, and interest in all data stored and generated, both historical and current. The Contractor shall adhere to the State's policy that vendors shall not have access to the **EasyIEP™** system. The State and LEAs shall have access to available reports, as well as the ad hoc query tools, on EasyIEP™ to compile stored data for disclosure to and use by third party vendors.
- A.13. The Contractor shall create a standard report related to the provision of related services that will be accessed on the reports page within EasyIEP™.
- A.14. The Contractor shall prepare, for State approval, a detailed plan indicating the essential steps leading to the transition between the Contractor and any future contractor due 60 days after this Contract is fully executed. The plan shall include the steps and a timeline for the transition to avoid any disruption of services, deliverables to students, teachers, schools, LEAs and the State. The Contractor shall work with any future contractor as required by the State during the transition period. Data transfers to the new vendor shall begin no later than July 1, 2014 with all data completely transferred by June 1, 2015. The Contractor shall not be liable for any failures caused solely by a third party vendor/system to accept transferred data by June 1, 2015.
- A.15. The Contractor shall, at the request of the State's contact referenced in Section E.2, of this Contract, lock out user access for EasyIEP on an annual basis. The date of this lock out shall be determined by the State's contact referenced in Section E.2. of this Contract.
- A.16. Contractor will provide the State with the EasyTrac™ add-on solution which allows LEAs to documents related services provided to students with IEPs.

B. CONTRACT PERIOD:

This Contract shall be effective for the period beginning July 1, 2013, and ending on July 31, 2015. The Contractor hereby acknowledges and affirms that the State shall have no obligation for services rendered by the Contractor which were not performed within this specified contract period.

C. PAYMENT TERMS AND CONDITIONS:

- C.1. Maximum Liability. In no event shall the maximum liability of the State under this Contract exceed five million nine hundred ninety-three thousand dollars (\$5,993,000.00). The payment rates in section C.3 shall constitute the entire compensation due the Contractor for all service and Contractor obligations hereunder regardless of the difficulty, materials or equipment required. The payment rates include, but are not limited to, all applicable taxes, fees, overheads, and all

other direct and indirect costs incurred or to be incurred by the Contractor.

The Contractor is not entitled to be paid the maximum liability for any period under the Contract or any extensions of the Contract for work not requested by the State. The maximum liability represents available funds for payment to the Contractor and does not guarantee payment of any such funds to the Contractor under this Contract unless the State requests work and the Contractor performs said work. In which case, the Contractor shall be paid in accordance with the payment rates detailed in section C.3. The State is under no obligation to request work from the Contractor in any specific dollar amounts or to request any work at all from the Contractor during any period of this Contract.

- C.2. Compensation Firm. The payment rates and the maximum liability of the State under this Contract are firm for the duration of the Contract and are not subject to escalation for any reason unless amended.
- C.3. Payment Methodology. The Contractor shall be compensated based on the payment rates herein for units of service authorized by the State in a total amount not to exceed the Contract Maximum Liability established in section C.1.
- a. The Contractor's compensation shall be contingent upon the satisfactory completion of units, milestones, or increments of service defined in section A.
 - b. The Contractor shall be compensated for said units, milestones, or increments of service based upon the following payment rates:

| Service Description | Annual Fee (Year 1) | Annual Fee (Year 2) |
|---|---------------------|---------------------|
| System Hosting, A.4 | \$275,000 | \$275,000 |
| System License, Maintenance, and Modifications, A.3, A.5, A.6, A.7, A.11 | \$350,000 | \$350,000 |
| System Support, A.7 | \$1,175,000 | \$1,175,000 |
| EIS Data Transfer/Funding Algorithm Maintenance and Support/SSMS Imports, A.9, A.11 | \$375,000 | \$375,000 |
| Query Tool License, A.3.g | \$50,000 | \$50,000 |
| PaperClip, A.3.h | \$350,000 | \$350,000 |
| User Type Support, A.16 | \$18,500 | \$18,500 |
| EasyTRAC Related Services Setup and Design, A.13 | \$50,000 | \$0 |
| EasyTRAC Related Service Tracking, A.13 | \$360,000 | \$360,000 |
| EasyTRAC Service Log (Medicaid) Report, A.13 | \$10,000 | \$0 |
| TEIDS Data Import, A.10 | \$4,500 | \$4,500 |
| Restraint and Isolation Interface and Report Modification, A.3.k | \$17,000 | \$0 |

- C.4. Travel Compensation. The Contractor shall not be compensated or reimbursed for travel, meals, or lodging.
- C.5. Invoice Requirements. The Contractor shall invoice the State only for completed increments of service and for the amount stipulated in section C.3, above, and present said invoices no more often than monthly, with all necessary supporting documentation, to:

Terry Wallis
 Tennessee Department of Education
 710 James Robertson Parkway
 Andrew Johnson Tower, 11th Floor
 Nashville, TN 37243

- a. Each invoice shall clearly and accurately detail all of the following required 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 / EdPlan/EasyIEP
 - (5) Customer Account Number (assigned by the Contractor to the above-referenced Customer)
 - (6) Contractor Name
 - (7) Contractor Tennessee Edison Registration ID Number Referenced in Preamble of this Contract
 - (8) Contractor Contact for Invoice Questions (name, phone, and/or fax)
 - (9) Contractor Remittance Address
 - (10) Description of Delivered Service
 - (11) Complete Itemization of Charges, which shall detail the following:
 - i. Service or Milestone Description (including name & title as applicable) of each service invoiced
 - ii. Number of Completed Units, Increments, Hours, or Days as applicable, of each service invoiced
 - iii. Applicable Payment Rate (as stipulated in Section C.3.) of each service invoiced
 - iv. Amount Due by Service
 - v. Total Amount Due for the invoice period
- b. The Contractor understands and agrees that an invoice under this Contract shall:
- (1) include only charges for service described in Contract Section A and in accordance with payment terms and conditions set forth in Contract Section C;
 - (2) only be submitted for completed service and shall not include any charge for future work;
 - (3) not include sales tax or shipping charges; and
 - (4) initiate the timeframe for payment (and any discounts) only when the State is in receipt of the invoice, and the invoice meets the minimum requirements of this section C.5.
- 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 matter in relation thereto. A payment by the State shall not be construed as acceptance of any part of the work or service 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 theretofore made which are determined by the State, on the basis of audits conducted in accordance with the terms of this Contract, not to constitute proper remuneration for compensable services.
- 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, which 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 documentation properly completed.
- a. The Contractor shall complete, sign, and present to the State an "Authorization Agreement for Automatic Deposit (ACH Credits) Form" provided by the State. By doing so, the Contractor acknowledges and agrees that, once said form is received by the State, all payments to the Contractor, under this or any other contract the Contractor has with the State of Tennessee shall be made by Automated Clearing House (ACH).
 - b. The Contractor shall complete, sign, and present to the State a "Substitute W-9 Form" provided by the State. The taxpayer identification number detailed by said form must agree with the Contractor's Federal Employer Identification Number or Tennessee Edison Registration ID referenced in this Contract.
- D. STANDARD TERMS AND CONDITIONS:**
- D.1. Required Approvals. The State is not bound by this Contract until it is signed by the contract parties and approved by appropriate officials in accordance with applicable Tennessee laws and regulations (depending upon the specifics of this contract, said officials may include, but are not limited to, the Chief Procurement Officer, the Commissioner of Human Resources, and the Comptroller of the Treasury).
- D.2. Modification and Amendment. This Contract may be modified only by a written amendment signed by all parties hereto and approved by both the officials who approved the base contract and, depending upon the specifics of the contract as amended, any additional officials required by Tennessee laws and regulations (said officials may include, but are not limited to, the Chief Procurement Officer, the Commissioner of Human Resources, and the Comptroller of the Treasury).
- D.3. Termination for Convenience. The State may terminate this Contract without cause for any reason. Said termination shall not be deemed a breach of contract by the State. The State shall give the Contractor at least thirty (30) days written notice before the effective termination date. The Contractor shall be entitled to compensation for satisfactory, authorized service completed as of the termination date, but in no event shall the State be liable to the Contractor for compensation for any service which has not been rendered. 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.4. 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 violates any terms of this Contract, the State shall have the right to immediately terminate the Contract and withhold payments in excess of fair compensation for completed services. Notwithstanding the above, the Contractor shall not be relieved of liability to the State for damages sustained by virtue of any breach of this Contract by the Contractor.
- D.5. 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. If such subcontracts are approved by the State, each shall contain, at a minimum, sections of this Contract below pertaining to "Conflicts of Interest," "Nondiscrimination," and "Records" (as identified by the section headings). Notwithstanding any use of approved subcontractors, the Contractor shall be the prime contractor and shall be responsible for all work performed.
- D.6. Conflicts of Interest. The Contractor warrants that no part of the total Contract 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 relative to 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 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 months has been, an employee of the State of Tennessee.

- D.7. 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, color, religion, sex, national origin, or any other classification protected by Federal, Tennessee State constitutional, or statutory law. The Contractor shall, upon request, show proof of such nondiscrimination and shall post in conspicuous places, available to all employees and applicants, notices of nondiscrimination.
- D.8. Prohibition of Illegal Immigrants. The requirements of *Tennessee Code Annotated*, Section 12-4-124, *et seq.*, 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 attests, certifies, warrants, and assures 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 B, hereto, semi-annually during the period of this Contract. Such 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 period of this Contract, 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 relative to this Contract and shall not knowingly utilize the services of any subcontractor who will utilize the services of an illegal immigrant to perform work relative to this Contract. Attestations obtained from such 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. Said 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 Annotated*, Section 12-4-124, *et seq.* for acts or omissions occurring after its effective date. This law requires the Commissioner of Finance and Administration 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.9. Records. The Contractor shall maintain documentation for all charges under this Contract. The books, records, and documents of the Contractor, insofar as they relate to work performed or money received under this Contract, shall be maintained for a period of three (3) 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.10. Prevailing Wage Rates. All contracts for construction, erection, or demolition or to install goods or materials that involve the expenditure of any funds derived from the State require compliance with the prevailing wage laws as provided in *Tennessee Code Annotated*, Section 12-4-401, *et seq.*
- 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 insist in any one or more cases upon 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 hereto.
- D.14. Independent Contractor. The parties hereto, in the performance of this Contract, shall not act as employees, partners, joint venturers, or associates of one another. It is expressly acknowledged by the parties hereto 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. State Liability. The State shall have no liability except as specifically provided in this Contract.
- D.16. 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.17. State and Federal Compliance. The Contractor shall comply with all applicable State and Federal laws and regulations in the performance of this Contract.
- D.18. Governing Law. This Contract shall be governed by and construed in accordance with the laws of the State of Tennessee. The Contractor agrees that it will be subject to the exclusive jurisdiction of the courts of the State of Tennessee in actions that may arise under this Contract. The Contractor acknowledges and agrees that any rights or claims against the State of Tennessee or its employees hereunder, and any remedies arising therefrom, shall be subject to and limited to those rights and remedies, if any, available under *Tennessee Code Annotated*, Sections 9-8-101 through 9-8-407.
- D.19. 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.20. 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 hereof shall not be affected thereby and shall remain in full force and effect. To this end, the terms and conditions of this Contract are declared severable.
- D.21. Headings. Section headings of this Contract are for reference purposes only and shall not be construed as part 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, these special terms and conditions shall control.
- E.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 set forth below or to that of such other party or address, as may be hereafter specified by written notice.

The State:

Nathan Travis, Director of Data Services
 TN Department of Education
 Andrew Johnson Tower, 11th Floor
 710 James Robertson Parkway
 Nashville, TN 37243
 Nathan.Travis@tn.gov
 Telephone # (615) 532-6194
 FAX # (615) 532-9412

The Contractor:

Robbie Ammons
 Public Consulting Group
 401 Church Street, Suite 2420
 Nashville, TN 37219
 rammons@pcgus.com
 Telephone # (615) 983-5300
 FAX # (615) 983-5301

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

- E.3. Subject to Funds Availability. The Contract is subject to the appropriation and availability of State and/or Federal funds. In the event that the funds are not appropriated or are otherwise unavailable, the State reserves the right to terminate the Contract upon written notice to the Contractor. Said termination shall not be deemed a breach of Contract by the State. Upon receipt of the written notice, the Contractor shall cease all work associated with the Contract. Should such an event occur, the Contractor shall be entitled to compensation for all satisfactory and authorized services completed as of the termination date. Upon such termination, the Contractor shall have no right to recover from the State any actual, general, special, incidental, consequential, or any other damages whatsoever of any description or amount.
- E.4. Tennessee Consolidated Retirement System. The Contractor acknowledges and understands that, subject to statutory exceptions contained in *Tennessee Code Annotated*, Section 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 pursuant to *Tennessee Code Annotated*, Title 8, Chapter 35, Part 3 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 period of this Contract.

E.5. Insurance. The Contractor shall carry adequate liability and other appropriate forms of insurance.

- a. The Contractor shall maintain, at minimum, the following insurance coverage:
 - (1) Workers' Compensation/ Employers' Liability (including all states coverage) with a limit not less than the relevant statutory amount or one million dollars (\$1,000,000) per occurrence for employers' liability whichever is greater.
 - (2) Comprehensive Commercial General Liability (including personal injury & property damage, premises/operations, independent contractor, contractual liability and completed operations/products) with a bodily injury/property damage combined single limit not less than one million dollars (\$1,000,000) per occurrence and two million dollars (\$2,000,000) aggregate.
 - (3) Automobile Coverage (including owned, leased, hired, and non-owned vehicles) with a bodily injury/property damage combined single limit not less than one million dollars (\$1,000,000) per occurrence.
 - (4) Professional Malpractice Liability with a limit of not less than one million dollars (\$1,000,000) per claim and two million dollars (\$2,000,000) aggregate.
- b. At any time State may require the Contractor to provide a valid Certificate of Insurance detailing Coverage Description; Insurance Company & Policy Number; Exceptions and Exclusions; Policy Effective Date; Policy Expiration Date; Limit(s) of Liability; and Name and Address of Insured. Failure to provide required evidence of insurance coverage shall be a material breach of this Contract.

E.6. 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.7. HIPAA Compliance. The State and Contractor shall comply with obligations under the Health Insurance Portability and Accountability Act of 1996 (HIPAA) and its accompanying regulations.
- a. Contractor warrants to the State that it is familiar with the requirements of HIPAA and its accompanying regulations, and will comply with all applicable HIPAA 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 HIPAA and its regulations, in the course of performance of the Contract so that both parties will be in compliance with HIPAA.
 - c. The State and the Contractor will sign documents, including but not limited to business associate agreements, as required by HIPAA and that are reasonably necessary to keep the State and Contractor in compliance with HIPAA. This provision shall not apply if information received by the State under this Contract is NOT "protected health information" as defined by HIPAA, or if HIPAA permits the State to receive such information without entering into a business associate agreement or signing another such document.
- E.8. Printing Authorization. The Contractor agrees that no publication coming within the jurisdiction of *Tennessee Code Annotated*, Section 12-7-101, *e. seq.* shall be printed pursuant to this Contract unless a printing authorization number has been obtained and affixed as required by *Tennessee Code Annotated*, Section 12-7-103(d).
- E.9. Competitive Procurements. This Contract provides for reimbursement of the cost of goods, materials, supplies, equipment, or contracted services. Such procurements shall be made on a competitive basis, where practical. The Contractor shall maintain documentation for the basis of each procurement for which reimbursement is paid pursuant to this Contract. In each instance where it is determined that use of a competitive procurement method was not practical, said documentation shall include a written justification, approved by the Commissioner, for such decision and non-competitive procurement.
- E.10. 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 temporary use under this Contract. Upon termination of this Contract, all property furnished shall be returned to the State in good order and condition as when received, reasonable use and wear thereof excepted. Should the property be destroyed, lost, or stolen, the Contractor shall be responsible to the State for the residual value of the property at the time of loss.
- E.11. Environmental Tobacco Smoke. Pursuant to the provisions of the federal "Pro-Children Act of 1994" and the Tennessee "Children's Act for Clean Indoor Air of 1995," the Contractor shall prohibit smoking of tobacco products within any indoor premises in which services are provided pursuant to this Contract to individuals under the age of eighteen (18) years. The Contractor shall post "no smoking" signs in appropriate, permanent sites within such premises. This prohibition shall be applicable during all hours, not just the hours in which children are present. Violators of the prohibition may be subject to civil penalties and fines. This prohibition shall apply to and be made part of any subcontract related to this Contract.
- E.12. Lobbying. The Contractor certifies, to the best of its knowledge and belief, that:
- a. No federally appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal

contract, the making of any Federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.

- b. If any funds other than federally appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this contract, grant, loan, or cooperative agreement, the Contractor shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
- c. The Contractor shall require that the language of this certification be included in the award documents for all sub-awards at all tiers (including subcontracts, sub-grants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

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

- E.13. 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 offence in connection with obtaining, attempting to obtain, or performing a public (federal, state, or local) transaction or grant under a public transaction; violation of federal or state antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification, or destruction of records, making false statements, or receiving stolen property;
 - c. are not presently indicted or otherwise criminally or civilly charged by a government entity (federal, state, or local) with commission of any of the offenses detailed in section b. of this certification; and
 - d. have not within a three (3) year period preceding this Contract had one or more public transactions (federal, state, or local) terminated for cause or default.

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

- E.14. Copyrights and Patents. The Contractor agrees to indemnify and hold harmless the State of Tennessee as well as its officers, agents, and employees from and against any and all claims or suits which may be brought against the State for infringement of any laws regarding patents or copyrights which may arise from the Contractor's performance of this Contract. In any such action brought against the State, the Contractor shall satisfy and indemnify the State for the amount of any final judgment for infringement. The Contractor further agrees it shall be liable for the reasonable fees of attorneys for the State in the event such service is necessitated to enforce the terms of this Contract or otherwise enforce the obligations of the Contractor to the State. The State shall give the Contractor written notice of any such claim or suit and full right and opportunity to conduct the Contractor's own defense thereof.
- E.15. Hold Harmless. The Contractor agrees to indemnify and hold harmless the State of Tennessee as well as its officers, agents, and employees from and against any and all claims, liabilities,

losses, and causes of action which may arise, accrue, or result to any person, firm, corporation, or other entity which may be injured or damaged as a result of acts, omissions, or negligence on the part of the Contractor, its employees, or any person acting for or on its or their behalf relating to this Contract. The Contractor further agrees it shall be liable for the reasonable cost of attorneys for the State in the event such service is necessitated to enforce the terms of this Contract or otherwise enforce the obligations of the Contractor to the State.

In the event of any such suit or claim, the Contractor shall give the State immediate notice thereof and shall provide all assistance required by the State in the State's defense. The State shall give the Contractor written notice of any such claim or suit, and the Contractor shall have full right and obligation to conduct the Contractor's own defense thereof. Nothing contained herein shall be deemed to accord to the Contractor, through its attorney(s), the right to represent the State of Tennessee in any legal matter, such rights being governed by *Tennessee Code Annotated*, Section 8-6-106.

E.16. Breach. A party shall be deemed to have breached the Contract if any of the following occurs:

- failure to perform in accordance with any term or provision of the Contract;
- partial performance of any term or provision of the Contract;
- any act prohibited or restricted by the Contract; or
- violation of any warranty.

For purposes of this Contract, these items shall hereinafter be referred to as a "Breach."

a. Contractor Breach— The State shall notify Contractor in writing of a Breach.

- (1) In event of a Breach by Contractor, the State shall have available the remedy of Actual Damages and any other remedy available at law or equity.
- (2) Liquidated Damages— In the event of a Breach, the State may assess Liquidated Damages. The State shall notify the Contractor of amounts to be assessed as Liquidated Damages. The parties agree that due to the complicated nature of the Contractor's obligations under this Contract it would be difficult to specifically designate a monetary amount for a Breach by Contractor as said amounts are likely to be uncertain and not easily proven. Contractor hereby represents and covenants it has carefully reviewed the Liquidated Damages contained in above referenced, Attachment C and agree that said amounts represent a reasonable relationship between the amount and what might reasonably be expected in the event of Breach, and are a reasonable estimate of the damages that would occur from a Breach. It is hereby agreed between the parties that the Liquidated Damages represent solely the damages and injuries sustained by the State in losing the benefit of the bargain with Contractor and do not include any injury or damage sustained by a third party. The Contractor agrees that the liquidated damage amount is in addition to any amounts Contractor may owe the State pursuant to the indemnity provision or other section of this Contract.

The State may continue to assess the Liquidated Damages or a portion thereof until the Contractor cures the Breach, the State exercises its option to declare a Partial Default, or the State terminates the Contract. The State reserves the right to set off against any amounts owed the Contractor for any liquidated damages assessed by the State. The State is not obligated to assess Liquidated Damages before availing itself of any other remedy. The State may choose to discontinue Liquidated Damages and avail itself of any other remedy available under this Contract or at law or equity; provided, however, Contractor shall receive a credit for said Liquidated Damages previously withheld except in the event of a Partial Default.

- (3) Partial Default— In the event of a Breach, the State may declare a Partial Default. In which case, the State shall provide the Contractor written notice of: (1) the date which Contractor shall terminate providing the service associated with the Breach; and (2) the date the State will begin to provide the service associated with the Breach. Notwithstanding the foregoing, the State may revise the time periods contained in the notice written to the Contractor.

In the event the State declares a Partial Default, the State may withhold, together with any other damages associated with the Breach, from the amounts due the Contractor the greater of: (1) amounts which would be paid the Contractor to provide the defaulted service; or (2) the cost to the State of providing the defaulted service, whether said service is provided by the State or a third party. To determine the amount the Contractor is being paid for any particular service, the Department shall be entitled to receive within five (5) days any requested material from Contractor. The State shall make the final and binding determination of said amount.

The State may assess Liquidated Damages against the Contractor for any failure to perform which ultimately results in a Partial Default with said Liquidated Damages to cease when said Partial Default is cured. Upon Partial Default, the Contractor shall have no right to recover from the State any actual, general, special, incidental, consequential, or any other damages whatsoever of any description or amount. Contractor agrees to cooperate fully with the State in the event a Partial Default is taken.

- (4) Contract Termination— In the event of a Breach, the State may terminate the Contract immediately or in stages. The Contractor shall be notified of the termination in writing by the State. Said notice shall hereinafter be referred to as Termination Notice. The Termination Notice may specify either that the termination is to be effective immediately, on a date certain in the future, or that the Contractor shall cease operations under this Contract in stages. In the event of a termination, the State may withhold any amounts which may be due Contractor without waiver of any other remedy or damages available to the State at law or at equity. The Contractor shall be liable to the State for any and all damages incurred by the State and any and all expenses incurred by the State which exceed the amount the State would have paid Contractor under this Contract. Contractor agrees to cooperate with the State in the event of a Contract Termination or Partial Takeover.

- b. State Breach— In the event of a Breach of Contract by the State, the Contractor shall notify the State in writing within 30 days of any Breach of Contract by the State. Said notice shall contain a description of the Breach. Failure by the Contractor to provide said written notice shall operate as an absolute waiver by the Contractor of the State's Breach. In no event shall any Breach on the part of the State excuse the Contractor from full performance under this Contract. In the event of Breach by the State, the Contractor may avail itself of any remedy at law in the forum with appropriate jurisdiction; provided, however, failure by the Contractor to give the State written notice and opportunity to cure as described herein operates as a waiver of the State's Breach. Failure by the Contractor to file a claim before the appropriate forum in Tennessee with jurisdiction to hear such claim within one (1) year of the written notice of Breach shall operate as a waiver of said claim in its entirety. It is agreed by the parties this provision establishes a contractual period of limitations for any claim brought by the Contractor.

- E.17. Unencumbered Personnel. All persons assigned by the Contractor to perform services for the State under this Contract, whether they are employees, agents, subcontractors, or principals of the Contractor, shall not be subject to any employment contract or restrictive covenant provisions which would preclude those persons from performing the same or similar services for the State after the termination of this Contract, either as a State employee, an independent contractor, or an employee, agent, subcontractor or principal of another contractor with the State. If the

Contractor provides the State with the services of any person subject to a restrictive covenant or contractual provision in violation of this provision, any such restrictive covenant or contractual provision will be void and unenforceable, and the Contractor will pay the State and any person involved all of its expenses, including attorney's fees, caused by attempts to enforce such provisions.

- E.18. 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.
- E.19. Federal Funding Accountability and Transparency Act (FFATA). This Contract requires the Contractor to provide supplies and/or services that are funded in whole or in part by federal funds that are subject to FFATA. The Contractor is responsible for ensuring that all applicable requirements, including but not limited to those set forth herein, of FFATA are met and that the Contractor provides information to the State as required.

The Contractor shall comply with the following:

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

Executive means officers, managing partners, or any other employees in management positions.
 - (2) Total compensation means the cash and noncash dollar value earned by the executive during the Contractor's preceding fiscal year and includes the following (for more information see 17 CFR 229.402(c)(2)):
 - i. Salary and bonus.
 - ii. Awards of stock, stock options, and stock appreciation rights. Use the dollar amount recognized for financial statement reporting purposes with respect to the fiscal year in accordance with the Statement of Financial Accounting Standards No. 123 (Revised 2004) (FAS 123R), Shared Based Payments.
 - iii. Earnings for services under non-equity incentive plans. This does not include group life, health, hospitalization or medical reimbursement plans

- that do not discriminate in favor of executives, and are available generally to all salaried employees.
- iv. Change in pension value. This is the change in present value of defined benefit and actuarial pension plans.
 - v. Above-market earnings on deferred compensation which is not tax qualified.
 - vi. Other compensation, if the aggregate value of all such other compensation (e.g. severance, termination payments, value of life insurance paid on behalf of the employee, perquisites or property) for the executive exceeds \$10,000.
- b. The Contractor must report executive total compensation described above to the State by the end of the month during which this Contract is awarded.
 - c. If this Contract is amended to extend its term, the Contractor must submit an executive total compensation report to the State by the end of the month in which the amendment to this Contract becomes effective.
 - d. The Contractor will obtain a Data Universal Numbering System (DUNS) number and maintain its DUNS number for the term of this Contract. More information about obtaining a DUNS Number can be found at: <http://fedgov.dnb.com/webform/>

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

- E.20. FERPA Compliance. The State and Contractor shall comply with the Family Education Rights and Privacy Act of 1974 (20 U.S.C. § 1232g) (FERPA) and its accompanying regulations (34 C.F.R. 99). The Contractor warrants that it is familiar with requirements of FERPA and its accompanying regulations and that it will comply with all applicable FERPA requirements in the performance of its duties in this contract. The Contractor agrees to cooperate with the State as required by FERPA and its regulations in the performance of its duties in this contract. The Contractor agrees to maintain the confidentiality of all education records and student information and use such records and information for the exclusive purpose of performing its duties in this contract. The Contractor shall reaffirm this attestation, in writing, by submitting to the State a completed and signed copy of the Authorization and Acknowledgement of Compliance document at Attachment D.
- E.21 Contractor Commitment to Diversity. The Contractor shall assist the State in monitoring the Contractor's performance of this commitment by providing, as requested, a quarterly report of participation in the performance of this Contract by small business enterprises and businesses owned by minorities, women, and persons with a disability. Such reports shall be provided to the state of Tennessee Governor's Office of Diversity Business Enterprise in form and substance as required by said office.
- E.22. Limitation of Liability. The parties agree that the Contractor's liability 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 intentional torts, criminal acts, or fraudulent conduct.

IN WITNESS WHEREOF,

PUBLIC CONSULTING GROUP, INC.:

CONTRACTOR SIGNATURE

DATE

PRINTED NAME AND TITLE OF CONTRACTOR SIGNATORY (above)

TENNESSEE DEPARTMENT OF EDUCATION:

KEVIN HUFFMAN, COMMISSIONER

DATE

ATTACHMENT A
EIS REPORTING REQUIREMENTS REFERENCES

| | |
|---------------------------|---|
| EIS Manual | http://www.tn.gov/education/eis/ |
| EIS Reports | http://www.tn.gov/education/eis/reports.shtml |
| EIS Questions and Answers | http://www.tn.gov/education/eis/doc/eisquestions.pdf |
| Business Rules | http://www.tn.gov/education/eis/doc/manual_business.pdf |
| All Record Layouts | http://www.tn.gov/education/eis/doc/record_layout_definitions.pdf |
| EIS Data Dictionary | http://www.tn.gov/education/eis/doc/data_dictionary.pdf |
| Appendices | http://www.tn.gov/education/eis/doc/appendices.pdf |
| File Transmission | http://www.tn.gov/education/eis/doc/manual_transmission.pdf |
| Attendance Manual | http://www.tn.gov/education/dataquality/attendancemanual/doc/Attendance_Manual.pdf |

ATTESTATION RE PERSONNEL USED IN CONTRACT PERFORMANCE

| | |
|---|-------------------------------|
| SUBJECT CONTRACT NUMBER: | 36543 |
| CONTRACTOR LEGAL ENTITY NAME: | Public Consulting Group, Inc. |
| FEDERAL EMPLOYER IDENTIFICATION NUMBER: (or Social Security Number) | 0000004919 |

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

ATTACHMENT C

LIQUIDATED DAMAGES

| SERVICE DESCRIPTION | LIQUIDATED AND ADDITIONAL DAMAGES |
|--|---|
| Maintain host site 24 hours a day, 365 days a year; A.5. | \$1,500.00/each day for outages that are not scheduled as part of quarterly maintenance or required to make system wide modification as defines in Section A.6. |
| Resolution of technical issues; A.7. | \$500/each day a critical issue is not resolved as specified in the scope with condition that failure is exclusively due to negligence, actions, failures, or omissions on the Contractor's part. |

ATTACHMENT D
AUTHORIZATION AND ACKNOWLEDGEMENT OF COMPLIANCE

Whereas, State has contracted with **Public Consulting Group, Inc.** on **July 1, 2013** through **June 30, 2015 (Agency Tracking # 33136-00114)**, for an internet based student data collection and reporting tool, and

Whereas, The above referenced contract may require the disclosure by the State to **Public Consulting Group, Inc.** of certain personally identifiable student information that is confidential under the Family Educational Rights and Privacy Act (FERPA), and

Whereas, 34 C.F.R. 99.31(2), authorizes an educational agency or institution to disclose personally identifiable information from an education record of a student without the consent required by Sec. 99.30 to a contractor, consultant, volunteer, or other party to whom an agency or institution has outsourced institutional services.

Therefore, the State and **Public Consulting Group, Inc.** hereby agree as follows:

1. **Public Consulting Group, Inc.** is authorized to maintain certain student information for the sole purpose of compliance with the requirements of the above referenced contract. This student information may include: name, disability, phone number, social security number, individual education plan, and psychological reports.
2. **Public Consulting Group, Inc.** agrees to comply fully with FERPA by maintaining the confidentiality of all student information and to use the information solely to fulfill its obligations under the above referenced contract with the state.
3. **Public Consulting Group, Inc.** agrees to destroy all confidential student information when it is no longer needed for purposes of fulfilling its obligations under the above referenced contract.

PUBLIC CONSULTING GROUP, INC.

DATE

TENNESSEE DEPARTMENT OF EDUCATION

DATE

CONTRACT PROVISION REQUEST

TENNESSEE DEPARTMENT OF EDUCATION – CONTRACTS OFFICE

***Attach Proposed Contract**

| | | |
|---|---|--|
| Requested By: Nathan Travis Program Area: Special Education and Special Populations Vendor Name: Public Consulting Group, Inc. | Request Date: 4/29/13 Start Date: July 1, 2013 | RFS Number: 33136-00114 End Date: June 30, 2015 Contract Amount: \$5,993,000.00 |
|---|---|--|

Contract Provision(s) E Clauses to be Included:

- | | | |
|--|--|---|
| <input type="checkbox"/> State Ownership of Work Products | <input checked="" type="checkbox"/> Copyrights and Patents | <input type="checkbox"/> Partial Takeover |
| <input type="checkbox"/> Ownership of Software & Work Products | <input checked="" type="checkbox"/> Hold Harmless | <input type="checkbox"/> Unencumbered Personnel |
| <input type="checkbox"/> Performance Bond | <input type="checkbox"/> Breach (Liquidated Damages) | |
| <input type="checkbox"/> Other: | | |

Contract Provision(s) E Clauses to be Excluded:

- | | |
|--|---------------------------------|
| <input type="checkbox"/> State Interest in Equipment | <input type="checkbox"/> Other: |
|--|---------------------------------|

Justification for why the provision(s) requested are in the best interest of the State and the Department of Education. Identify the risk(s).

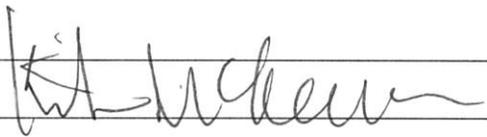
Purpose of Contract:

Internet based student data collection and reporting tool

Legal Counsel Review and Approval:

| | | |
|---|--|--|
| <input checked="" type="checkbox"/> Concur with Request | <input type="checkbox"/> Do Not Concur | Signature:  |
| Comments: | | |

Contracts Office Review and Approval:

| | | |
|---|--|--|
| <input checked="" type="checkbox"/> Concur with Request | <input type="checkbox"/> Do Not Concur | Signature:  |
| Comments: | | |