CONTRACT #3
RFS # 309.01-15210
Edison # 26193

Department of Treasury

VENDOR:
Peak 10, Inc.

STATE OF TENNESSEE

DAVID H. LILLARD, JR.
STATE TREASURER

TREASURY DEPARTMENT

STATE CAPITOL
NASHVILLE, TENNESSEE 37243-0225

615.741.2956
David.Lillard@tn.gov

MEMORANDUM

TO: Fiscal Review Committee

FROM: Courtney Hess, Assistant General Counsel

DATE: August 17, 2015

SUBJECT: **Peak 10, Inc., Contract Amendment**

This memorandum describes the Department of Treasury's ("Department") proposed amendment to extend its contract with Peak 10, Inc. ("Peak 10"), as well as the justification for the noncompetitive amendment. The Department requests approval from the Fiscal Review Committee for the proposed amendment.

The Department holds a contract with Peak 10, Inc., for a secure data center environment for the three Constitutional offices (Office of the Comptroller of the Treasury, Treasury Department, and Department of State). Peak 10 provides hosting for critical production and disaster recovery infrastructure at its data center facility for the offices, in accordance with specifications required by the Information Systems divisions of the three offices. In addition to providing the infrastructure and appropriate network connections to host the data center, Peak 10 provides hands on/managed services support for the data center as requested by the State. Peak 10's services are subject to a performance standards guarantee in the contract.

The proposed amendment would allow the Department to extend its current contract with Peak 10 for an additional two years, to April 30, 2018. Information Systems directors for the three offices attest to Peak 10's excellent service and responsiveness to the State's needs at a cost that remains competitive in the current marketplace, even as average data center hosting costs have increased. Given the market trends, Information Systems directors for the offices are researching the future options for data center hosting, including the potential capability of State-hosted facilities. Extending the contract with Peak 10 will allow the State to experience continuity from a critical vendor, avoiding the significant expenses and expenditure of resources that would be required to establish a new contract with another vendor, while researching and determining the best solution to data center hosting for the three Constitutional offices going forward.

When the contract was initially awarded as the result of a Request for Proposals, it was approved with a maximum liability of $2,242,980. Expenditures through May 1, 2015, have been $782,050, and projected cumulative expenditures through the end of the current contract will be approximately $1,100,000. The actual expenditures have been lower than the original budget for a few reasons. First, the Constitutional offices had planned to put more infrastructure at the facility, earlier. For example, a large portion of the Office of the Comptroller of the Treasury's server infrastructure was not transferred from the Polk Building to Peak 10 until last year. Additionally, the offices have been able to make more efficient use of space due to technology changes and virtualization. Finally, the offices planned for additional capacity for contingency purposes. The Constitutional offices believe that the remaining funds in the current maximum liability will adequately cover the necessary services for the additional two years to April 30, 2018, should the amendment extending the contract be approved.

Supplemental Documentation Required for Fiscal Review Committee

*Contact Name:	Courtney Hess	*Contact Phone:	615 532 3067
*Presenter's name(s):	Treasurer David H. Lillard, Jr.		
Edison Contract Number: *(if applicable)*	26193	RFS Number: *(if applicable)*	30901-15210
*Original or Proposed Contract Begin Date:	May 1, 2011	*Current or Proposed End Date:	April 30, 2016 (Current) April 30, 2018 (Proposed)
Current Request Amendment Number: *(if applicable)*	1		
Proposed Amendment Effective Date: *(if applicable)*	May 1, 2016		
*Department Submitting:	Treasury		
*Division:	Information Systems		
*Date Submitted:	August 17, 2015		
*Submitted Within Sixty (60) days:	Yes		
If not, explain:			
*Contract Vendor Name:	Peak 10, Inc.		
*Current or Proposed Maximum Liability:	$2,242,980		
*Estimated Total Spend for Commodities:	N/A		

*Current or Proposed Contract Allocation by Fiscal Year:
(as Shown on Most Current Fully Executed Contract Summary Sheet)

FY: 2011	FY: 2012	FY: 2013	FY: 2014	FY 2015	FY 2016
$ 74,766	$ 448,596	$ 448,596	$ 448,596	$ 448,596	$ 373,830

*Current Total Expenditures by Fiscal Year of Contract:
(attach backup documentation from Edison)

FY: 2011	FY: 2012	FY: 2013	FY: 2014	FY 2015	FY 2016
0	$162,673.86	$ 160,788	$ 184,782	$ 273,806	$ 26,146

IF Contract Allocation has been greater than Contract Expenditures, please give the reasons and explain where surplus funds were spent:	When the contract was initially awarded, the Constitutional offices had planned to put more infrastructure at the facility earlier. A large portion of infrastructure was not moved to the facility until 2014. The offices have also been able to make more efficient use of space due to technology changes and virtualization, resulting in a need for less infrastructure space. Surplus funds were not spent.
IF surplus funds have been carried forward, please give the reasons and provide the authority for the	N/A

Supplemental Documentation Required for Fiscal Review Committee

carry forward provision:			
IF Contract Expenditures exceeded Contract Allocation, please give the reasons and explain how funding was acquired to pay the overage:	N/A		
*Contract Funding Source/Amount:			
State:		Federal:	
Interdepartmental:	75% of funding	*Other*:	25% of funding
If "*other*" please define:		Current Services	
If "*interdepartmental*" please define:		Disaster Recovery **Because Treasury has the contract with Peak 10, it pays the invoices and collects the appropriate shares back from the other two constitutional offices.	
Dates of All Previous Amendments or Revisions: (*if applicable*)		Brief Description of Actions in Previous Amendments or Revisions: (*if applicable*)	
Method of Original Award: (*if applicable*)		RFP	
*What were the projected costs of the service for the entire term of the contract prior to contract award? How was this cost determined?		$2,242,980. Projected costs were based on the anticipated amount of infrastructure to be moved to Peak 10 facilities applying the rates proposed by Peak 10 in the RFP that are included in the contract.	
*List number of other potential vendors who could provide this good or service; efforts to identify other competitive procurement alternatives; and the reason(s) a sole-source contract is in the best interest of the State.		When the RFP was conducted in 2011, one other company responded. The State has been advised that State-hosted facilities may be capable of providing the secure data center services provided under this contract in the near future. Extending the current contract will allow the State to have continuity in its data center and disaster recovery efforts for the three Constitutional offices and avoid the significant expenses and expenditure of resources that would be required to move the services to another vendor, while exploring the option of utilizing State-hosted facilities.	

Peak 10 Payments from **$782,049.86**
7/1/11 - 5/1/15

Date	Invoice #	Invoice Total
5/1/2015	INV0038085	$6,125.00
5/1/2015	INV0038086	$20,021.00
4/1/2015	INV0037771	$6,125.00
4/1/2015	INV0037772	$20,021.00
3/1/2015	INV0037452	$6,125.00
3/1/2015	INV0037453	$20,021.00
2/1/2015	INV0037143	$6,125.00
2/1/2015	INV0037144	$20,021.00
1/1/2015	INV0036834	$6,125.00
1/1/2015	INV0036835	$17,721.00
12/1/2014	INV0036524	$6,125.00
12/1/2014	INV0036525	$17,721.00
11/1/2014	INV0036214	$6,125.00
11/1/2014	INV0036215	$17,721.00
10/1/2014	INV0035904	$6,125.00
10/1/2014	INV0035905	$17,721.00
9/1/2014	INV0035578	$6,125.00
9/1/2014	INV0035579	$17,721.00
8/1/2014	INV0035265	$6,125.00
8/1/2014	INV0035266	$17,721.00
7/1/2014	INV0034951	$6,125.00
7/1/2014	INV0034952	$20,021.00
6/1/2014	INV0034631	$6,125.00
6/1/2014	INV0034632	$20,021.00
5/1/2014	INV0034309	$6,125.00
5/1/2014	INV0034310	$20,021.00
4/1/2014	INV0033995	$13,399.00
3/1/2014	INV0033688	$13,399.00
2/1/2014	INV0033388	$13,399.00
1/1/2014	INV0033085	$13,399.00

11/26/2013	RET101558	$	(1,500.00)
12/1/2013	INV0032775		$13,399.00
11/1/2013	INV0032466		$13,399.00
10/1/2013	INV0032164		$13,399.00
9/1/2013	INV0031856		$13,399.00
8/1/2013	INV0031548		$13,399.00
7/1/2013	INV0031248		$13,399.00
6/1/2013	INV0030945		$13,399.00
5/1/2013	INV0030644		$13,399.00
4/1/2013	INV0030352		$13,399.00
3/1/2013	INV0030058		$13,399.00
2/1/2013	INV0029754		$13,399.00
1/1/2013	INV0029465		$13,399.00
12/1/2012	INV0028542		$13,399.00
11/1/2012	INV0028838		$13,399.00
10/1/2012	INV0029141		$13,399.00
9/1/2012	INV28252		$13,399.00
8/1/2012	INV27966		$13,399.00
7/1/2012	INV27608		$13,399.00
6/1/2012	INV27239		$13,399.00
5/1/2012	INV26928		$13,399.00
4/1/2012	INV26618		$13,399.00
3/1/2012	INV26295		$13,399.00
2/1/2012	INV25914		$13,399.00
1/1/2012	INV25505		$13,399.00
12/30/2011	RET100991	$	(72.78)
12/1/2011	INV25192		$13,812.00
11/1/2011	INV24885		$13,812.00
10/1/2011	INV24499		$13,812.00
9/1/2011	INV24161		$13,812.00
8/1/2011	INV23852		$13,812.00
7/31/2011	INV23678		$1,780.64
7/1/2011	INV23561		$11,512.00
			$782,049.86

cy15-5569

Amendment Request

This request form is not required for amendments to grant contracts. Route a completed request, as one file in PDF format, via e-mail attachment sent to: Agsprs.Agsprs@tn.gov

APPROVED	
Kevin C. Bartels for Michael F. Perry	Digitally signed by Kevin C. Bartels for Michael F. Perry DN: cn=Kevin C. Bartels for Michael F. Perry, o=CPO, ou, email=Kevin.C.Bartels@tn.gov, c=US Date: 2015.08.10 12:21:32 -05'00'
CHIEF PROCUREMENT OFFICER	DATE

Agency request tracking #	30901-15210
1. Procuring Agency	Department of Treasury
2. Contractor	Peak 10, Inc.
3. Edison contract ID #	26193
4. Proposed amendment #	1
5. Contract's Effective Date	May 1, 2011
6. Current end date	April 30, 2016
7. Proposed end date	April 30, 2018
8. Current Maximum Liability or Estimated Liability	$ 2,242,980
9. Proposed Maximum Liability or Estimated Liability	$ 2,242,980
10. Office for Information Resources Pre-Approval Endorsement Request *– information technology service (N/A to THDA)*	☐ Not Applicable ☒ Attached
11. eHealth Pre-Approval Endorsement Request *– health-related professional, pharmaceutical, laboratory, or imaging*	☒ Not Applicable ☐ Attached
12. Human Resources Pre-Approval Endorsement Request *– state employee training service*	☒ Not Applicable ☐ Attached

13. Explain why the proposed amendment is needed

The State utilizes the services of Peak 10 for a secure data center environment for the three Constitutional offices. These offices host critical production and disaster recovery infrastructure at the Peak 10 data center facility. During the current term of the Contract,

Peak 10 has provided excellent service and responsiveness to the State's needs at a cost that remains competitive in the current marketplace, even as average data center hosting costs have increased. The State desires to extend the current contract with Peak 10 for an additional two years, to April 30, 2018, to continue to benefit from the excellent service and pricing of the Contractor, as well as avoid the significant expenses and expenditure of resources that would be required to establish a new contract with another vendor. The extension will enable the State to benefit from the continuity of a critical vendor while exploring the option of eventually utilizing State-hosted facilities when such

Agency request tracking #	30901-15210
capability may be available.	
14. If the amendment involves a change in Scope, describe efforts to identify reasonable, competitive, procurement alternatives to amending the contract. **Not applicable.**	
Signature of agency head or designee and date August 4, 2015	

Approved for signature by CH 7/16/15

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 : Dawn Rochelle
Procurement Coordinator, Treasury Department

E-Mail : Dawn.Rochelle@tn.gov

DATE : 04/29/2010

RE : Request for OIR Pre-Approval Endorsement

APPLICABLE RFS # RFP 30901-15210

OIR ENDORSEMENT SIGNATURE & DATE :

Mark Bengelges 9/7/10

Chief Information Officer

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.

1 **SUBJECT PROCUREMENT DOCUMENT TYPE** (mark one) :

X RFP

☐ Competitive Negotiation Request ☐ Alternative Procurement Method Request

☐ Non-Competitive Contract Request ☐ Non-Competitive Amendment Request

☐ Contract ☐ Contract Amendment ☐ Grant ☐ Grant Amendment

2 **INFORMATION SYSTEMS PLAN (ISP) PROJECT APPLICABLITY :**

☐ Not Applicable to this Request ☒ Applicable – ISP PROJECT # II63SRVR

RESPONSE CONFIRMED BY : IT DIRECTOR/Gary Ridner

APPLICABLE RFS #	**RFP 30901-15210**
3	**CONTRACTING AGENCY CONTACT :** NAME/TITLE Gail Doss, Project Manager TELEPHONE # 615-532-0464 E-MAIL ADDRESS gail.doss@tn.gov
4	**SUBJECT INFORMATION TECHNOLOGY SERVICE DESCRIPTION :** Locked cage and associated services within a secure data center environment for the Constitutional offices (Secretary of State's Office, Comptroller of the Treasury, and the Tennessee Treasury Department), primarily for hosting disaster recovery-related servers and related equipment.
5	**REQUIRED ATTACHMENT(S) AS APPLICABLE** (copies without signatures acceptable) : X **RFP, Competitive Negotiation Request, Alternative Procurement Method Request, or Non-Competitive Contract/Amendment Request** ☐ **proposed contract/grant or amendment** ☐ **original contract/grant & any prior amendments**

Rule Exception Request

Route completed request, as one file in PDF format, via e-mail attachment sent to: Agsprs.Agsprs@tn.gov

APPROVED	APPROVED
Michael F. Perry/TLS Digitally signed by Michael F. Perry/TLS DN: cn=Michael F. Perry/TLS, o, ou=Central Procurement Office, email=tons.stuart@tn.gov, c=US Date: 2015.08.10 16:44:58 -05'00'	8/12/2015
CHIEF PROCUREMENT OFFICER (Required for all Rule Exception Requests)	COMPTROLLER OF THE TREASURY (ONLY for applicable statutorily required approvals e.g., records, annual report and audit, or monitoring provisions)

Request Tracking #	30901-15210
1. **Contract #**	26193
2. **Goods or Services Caption**	A locked cage and associated services within a secure data center environment for the Constitutional offices (Secretary of State, Comptroller of the Treasury, and the Tennessee Treasury Department), primarily for hosting disaster recovery-related servers and related equipment.
3. **Contractor**	Peak 10 Inc.
4. **Contract Period** (with ALL options to extend exercised)	84 months
5. **Contract Maximum Liability** (with ALL options to extend exercised)	$ 2,242,980
6. **Rule(s)** (for which the exception is requested) Please include citation and written explanation of Rule(s) to be excepted.	Rule 0690-03-01-.14(2)(c) – any multi-year contract shall not be for a period longer than sixty (60) months unless approved by the Chief Procurement Officer as being in the best interests of the State.
7. **Explanation of Rule Exception Requested**	The Department requests approval of a contract longer than sixty (60) months. With an approved Rule Exception Request and subsequent approved amendment, the Contract term would be eighty-four (84) months.
8. **Justification**	The State utilizes the services of Peak 10 for a secure data center environment for the three Constitutional offices. These offices host critical production and disaster recovery infrastructure at the Peak 10 data center facility. During the current term of the Contract, Peak 10 has provided excellent service and responsiveness to the State's needs at a cost that remains competitive in the current marketplace, even as average data center hosting costs have increased. The State desires to extend the current contract with Peak 10 for an additional two years, to April 30, 2018, to continue to benefit from the excellent service and pricing of the Contractor, as well as avoid the significant expenses and expenditure of resources that would be required to establish a new contract with another vendor. Transitioning to a new vendor would require the State to shut down, relocate, and restore all three offices' environments at another site, as well as terminate and re-instantiate data connections to the Internet and state data centers. During the extension, the State will be able to explore the potential opportunity to move some of the infrastructure

	to State-hosted facilities rather than utilize an outside vendor. The extension will enable the State to benefit from the continuity of a critical vendor while exploring this option to meet its future needs.
Agency Head Signature and Date (contracting agency head or authorized signatory)	

August 4, 2015

Approved for signature by CAA 7/14/15

CONTRACT AMENDMENT COVER SHEET

Agency Tracking #	Edison ID	Contract #	Amendment #
30901-15210	26193	26193	1

Contractor Legal Entity Name	Edison Vendor ID
Peak 10, Inc.	139835

Amendment Purpose & Effect(s)
Extend the Contract two years to April 30, 2018

Amendment Changes Contract End Date: ☒ YES ☐ NO **End Date:** April 30, 2018

TOTAL Contract Amount INCREASE or DECREASE per this Amendment (zero if N/A): **0**

Funding —

FY	State	Federal	Interdepartmental	Other	TOTAL Contract Amount
2011			$ 0	$ 0	$ 0
2012			$ 122,055.86	$ 40,618	$ 162,673.86
2013			$ 120,591	$ 40,197	$ 160,788
2014			$ 138,587	$ 46,195	$ 184,782
2015			$ 205,355	$ 68,451	$ 273,806
2016			$ 386,718	$ 128,905	$515,623
2017			$ 386,717	$ 128,905	$515,622
2018			$ 322,263.14	$ 107,422	$429,685.14
TOTAL:			**$ 1,682,287**	**$ 560,693**	**$2,242,980**

American Recovery and Reinvestment Act (ARRA) Funding: ☐ YES ☒ NO

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.

CPO USE

Speed Chart (optional)

Account Code (optional)

AMENDMENT 1
OF CONTRACT 26193

This Amendment is made and entered by and between the State of Tennessee, Department of Treasury, hereinafter referred to as the "State" and Peak 10, Inc., hereinafter referred to as the "Contractor." For good and valuable consideration, the sufficiency of which is hereby acknowledged, it is mutually understood and agreed by and between said, undersigned contracting parties that the subject contract is hereby amended as follows:

1. Contract Section B is deleted in its entirety and replaced with the following:

   This Contract shall be effective for the period commencing on May 1, 2011 and ending on April 30, 2018. The State shall have no obligation for services rendered by the Contractor which are not performed within the specified period.

Required Approvals. The State is not bound by this Amendment 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 Commissioner of Finance and Administration, the Commissioner of Human Resources, and the Comptroller of the Treasury).

Amendment Effective Date. The revisions set forth herein shall be effective May 1, 2016. All other terms and conditions of this Contract not expressly amended herein shall remain in full force and effect.

IN WITNESS WHEREOF,

PEAK 10, INC.:

SIGNATURE **DATE**

PRINTED NAME AND TITLE OF SIGNATORY (above)

DEPARTMENT OF TREASURY:

DAVID H. LILLARD, JR., TREASURER **DATE**

CONTRACT

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

Begin Date	End Date	Agency Tracking #	Edison Record ID
May 1, 2011	April 30, 2016	30901-15210	26193

Contractor Legal Entity Name	Edison Vendor ID
Peak 10 Inc.	139835

Subrecipient or Vendor	CFDA #	FEIN or SSN (optional)
☐ Subrecipient ☒ Vendor		20-5233249

Service Caption (one line only)

A locked cage and associated services within a secure data center environment for the Constitutional offices (Secretary of State's Office, Comptroller of the Treasury, and the Tennessee Treasury Department), primarily for hosting disaster recovery-related servers and related equipment.

FY	State	Federal	Interdepartmental	Other	TOTAL Contract Amount
2011	$74,766				$74,766
2012	$448,596				$448,596
2013	$448,596				$448,596
2014	$448,596				$448,596
2015	$448,596				$448,596
2016	$373,830				$373,830
TOTAL:	$2,242,980				$2,242,980

American Recovery and Reinvestment Act (ARRA) Funding: ☐ YES ☒ NO

Ownership/Control

☐ African American ☐ Asian ☐ Hispanic ☐ Native American ☐ Female

☐ Person w/Disability ☐ Small Business ☐ Government ☒ NOT Minority/Disadvantaged

☒ Other:

Selection Method & Process Summary (mark the correct response to confirm the associated summary)

☒ RFP	The procurement process was completed in accordance with the approved RFP document and associated regulations.
☐ Competitive Negotiation	The predefined, competitive, impartial, negotiation process was completed in accordance with the associated, approved procedures and evaluation criteria.
☐ Alternative Competitive Method	The predefined, competitive, impartial, procurement process was completed in accordance with the associated, approved procedures and evaluation criteria.
☐ Non-Competitive Negotiation	The non-competitive contractor selection was completed as approved, and the procurement process included a negotiation of best possible terms & price.
☐ Other	The contractor selection was directed by law, court order, settlement agreement, or resulted from the state making the same agreement with all interested parties or all 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. Rick DuBray		OCR USE - FA
Speed Code	**Account Code**	

CONTRACT
BETWEEN THE STATE OF TENNESSEE,
DEPARTMENT OF TREASURY
AND
PEAK 10 INC.

This Contract, by and between the State of Tennessee, Department of Treasury, hereinafter referred to as the "State", and Peak 10 Inc., hereinafter referred to as the "Contractor", is for the provision of a secure data center environment and related services for the Tennessee Department of Treasury, Tennessee Secretary of State's Office, and the Office of the Tennessee Comptroller of the Treasury, which will be primarily for disaster recovery-related servers and related equipment, as further defined in the "SCOPE OF SERVICES."

The Contractor is a for-profit corporation.
Contractor Federal Employer Identification or Social Security Number: 20-5233249
Contractor Place of Incorporation or Organization: Delaware

A. SCOPE OF SERVICES:

A.1. The Contractor shall provide all service and deliverables as required, described, and detailed by this Scope of Services and shall meet all service and delivery timelines specified in the Scope of Services section or elsewhere in this Contract.

A.2. Data Center Location. The Contractor shall provide a secure data center environment for the Tennessee Department of Treasury, Tennessee Secretary of State's Office, and the Office of the Tennessee Comptroller of the Treasury, which will be primarily for hosting disaster recovery-related servers and related equipment, at the facility located at the address specified on page 6 of the Contractor's Response (hereinafter referred to as the "Data Center"). The Contractor represents to the State that the Data Center is (i) a minimum of five (5) miles from 502 Deaderick Street; Nashville, Tennessee 37243; (ii) is a maximum of seventy-five (75) miles from 502 Deaderick Street; Nashville, Tennessee 37243; and (iii) is outside of Federal Emergency Management Agency (FEMA)-identified high risk flood zone designation.

A.3. Data Center Access. The Contractor shall provide the State access to the Data Center through proximity or scan card entry access, which records the time and date that the cards are scanned. The Contractor agrees the State will have remote and physical access to the Data Center twenty-four (24) hours a day, three hundred sixty-five (365) days a year throughout the term of this Contract with no advance notice requirement.

The Contractor shall provide a verbal authorization process to provide access to personnel during an emergency. This verbal authorization process must include a provision to provide physical access to the Data Center to these personnel during an emergency.

A.4 Network Conduits. The Contractor's Data Center must have redundant, physically separated (*i.e.*, different) conduits as well as different routes for network and electrical building network access points.

A.5. Loading Dock. The Contractor's Data Center must have, and the Contractor shall make available to the State, a loading dock that can accommodate a full-size semi trailer. The Contractor agrees to keep and maintain such a loading dock at the Data Center throughout the term of this Contract.

A.6. Data Center Heating, Ventilation, and Air Conditioning (HVAC) and Electrical Power. The Contractor shall ensure that the Data Center provides redundant HVAC sufficient to maintain ambient temperature range of 65° to 72°F and ambient relative humidity levels between 35% and 60%. The Contractor shall provide continuous conditioned electrical power within the Data Center and generator-supplied electrical backup power with automatic failover in case of power

interruption. The Contractor agrees that it has and will maintain fuel or fuel contracts in place to operate the generator continuously until regular power is restored to the Data Center.

A.7. Fire Suppression and Protection Monitoring. The Contractor shall provide clean agent gaseous fire suppression, and monitored protection and alarms for fire, heat, flooding, adverse environmental conditions, and unauthorized entry. Notwithstanding this Section A.7, the Contractor may provide dry pipe fire suppressions systems utilizing other than clean agent gas as long as the Contractor is bonded/insured to cover one hundred percent (100%) of the loss of any equipment and services due to activation of the system in other than an actual fire event, such as during testing of the fire suppression system. The Contractor agrees to notify the State within five (5) minutes of any event that triggers these alarms. Automated notification is sufficient.

A.8. Cable Management. The Contractor shall provide cable management (raised floor or overhead cable tray system).

A.9 Hands On / Managed Services Support. The Contractor shall provide hands on / managed services support, such as server reboot and admission of service personnel, as requested by the State.

A.10. Circuits. The Contractor shall provide dual 30 amp power circuits on separate Power Distribution Units (PDUs), supporting both 110 and 220 volts, and dual 50 amp power circuits on separate PDUs, supporting 220 volts, as requested by the State.

A.11. Uninterruptable Power Source. The Contractor shall provide a UPS (uninterruptable power source) capable of maintaining the proper and constant electricity (voltage and amperage) to all State equipment regardless of the source of the electricity (*i.e.*, utility power, generator power, no power, *etc.*), including the manual and/or automatic transition periods from one power source to another.

A.12. Contractor-provided Server Racks. The Contractor shall provide 42u minimum server racks to accommodate equipment 19" wide and 36" deep, if requested by the State.

A.13. State-provided Server Racks. The Contractor shall allow the State to provide State-owned server racks, approximately 42u, to accommodate equipment 19" wide and 36" deep, at State's request.

A.14. Network Services. The Contractor shall provide the following three (3) base network services to the State:

a. Point to Point (P2P) network connectivity (including standard Ethernet data link of up to three non channelized 1.544 MB data circuits which terminate on both ends in Quality of Service (QoS)-capable routing equipment that have the ability to make multiple circuits appear as one data path to the communications platform),
b. Direct Internet Access network connectivity (with up to 32 public IP addresses per State agency/Maximum 96 public IP addresses), and
c. Nashville Metro Optical Ethernet ring (Metro-E) network connectivity. All network services that require termination on the State's side will be terminated within 1/4 mile of the State of Tennessee State Capitol Building, 600 Charlotte Ave, Nashville, TN 37243.

The Data Center must have the ability to provide public Internet IP Addresses, not to exceed a Class 4 range (254 addresses), that are assigned to the Contractor by the Internet Assigned Numbers Authority (IANA).

All network connectivity and/or cross connects to other network providers that are provided by the Contractor to the State under this Contract must have a Service Level Agreement provided by the Contractor and approved by the State that contains at least the following two (2) provisions:

1. The Contractor must provide 99.99% guaranteed uptime and connectivity (the ability of the State to transmit and receive data without error) of any Contractor-supplied network and/or cross connect.
2. The Contractor must provide 24 hours a day, 7 days a week monitoring with notification to the State of any disruption of network connectivity and/or cross connect within 5 minutes of occurrence.

Performance standards and guarantees for not meeting the approved Service Level Agreement are contained in Section A.21, "Performance Standards".

A.15. Secured Cage Space. The Contractor shall provide secure caged space, minimum 200 sq. ft., with punchkey/combination locks, for eight (8) 42u server racks to accommodate equipment 19" wide and 36" deep. Caged space shall be configured to allow installation of additional racks and to provide a minimum of 36 inches front and back clearance for equipment maintenance.

A.16. Additional Secured Cage Space. The Contractor shall provide additional secured caged space, minimum 120 sq. ft., with punchkey/combination locks, for four (4) 42u server racks to accommodate equipment 19" wide and 36" deep, if needed and requested by the State. Caged space shall be configured to provide a minimum of 36 inches front and back clearance for equipment maintenance. The Contractor shall provide such space adjacent to the initial caged space if it is available at the time of the State's request. At a minimum, the Contractor shall offer the State first right of refusal for any space adjacent to the caged space occupied by the State prior to offering or providing that space to another entity.

A.17. Fiber Optic Cross Connections. The Contractor shall provide secure access and a maximum of two (2) fiber optic cross connections per network and/or Internet connection if requested by the State for each Agency from the Data Center network demarc location to the caged environment space.

A.18. Secure Access for Authorized Vendors. The Contractor shall provide on-demand secure access to the caged space for authorized third party vendors to support the State's equipment. The State shall be responsible for providing physical access into and within the caged space.

A.19. Construction Completion. The Contractor shall provide the State with access to the caged space as soon as construction is complete. Construction shall be considered complete when items A.10. through A.13., A.15., A.17., and services requested from A.14. above are complete and accepted by the State. The Contractor shall complete construction no later than 30 days after the first day of the contract period in Section B.

A.20. Facilities Maintenance. The Contractor shall provide facility maintenance, such as janitorial services, environmental system maintenance, power plant maintenance, and other actions required to sustain an environment suitable for telecommunications equipment and computer hardware. The Contractor shall provide an annual report of scheduled and actual maintenance activities, including maintenance of its UPS and HVAC systems, if requested by the State.

A.21. Performance Standards Guarantee.

a. Standards. The Contractor agrees that the following performance standards shall be met or exceeded and that if such standards are not met, the Contractor will take immediate steps to restore performance and the Contractor's compensation shall be reduced pursuant to Section A.21.b below:

(1) The State will have remote and physical access to the Data Center twenty-four (24) hours a day, three hundred sixty-five (365) days a year throughout the term of this Contract with no advance notice requirement.

(2) The ambient temperature will not exceed the range of 65° to 72°F.

(3) The ambient relative humidity will not be outside the range of 35% to 60%.

(4) Electrical power to the caged space will be available 100% of the time with no power interruptions beyond microsecond failover.

(5) Fire, heat, flooding, environmental hazard, and/or unauthorized entry events in the Data Center will not exceed zero (0) incidents.

(6) One hundred percent (100%) of any fire, heat, flooding, environmental hazard, and/or unauthorized entry events in the Data Center will be reported to the State. Automated notification is sufficient.

(7) All network and/or Internet connectivity provided by the Contractor will have 99.99% guaranteed uptime and connectivity (availability to customer for data transmission) and monitoring 24x7 with notification to the customer of disruption of service within 5 minutes of occurrence. Uptime and connectivity will be measured over a six (6) month period.

b. Guarantee. If the Contractor does not meet or exceed any performance standard in Subsection a. above, the amount of compensation payable to the Contractor during the month in which the standard was not met shall be reduced by five hundred dollars ($500.00) for each incident the standard was not met.

The State or its designee reserves the right to audit and/or inspect the Data Center and its caged environment at any time.

B. CONTRACT TERM:

This Contract shall be effective for the period commencing on May 1, 2011 and ending on April 30, 2016. The State shall have no obligation for services rendered by the Contractor which are not performed within the specified period.

C. PAYMENT TERMS AND CONDITIONS:

C.1. Maximum Liability. In no event shall the maximum liability of the State under this Contract exceed two million two hundred forty-two thousand nine hundred eighty dollars and no cents ($2,242,980.00). The payment rates in Section C.3 shall constitute the entire compensation due the Contractor for the Service and all of the Contractor's 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	**Amount** (per compensable increment)
Hands on / Managed Services Support (0.5 hour minimum)	$50.00 per hour
Primary 110 volt, 30 amp circuit	$413.00 per circuit per month
Secondary/Redundant 110 volt, 30 amp circuit	$206.00 per circuit per month
Primary 208/220 volt. 30 amp circuit	$825.00 per circuit per month
Secondary/Redundant 208/220 volt, 30 amp circuit	$412.00 per circuit per month
Primary 208/220 volt, 50 amp circuit	$1,375.00 per circuit per month
Secondary/Redundant 208/220 volt, 50 amp circuit	$687.00 per circuit per month
Standard 42u or greater server cabinet (provided by Contractor)	$75.00 per cabinet per month
Initial secure caged space for 8 server racks, 200 sq. ft. minimum	$5,000.00 per month
Additional secure caged space for 4 server racks, 120 sq. ft. minimum	$3,000.00 per month
100 mbps network connection to Nashville MetroE, NetTN, or other provider	$1,700.00 per connection per month
100 mbps internet connection	$2,500.00 per connection per month
1 Gigabit network connection to Nashville MetroE, NetTN, or other provider	$2,300.00 per connection per month
1 Gigabit internet connection	$4,000.00 per connection per month

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 as required below prior to any payment.

a. The Contractor shall submit invoices no more often than monthly, with all necessary supporting documentation, to:

Tennessee Treasury Department
Administrative Services Division
11th Floor, Andrew Jackson State Office Building
502 Deaderick Street
Nashville, Tennessee 37243-0225

b. The Contractor agrees that each invoice submitted shall clearly and accurately (all calculations must be extended and totaled correctly) detail the following required information.

(1) Invoice/Reference Number (assigned by the Contractor);
(2) Invoice Date;
(3) Invoice Period (period to which all invoiced charges are applicable);
(4) Contract Number (assigned by the State to this Contract);
(5) Account Name: Tennessee Treasury Department, Division of Information Systems;
(6) Account/Customer Number (uniquely assigned by the Contractor to the above-referenced Account Name);
(7) Contractor Name;
(8) Contractor Federal Employer Identification Number or Social Security Number (as referenced in this Contract);
(9) Contractor Contact (name, phone, and/or fax for the individual to contact with billing questions);
(10) Contractor Remittance Address;
(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; and
v. Total Amount Due for the invoice period.

c. The Contractor understands and agrees that an invoice to the State 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) not include any future work but will only be submitted for completed service; and
(3) not include sales tax or shipping charges.

d. The Contractor agrees that timeframe for payment (and any discounts) begins when the State is in receipt of each invoice meeting the minimum requirements above.

e. The Contractor shall complete and sign a "Substitute W-9 Form" provided to the Contractor by the State. The taxpayer identification number contained in the Substitute W-9 submitted to the State shall agree to the Federal Employer Identification Number or Social Security Number referenced in this Contract for the Contractor. The Contractor shall not invoice the State for services until the State has received this completed form.

C.6. Payment of Invoice. The payment of the invoice by the State shall not prejudice the State's right to object to or question any invoice or matter in relation thereto. Such payment by the State shall neither be construed as acceptance of any part of the work or service provided nor as an approval of any of the amounts invoiced therein.

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. Automatic Deposits. The Contractor shall complete and sign an "Authorization Agreement for Automatic Deposit (ACH Credits) Form." This form shall be provided to the Contractor by the State. Once this form has been completed and submitted to the State by the Contractor, 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). The Contractor shall not invoice the State for services until the Contractor has completed this form and submitted it to the State.

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 on the specifics of this contract, said officials may include, but are not limited to, the Commissioner of Finance and Administration, the Commissioner of Personnel, and the Comptroller of the Treasury).

D.2. Modification and Amendment. This Contract may be modified only by a written amendment executed 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 Commissioner of Finance and Administration, the Commissioner of Personnel, 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 receive 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, they 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 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 Public Acts of 2006, Chapter Number 878, of the state of Tennessee, 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 Contract Attachment 1, 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 Public Chapter 878 of 2006 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:

Tim Sundell, Acting Information Systems Director
Tennessee Treasury Department
11th Floor, Andrew Jackson State Office Building
502 Deaderick Street
Nashville, Tennessee 37243-0225
tim.sundell@tn.gov
Telephone # (615) 532-0734
FAX # (615) 532-0734

The Contractor:

Drew Fassett, Vice President & General Manager
Peak 10 Inc.
425 Duke Drive, Suite 400
Franklin, Tennessee 37067
drew.fassett@peak10.com
Telephone # (615) 263-6400
FAX # (615) 254-8320

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 may be required to repay to TCRS the amount of retirement benefits the Contractor received from TCRS during the period of this Contract.

IN WITNESS WHEREOF,

PEAK 10 INC.:

4/19/2011

CONTRACTOR SIGNATURE **DATE**

DAVID H. JONES, PRESIDENT & CEO PEAK 10, INC

PRINTED NAME AND TITLE OF CONTRACTOR SIGNATORY (above)

DEPARTMENT OF TREASURY:

April 26, 2011

DAVID H. LILLARD, JR., STATE TREASURER **DATE**

Approved for signature by NRK

ATTESTATION RE PERSONNEL USED IN CONTRACT PERFORMANCE

SUBJECT CONTRACT NUMBER:	
CONTRACTOR LEGAL ENTITY NAME:	Peak 10 Inc.
FEDERAL EMPLOYER IDENTIFICATION NUMBER: (or Social Security Number)	20-5233249

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.

David H. Jones

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.

DAVID H JONES, PRESIDENT & CEO, PEAK10 INC

PRINTED NAME AND TITLE OF SIGNATORY

April, 19, 2011

DATE OF ATTESTATION