



STATE OF TENNESSEE  
Department of Intellectual and Developmental Disabilities

Citizens Plaza, 10<sup>th</sup> Floor  
400 Deaderick Street  
NASHVILLE, TN 37243-0675

TO: The Honorable Senator Ken Yager, Chairman  
The Honorable Representative Mark White, Vice Chairman  
Krista Lee, Executive Director  
Fiscal Review Committee Members

FROM: Debra K. Payne, Commissioner, DIDD *QES*

DATE: August 18, 2017

SUBJECT: Relias Learning, LLC

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The Department of Intellectual and Developmental Disabilities (DIDD) requests the approval of a twenty-four month sole source contract with Relias Learning, LLC for the continuation of web-based training services for people caring for individuals with intellectual and developmental disabilities. The platform provided by Relias assists the department in ensuring that all training requirements are met by providers participating in the traditional waiver programs. In addition to supporting direct care staff training for the traditional waiver programs, DIDD, through an interagency agreement with the Bureau of TennCare, also provides these services to provider agencies participating in both the traditional waiver programs and the new Employment and Community First (ECF) CHOICES program.

DIDD has entered into discussions with TennCare and their contracted managed care organizations (MCOs) on the utilization of the Relias system as a tool to administer and manage training requirements for MCO contracted providers. In addition, the department continues to evaluate current Relias training courses and their compatibility with training courses required by the MCOs.

The need for a sole source contract for these services is multilayered. The influx of users and new training requirements of MCO participating agencies will require the use of a training sub-portal which is readily available under the current contract. The availability of the sub-portal will allow the department to add new users and new training courses with relative ease. Secondly, due to the number of provider agencies that participate both in the traditional waiver programs and the ECF CHOICES program, a single electronic learning management system would be efficient for both the State and provider agencies to ensure training requirements are met. Lastly, the two year sole source contract will give the department sufficient time to better evaluate the training needs related to the ECF CHOICES program and related managed care organizations. This evaluation period will allow the department to craft a more refined request for proposal related to training needs.

The department looks forward to discussing this with the committee at the October 18<sup>th</sup> meeting.

DKP:jmw

TO: The Honorable Ken Yager, Chairman  
Krista Lee, Executive Director  
Fiscal Review Committee Members

FROM: John M. Webb, Deputy Commissioner   
Department of Intellectual and Developmental Disabilities (DIDD)

DATE: August 18, 2017

SUBJECT: Relias Learning, LLC

The Department of Intellectual and Developmental Disabilities (DIDD) requests the approval of a twenty-four month sole source contract with Relias Learning, LLC. This contracted service provides web-based training for personnel who care for people with intellectual and developmental disabilities in community settings.

The original contract and proposed contract are enclosed along with a completed "Special Contract Request" form and a letter detailing the justification of the sole source request.

JMW:oj

Enclosures

Supplemental Documentation Required for  
Fiscal Review Committee

*Contact Name:	John Webb	*Contact Phone:	615-253-6710		
*Presenter's name(s):	John Webb, Deputy Commissioner				
Edison Contract Number: <i>(if applicable)</i>	N/A	RFS Number: <i>(if applicable)</i>	N/A		
*Original or Proposed Contract Begin Date:	1/1/2018	*Current or Proposed End Date:	12/31/2020		
Current Request Amendment Number: <i>(if applicable)</i>	N/A				
Proposed Amendment Effective Date: <i>(if applicable)</i>	N/A				
*Department Submitting:	Department of Intellectual and Developmental Disabilities				
*Division:	Administration				
*Date Submitted:	8/18/2017				
*Submitted Within Sixty (60) days:	Yes				
<i>If not, explain:</i>					
*Contract Vendor Name:	Relias Learning, LLC				
*Current or Proposed Maximum Liability:	\$790,524.00				
*Estimated Total Spend for Commodities:	N/A				
<b>*Current or Proposed Contract Allocation by Fiscal Year: (as Shown on Most Current Fully Executed Contract Summary Sheet)</b>					
FY:2018	FY:2019	FY:2020	FY:2016	FY2017	FY2018
\$194,712.00	\$395,262.00	\$200,550.00	N/A	N/A	N/A
<b>*Current Total Expenditures by Fiscal Year of Contract: (attach backup documentation from Edison)</b>					
FY:2018	FY:2019	FY:2020	FY:2016	FY2017	FY2018
N/A	N/A	N/A	N/A	N/A	N/A
<b>IF</b> Contract Allocation has been greater than Contract Expenditures, please give the reasons and explain where surplus funds were spent:	N/A				
<b>IF</b> surplus funds have been carried forward, please give the reasons and provide the authority for the carry forward provision:	N/A				
<b>IF</b> Contract Expenditures exceeded Contract Allocation, please give the reasons and explain how funding was acquired to pay the overage:	N/A				

Supplemental Documentation Required for  
Fiscal Review Committee

<b>*Contract Funding Source/Amount:</b>			
State:		Federal:	
<i>Interdepartmental:</i>	\$790,524.00	<i>Other:</i>	
If “ <i>other</i> ” please define:			
If “ <i>interdepartmental</i> ” please define:		TennCare Waiver Administration	
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>		RFP	
<p style="text-align: center;">*What were the projected costs of the service for the entire term of the contract prior to contract award? How was this cost determined?</p>		<p>The projected cost was \$790,524.00. Two different services are provided under this contract: customer and support to system administrators and content and licensing. The cost for customer service and support was calculated by multiplying the number of system administrators by the rate by 24 months. The cost for content and licensing was calculated by multiplying the rate for this service by 24 months. The cost for these two services was added together to arrive at the total projected contract cost.</p>	
<p style="text-align: center;">*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.</p>		<p>Through an interagency agreement between DIDD and TennCare, training programs are provided by DIDD for provider agencies who participate in both traditional waiver programs and the new Employment and Community First (ECF) CHOICES program. DIDD is currently working with TennCare to develop new training programs, but this process will require extensive work. Currently the influx of new users and training requirements will require the use of a training sub-portal which is only available under the current contract with Relias Learning, LLC. A two year sole source contract would give the department sufficient time to better evaluate the training needs related to the ECF CHOICES program and develop a more refined proposal related to these needs.</p>	

1. Provide information on the circumstances and status of any disciplinary action taken or pending against the vendor during the past 5 years with state agencies/departments, professional organizations, or through any legal action.

The Central Procurement Office can confirm that there have been no vendor complaints against Relias Learning, LLC Edison. Also, attached is the RFP proposal 34401-00400 that was submitted in 2013, in which Relias Learning, LLC states in B.9 there is no material pending litigation against Relias Learning, LLC that could adversely affect their ability to meet contract requirements pursuant to this RFP or to have a material adverse effect on their financial condition.

2. In addition, please provide any information regarding the due diligence that the Department has taken to ensure that the vendor is not or has not been involved in any circumstances related to illegal activity, including but not limited to fraud.

The Department of Intellectual and Developmental Disabilities has consulted with the Central Procurement Office concerning any complaints, disciplinary actions, or other indictments or judgements. The department also contacted Relias Learning, LLC and received the following response:

Relias Learning, LLC is not now, nor has it been, the subject of any criminal investigations nor has it been alleged to have committed fraud in civil or criminal proceedings.

# Special Contract Request

This form should be utilized to facilitate contract and procurement requests that require the Chief Procurement Officer's prior approval and that of the Comptroller of the Treasury, as applicable.

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@tn.gov.

<b>APPROVED</b>		<b>APPROVED</b>	
<b>CHIEF PROCUREMENT OFFICER</b>	<b>DATE</b>	<b>COMPTROLLER OF THE TREASURY</b>	<b>DATE</b>

<b>Request Tracking #</b>	<b>34401-99115</b>
<b>1. Contracting Agency</b>	<b>DIDD</b>
<b>2. Type of Contract or Procurement Method</b>	<input type="checkbox"/> No Cost <input type="checkbox"/> Revenue <input checked="" type="checkbox"/> Sole Source <input type="checkbox"/> Proprietary <input type="checkbox"/> Competitive Negotiation <input type="checkbox"/> Other _____
<b>3. Requestor Contact Information</b>	<b>Joyce Munda</b> <span style="float: right;"><b>Deputy</b></span> <b>Director Staff Development</b> <b>Department of Intellectual and</b> <b>Developmental Disabilities</b> <b>Citizen Plaza Office Building 10th Floor</b> <b>400 Deaderick St. Nashville,</b> <b>TN 37243</b> <b>Joyce.munda@tn.gov</b> <b>Telephone # (615)-253-8338</b> <b>FAX # (615) 532-6790</b>
<b>4. Brief Goods or Services Caption</b>	<b>Multi-Media, Interactive, Computer Assisted Training System</b>
<b>5. Description of the Goods or Services to be Acquired</b>	<b>The contractor shall provide the development of and maintenance for a multimedia, interactive, computer assisted training system for personnel who care for people with developmental disabilities in community settings.</b>
<b>6. Proposed Contractor</b>	<b>Relias Learning, LLC</b>
<b>7. Name &amp; Address of the Contractor's principal owner(s)</b> <i>- NOT required for a TN state education institution</i>	<b>Relias Learning, LLC /</b> <b>5550 Glades Road, Suite 413</b> <b>Boca Raton, Florida 33431</b>

Request Tracking #	34401-99115
8. <b>Proposed Contract Period</b> – with ALL options to extend exercised <i>The proposed contract start date shall follow the approval date of this request.</i>	24 months
9. <b>Strategic Technology Solutions (“STS”) Pre-Approval Endorsement Request</b> – information technology (N/A to THDA)	<input type="checkbox"/> Not Applicable <input checked="" type="checkbox"/> Attached
10. <b>eHealth Pre-Approval Endorsement Request</b> – health-related professional, pharmaceutical, laboratory, or imaging	<input checked="" type="checkbox"/> Not Applicable <input type="checkbox"/> Attached
11. <b>Human Resources Pre-Approval Endorsement Request</b> – state employee training	<input type="checkbox"/> Not Applicable <input checked="" type="checkbox"/> Attached
12. <b>Are these goods or services currently available on a statewide contract? If YES, please explain why the current statewide contract is not being used for this procurement.</b>	<input checked="" type="checkbox"/> NO <input type="checkbox"/> YES,
13. <b>Maximum Contract Cost</b> – with ALL options to extend exercised	\$ 790,524.00
14. <b>Was there an initial government estimate? If so, what amount?</b>	<input type="checkbox"/> NO <input checked="" type="checkbox"/> YES, \$790,524.00
15. <b>Cost Determination Used-</b> How did agency arrive at the estimate of expected costs?	The projected cost was \$790,524.00. Two different services are provided under this contract: customer and support to system administrators and content and licensing. The cost for customer service and support was calculated by multiplying the number of system administrators by the rate by 24 months. The cost for content and licensing was calculated by multiplying the rate for this service by 24 months. The cost for these two services was added together to arrive at the total projected contract cost.
16. <b>Explanation of Fair and Reasonable Price-</b> Explain how agency determined that price is fair and reasonable	During the previous RFP process, the Relias cost proposal was approximately 40 % less than the other bidders.
17. <b>Documentation of Discussions with Contractor-</b> How did agency document discussions with Contractor? Attach documentation to this request as applicable.	Discussions were had in meetings and phone conversations.
18. <b>Explanation of Need for or requirement placed on the State to acquire the goods or services</b>	DIDD must stay in compliance for the department training requirements. Relias is the only supplier who can utilize our sub-portal to sustain the influx of adding new users and new training courses.
19. <b>Proposed contract impact on current State operations</b>	Contracting this will assist the department in ensuring that all training requirements are met by providers participating in the traditional waiver programs and the Employment and Community First (ECF) CHOICES program.

Request Tracking #	34401-99115
<p>20. <b>Justification</b> – Specifically explain why the goods or services should be acquired through the procurement method or contract type selected.</p>	<p>Changes to the CMS waivers and the creation of the new TennCare Employment and Community First (ECF) CHOICES program have affected the numbers and training requirements for direct care staff supporting individuals living with intellectual and developmental disabilities in the State of Tennessee. We are presently working out the training crosswalk of courses we have available through our current vendor for web-based training, Relias Learning, LLC which may meet the ECF CHOICES program needs. We are in discussion with TennCare and their contracted Managed Care Organization (MCO) representatives about the use of an electronic learning management system (LMS) and specifically the Relias learning management system. This platform is one we currently use for the presentation of catalog selections, training and reporting on compliance and completions. The MCO's and their contracted agencies are still learning how the Relias LMS allows them to manage and assign courses. As one might imagine, courses with multiple required dates and intervals of completion, combined with specific training needs for differing positions within a diverse service environment, creates the need for a unique and competent system administration platform. The effectiveness of the Relias learning system is unmatched and unique to the DIDD Waiver system. Because our contract is set to expire December 31, 2017, DIDD needs to create a new contract with Relias Learning for 24 months in order to maintain the current level of service as we expand the total numbers of learners to include the additional agency staff working with individuals served by the CHOICES CLS, CLSFM and ECF programs. We currently have a sub-portal, formerly used by the now closed Greene Valley Developmental Center, which we can easily convert to handle the ECF CHOICES program agencies. This will serve as a short term (24 months) solution as we then track MCO approvals to better determine the increased numbers we will need to support both the DIDD and TennCare program during the next RFP training release.</p> <p>The MCO ECF CHOICES providers will be required to take additional training, not yet created, and our Relias Learning Management System is set up to allow us to easily load training created to meet their needs. We can also contract with Relias to provide assistance in creating web training courses during this 24 month contract period to meet the electronic training needs of TennCare and the MCO's, as they do not have IT web course builders readily available to assist them.</p>

Request Tracking #	34401-99115
<b>For No Cost and Revenue Contracts Only</b>	
21. What costs will the State incur as a result of this contract? If any, please explain.	
22. What is the total estimated revenue that the State would receive as a result of this contract?	
23. Could the State also contract with other parties interested in entering substantially the same agreement? Please explain.	<input type="checkbox"/> NO <input type="checkbox"/> YES
24. Summary of State responsibilities under proposed contract	
<b>For Sole Source and Proprietary Procurements Only</b>	
25. Explanation of Need for or requirement placed on the State to acquire the goods or services	To ensure the training requirements for direct care staff supporting individuals living with intellectual and developmental disabilities in the State of Tennessee.
26. Evidence of Contractor's experience & length of experience providing the goods or services to be procured.	The contractor has provided DIDD with 4 years of service and has been delivering online training programs to organizations with specialized needs since 2002.
27. Has the contracting agency procured the subject goods or services before? If yes, provide the method used to purchase the goods or services and the name and address of the contractor.	<input type="checkbox"/> NO <input checked="" type="checkbox"/> YES, Method: RFP Name/Address: Relias Learning, LLC / 5550 Glades Road, Suite 413 Boca Raton, Florida 33431
28. Contractor selection process and efforts to identify reasonable, competitive, procurement alternatives	The previous contract was an RFP which was awarded to this vendor. This contract will give DIDD and TennCare more time to develop the new trainings for the next RFP. Only Relias can currently provide this service.
<b>Signature Required for all Special Contract Requests</b>	
Signature of Agency head or authorized designee, title of signatory, and date (the authorized designee may sign his or her own name if indicated on the Signature Certification and Authorization document)	
Signature: <u>Debra K. Payne / JMW</u>	Date: <u>5/18/17</u>

**CONTRACT**

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

<b>Begin Date</b> 1/1/2018	<b>End Date</b> 12/30/2020	<b>Agency Tracking #</b> 34401-99115	<b>Edison Record ID</b>		
<b>Contractor Legal Entity Name</b> Relais Learning LLC			<b>Edison Vendor ID</b>		
<b>Goods or Services Caption (one line only)</b> Multi-Media, Interactive, Computer Assisted Training System					
<b>Contractor</b> <input checked="" type="checkbox"/> Contractor		<b>CFDA #</b>			
<b>Funding —</b>					
<b>FY</b>	<b>State</b>	<b>Federal</b>	<b>Interdepartmental</b>	<b>Other</b>	<b>TOTAL Contract Amount</b>
FY18			\$194,712.00		\$194,712.00
FY19			\$395,262.00		\$395,262.00
FY20			\$200,550.00		\$200,550.00
<b>TOTAL:</b>			<b>\$790,524.00</b>		<b>\$790,524.00</b>
<b>Contractor Ownership Characteristics:</b>					
<input type="checkbox"/> Minority Business Enterprise (MBE): African American, Asian American, Hispanic American, Native American					
<input type="checkbox"/> Woman Business Enterprise (WBE)					
<input type="checkbox"/> Tennessee Service Disabled Veteran Enterprise (SDVBE)					
<input type="checkbox"/> Tennessee Small Business Enterprise (SBE): \$10,000,000.00 averaged over a three (3) year period or employs no more than ninety-nine (99) employees.					
<input checked="" type="checkbox"/> Other: Not Minority/Disadvantaged					
<b>Selection Method &amp; Process Summary (mark the correct response to confirm the associated summary)</b>					
<input type="checkbox"/> Competitive Selection					
<input checked="" type="checkbox"/> Other					
Sole Source					
<b>Budget Officer Confirmation:</b> 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.					
					
<b>Speed Chart (optional)</b>			<b>Account Code (optional)</b>		

**CONTRACT  
BETWEEN THE STATE OF TENNESSEE,  
DEPARTMENT OF INTELLECTUAL AND DEVELOPMENTAL DISABILITIES  
AND  
RELIAS LEARNING, LLC**

This Contract, by and between the State of Tennessee, Department of Intellectual and Developmental Disabilities ("State") and Relias Learning, LLC ("Contractor"), is for the provision of development and maintenance of a multimedia, interactive, computer assisted training system for personnel who care for people with developmental disabilities in community settings, as further defined in the "SCOPE." State and Contractor may be referred to individually as a "Party" or collectively as the "Parties" to this Contract.

The Contractor is a Limited Liability Company.  
Contractor Place of Incorporation or Organization: California  
Contractor Edison Registration ID # 160394

**A. SCOPE:**

- A.1. The Contractor shall provide all goods or services and deliverables as required, described, and detailed below and shall meet all service and delivery timelines as specified by this Contract.
- A.2. The contractor shall provide a training curriculum that can be presented and tested in both a web based Learning Management System (LMS) training environment and in a classroom setting utilizing either hard copies or soft (power point, video, audio, or combinations) to train and test over materials which must include the following topics:
- a. Introduction to Developmental Disabilities – understanding the history of care for persons with developmental disabilities; the basic principles of supporting persons with disabilities in the community; understanding the importance of language while supporting persons with disabilities; and understanding common causes of developmental disabilities.
  - b. Role of Direct Support Professionals – understanding the role and history of the Direct Support Professional; understanding the ethical guidelines for Direct Support Professional and the teaching component of the Direct Support Professional.
  - c. Individual Rights and Choice – understanding the history of laws related to developmental disabilities; how to identify rights restrictions and how to support persons who express their choices and rights.
  - d. Health and Safety Issues related to delivering services to individuals served by DIDD including understanding risks and how to balance with individual choice; defining abuse, neglect and exploitation, and how to prevent, report, and document abuse, neglect and exploitation; implementing standard/universal precautions; fire safety; motor vehicle safety; and appropriate emergency response across all environments.
  - e. Healthcare Issues related to understanding the importance of proper healthcare and how to assist persons with developmental disabilities to lead a healthy life; how to support people in making good health-related choices; understanding individual health needs; recognizing signs and symptoms of illness and how to work with healthcare providers.
  - f. Behavior Supports – understanding of principles of behavior supports, understanding the common causes of challenging behavior and strategies to de-escalate and prevent behavior problems.
  - g. Community Integration – understanding the importance of community inclusion and how best to support a person with disabilities to develop, nurture, and sustain meaningful relationships with members of their community and their natural supports.

- h. Cultural Sensitivity – understanding the value of diversity; understanding personal cultural values; and respecting the cultural values of others.
  - i. Principles of Person-Centered Planning – understanding the principles of person centered planning; how to participate in the planning process; how to implement a person centered plan; and how to resolve common barriers to person centered planning.
  - j. Employment – understanding the employment needs of persons with disabilities; how to support persons with disabilities to explore employment skills such as completing job applications and interviewing.
  - k. Documentation – understanding the importance of documentation; how to effectively document; and the importance of maintaining confidentiality.
  - l. Management and Supervision Skills of Supervisors – understanding the skills necessary for managers to effectively supervise direct support personnel; how to develop staff performance through on-the-job training, mentoring, and job development; understanding the importance of direct support staff selection in increased retention rates and decreased turnover.
- A.3. For face-to-face classroom training, curricula must be available electronically so the State or its service providers can print unlimited resources (i.e. manuals, power point handouts and slides, tests, etc.) During the course of the contract when curricula is updated or modified, changes will be provided electronically to the state so resources can be upgraded for face-to-face training.
- A.4. The Contractor shall provide customer service and support to Four (4) DIDD Global Administrator(s) throughout the term of this Contract, including but not limited to, implementation, administrator/ provider setup, and administrator training. The Contractor shall provide ongoing updates and corrections to curriculum, courses and lessons to ensure that content are current and consistent with the best practice standards for services for persons with developmental disabilities, and perform system maintenance and database backups.
- A.5. The Contractor shall provide licensed access to content in the Training Curriculum and for the Learning Management System (LMS) used for its delivery and management. The Contractor shall provide a user-friendly, web-based relational database and maintain an auditable, real-time record of our organization's training data for an unlimited number of personnel who support people with developmental disabilities in community settings of varied sizes. Personnel may be inclusive of direct and indirect care staff comprising of: State employees, Provider Agency staff, contractors, and sub-contractors. The training system must meet the minimum or better for specified technical and system requirements; learner and course profiles; and reporting requirements. The system must be accessible seven (7) days per week, twenty-four (24) hours per day.
- a. Technical Requirements
- (1) The web based portal environment must be accessible at a minimum to computers with the following and/or better
    - i Intel Pentium II 450mhz, Intel Core, AMD Processors
    - ii Minimum memory of 512mb of RAM
    - iii Video/Graphics Card and monitor capable of displaying 800x600 resolution
    - iv Audio/Stereo Sound Card, internal/external speakers Minimum Hard Drive space of 20GB
  - (2) IBM Compatible Operating systems: [REDACTED]
  - (3) High-Speed internet connection: i.e. T1, Cable, DSL, Satellite and/or wireless

- (4) Supported Internet Browsers: i.e. Netscape, Microsoft Internet Explorer 7.x, Google Chrome, Mozilla Firefox.
- (5) Internet browser settings: disabling of Pop-up Blockers, enabling of [REDACTED] or higher, [REDACTED] and Cookies
- (6) Plug-ins: such as Adobe Acrobat Reader, Flash Player, Real Player, [REDACTED] Media Player [REDACTED] or higher, Apple QuickTime Player, [REDACTED] or higher

b. System Requirements

- (1) A secured LMS website that is security role based that requires unique learner id and prohibits learner record duplication by user ID.
- (2) Capability of assigning security roles that specifies access level by administrator, individual users and groups. Control access to learner transcripts, course creation, reports and more.
- (3) Restrict user access to data by location or region, or department wide, based on their role within the organization.
- (4) Components within the system will have the capability for Learner Tracking, Curriculum Development, Training Scheduling, Training Tracking, Training Registration and Reporting all in one easy-to-use software package.
- (5) Audit feature to manage data elements to include archives of training histories for year-round internal and external audits.
- (6) Calendar functions that allow assignment and tracking of other training events outside the web based training
- (7) Have pretest and post-test feature with recorded score to document the learner comprehension level of training material.
- (8) Pretest and post-test must generate random questions each time accessed.
- (9) Have test controls to limit the number of attempts within different time periods - set by various options i.e. by learner, by department, by agency, by course
- (10) Allow mobility of transcripts as staff move between agencies and quick access to a shared learner's training record within 5 working days of share/move request date.
- (11) Have an announcement feature, preferably tied to an email function, allowing agency-wide and system-wide announcements to be posted and preferably track the opening/reading of the announcements by learners.
- (12) Help feature that provides step by step tutorial on how to use the system components. The help feature should also define and describe each field.
- (13) Have the option to automatically send notification to original agency/administrator when an active learner's transcript is shared or moved.
- (14) Allow the reassignment of material for annual update/retraining and for remediation purposes without losing the original record with test scores and dates.
- (15) Capability to import historical learner data from other applications in formats such as: text files, csv, comma delimited, and rtf.
- (16) Must be SCORM compliant and meet current industry standards.

c. Learner Profiles

- (1) Learner profiles contain and must be searchable on any of the following:
  - i Learner Name
  - ii Learner ID
  - iii Job Title
  - iv Learner Category
  - v Active/Inactive Learner Status
  - vi Department/location
  - vii Sub-department
  - viii Agency Name
  - ix Date of Hire
  - x Date of Assignment
  - xi Due Date of Assignment
  - xii Date of Completion
  - xiii Date Ranges
  - xiv Expiration Dates
  - xv Course Title
  - xvi Module Title
  - xvii Lesson Title
  - xviii Other training event
  - xix Learning assigned/completed/not completed
- (2) Capability to export data located in learner's record in formats such as: text files, csv, comma delimited, and rtf.
- (3) Ability to group learners by learner category and job titles for organizing and assigning training by courses, modules, and lessons.
- (4) Maintain training history on active and inactive learners.

d. Course and Lesson Profiles

- (1) Each lesson shall have functionality to allow or turn off a pre-test, with lesson content, and a post-test. The trainee's scores and progress shall be available to the program administrator, via on-screen or printed reports, within five (5) working days after a trainee's completion of a course.
- (2) Create course profiles that calculate reoccurring future training based on retraining/recertification requirements.
- (3) Courses specify training requirements (class description, length of class, total hours, retraining months, written exam, CEUs, etc.).
- (4) Automatic notification of learners or administrators when courses are required, scheduled, completed (pass/fail) or cancelled.
- (5) Catalog utility that allows users to view and request available training.
- (6) Capability to enter course cost information. To include by not limited to Instructor, room, materials, cost per student, and total cost of class.
- (7) Require the learner to view entire lesson before test is available.
- (8) Capability to enter pass/fail criteria and test scores.
- (9) Calculate future expiration dates based on course requirements using date ranges.
- (10) Ability to import training requirements of existing learners.

- (11) Include competency based assessment for competency in the workplace.
- (12) The curriculum will reflect standards of best practice for services for persons with developmental disabilities.
- (13) User identifies training requirement groupings based on job title and learner category/group.
- (14) Automatic loading of training requirements to all learner profiles based on job title or learner category/group.
- (15) Automatically resolves duplicate requirements shared in various job titles.
- (16) Identify training requirements as prerequisites.
- (17) Verification of course prerequisites to be met beforehand will generate an alert.
- (18) Automatic notification of learners that don't meet course prerequisites.
- (19) Quickly and easily track training, licensures, certifications and qualifications by learner.
- (20) Identify learners needing training by training requirement, learner category/group or course.
- (21) Identify qualified trainers based on course training requirements.
- (22) Automated scheduling that identifies who needs to attend training based on training requirements.
- (23) Allows learners to complete course evaluations.

e. Reporting

- (1) Report layout is completely configurable using standard HTML editor.
- (2) Fully configurable report templates.
- (3) Will support all 3rd party reporting tools.
- (4) Ability to report on any field within any record.
- (5) Report on single or multiple learner records and fields within the records.
- (6) Report using parent-child relationships.
- (7) Save reports in various formats (RTF, PDF, Excel, etc).
- (8) Configure Report Views from the Web Browser using pre-defined columns and queries.
- (9) Trend analysis and distribution of statistical reports.
- (10) Reports by course, learner, date range, and more such as job title, work group, division/department, location, year, etc.
- (11) Availability of historical electronic records for querying/reporting by completion date within a date range.
- (12) View and print learner's complete training record.
- (13) Reports expired training by individual, learner category/group or department.
- (14) Ability to easily create user defined reports and possibly graphically display.
- (15) Reporting tool that can handle queries for administrators from agency level to system administrator level, and can
  - i. Provide reports or reporting/query capability to each agency for their own staff, with totals by lesson, by learner, by department/location, by job type/title, by sub-department and within date ranges.

- ii. Provide reports or reporting/query capability to the state administrators by learner, by lesson, by course, by agency, by department/location, by sub-department, by job type/title and by other possible groupings as well as the state as a whole and within date ranges.

A.6. Warranty. Contractor represents and warrants that the term of the warranty ("Warranty Period") shall be the greater of the Term of this Contract or any other warranty general offered by Contractor, its suppliers, or manufacturers to customers of its goods or services. The goods or services provided under this Contract shall conform to the terms and conditions of this Contract throughout the Warranty Period. Any nonconformance of the goods or services to the terms and conditions of this Contract shall constitute a "Defect" and shall be considered "Defective." If Contractor receives notice of a Defect during the Warranty Period, then Contractor shall correct the Defect, at no additional charge.

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

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

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

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

## **B. TERM OF CONTRACT:**

This Contract shall be effective on January 1, 2018 ("Effective Date") and extend for a period of twenty-four (24) months after the Effective Date ("Term"). The State shall have no obligation for goods or services provided by the Contractor prior to the Effective Date.

## **C. PAYMENT TERMS AND CONDITIONS:**

C.1. Maximum Liability. In no event shall the maximum liability of the State under this Contract exceed Seven Hundred Ninety Thousand Five Hundred Twenty Four Dollars and Zero Cents (\$790,524.00) ("Maximum Liability"). This Contract does not grant the Contractor any exclusive rights. The State does not guarantee that it will buy any minimum quantity of goods or services under this Contract. Subject to the terms and conditions of this Contract, the Contractor will only be paid for goods or services provided under this Contract after a purchase order is issued to Contractor by the State or as otherwise specified by this Contract.

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

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

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

Service Description	Amount (per compensable increment)				
	YEAR 1 1/1/2018— 12/31/2018	YEAR 2 1/1/2019— 12/31/2019	YEAR 3 1/1/2020— 12/31/2020	YEAR 4 1/1/2021— 12/31/2021	YEAR 5 1/1/2022— 12/31/2022
Customer service and support to DIDD Global Administrator(s) Contract Section A.4.	\$ 1,065.00 per Month per each Global Administrator	\$ 1,097.00 per Month per each Global Administrator			
Content and Licensing Fee Contract Section A.5.	\$ 28,192.00 per Month	\$ 29,037.00 per Month			

C.4. Travel Compensation. The Contractor shall not be compensated or reimbursed for travel time, travel expenses, meals, or lodging.

C.5. Invoice Requirements. The Contractor shall invoice the State only for goods delivered and accepted by the State or services satisfactorily provided at the amounts stipulated in Section C.3., above. Contractor shall submit invoices and necessary supporting documentation, no more frequently than once a month, and no later than thirty (30) days after goods or services have been provided to the following address:

400 Deaderick St.  
Nashville TN, 37219  
Citizen's Plaza Plaza  
Accounts Payable 9<sup>th</sup> Floor

- a. Each invoice, on Contractor's letterhead, shall clearly and accurately detail all of the following information (calculations must be extended and totaled correctly):
  - (1) Invoice number (assigned by the Contractor);
  - (2) Invoice date;
  - (3) Contract number (assigned by the State);
  - (4) Customer account name: Department of Intellectual and Developmental Disabilities;
  - (5) Customer account number (assigned by the Contractor to the above-referenced Customer);
  - (6) Contractor name;
  - (7) Contractor Tennessee Edison registration ID number;
  - (8) Contractor contact for invoice questions (name, phone, or email);
  - (9) Contractor remittance address;

- (10) Description of delivered goods or services provided and invoiced, including identifying information as applicable;
- (11) Number of delivered or completed units, increments, hours, or days as applicable, of each good or service invoiced;
- (12) Applicable payment methodology (as stipulated in Section C.3.) of each good or service invoiced;
- (13) Amount due for each compensable unit of good or service; and
- (14) Total amount due for the invoice period.

b. Contractor's invoices shall:

- (1) Only include charges for goods delivered or services provided as described in Section A and in accordance with payment terms and conditions set forth in Section C;
- (2) Only be submitted for goods delivered or services completed and shall not include any charge for future goods to be delivered or services to be performed;
- (3) Not include Contractor's taxes, which includes without limitation Contractor's sales and use tax, excise taxes, franchise taxes, real or personal property taxes, or income taxes; and
- (4) Include shipping or delivery charges only as authorized in this Contract.

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

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

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

C.8. Deductions. The State reserves the right to deduct from amounts, which are or shall become due and payable to the Contractor under this or any contract between the Contractor and the State of Tennessee, any amounts that are or shall become due and payable to the State of Tennessee by the Contractor.

C.9. Prerequisite Documentation. The Contractor shall not invoice the State under this Contract until the State has received the following, properly completed documentation.

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

**D. MANDATORY TERMS AND CONDITIONS:**

D.1. Required Approvals. The State is not bound by this Contract until it is duly approved by the Parties and all appropriate State officials in accordance with applicable Tennessee laws and regulations. Depending upon the specifics of this Contract, this may include approvals by the Commissioner of Finance and Administration, the Commissioner of Human Resources, the

Comptroller of the Treasury, and the Chief Procurement Officer. Approvals shall be evidenced by a signature or electronic approval.

- D.2. Communications and Contacts. All instructions, notices, consents, demands, or other communications required or contemplated by this Contract shall be in writing and shall be made by certified, first class mail, return receipt requested and postage prepaid, by overnight courier service with an asset tracking system, or by email or facsimile transmission with recipient confirmation. All communications, regardless of method of transmission, shall be addressed to the respective Party at the appropriate mailing address, facsimile number, or email address as stated below or any other address provided in writing by a Party.

The State:

Program Staff

Sandra Wise  
 Statewide Director of Staff and Provider Development  
 Department of Intellectual and Developmental Disabilities  
 Citizen Plaza Office Building 10<sup>th</sup> Floor  
 400 Deaderick St.  
 Nashville, TN 37243  
[sandra.wise@tn.gov](mailto:sandra.wise@tn.gov)  
 Telephone # (615) 741-6159  
 FAX # (615) 532-6790

Joyce Munda  
 Deputy Director Staff Development  
 Department of Intellectual and Developmental Disabilities  
 Citizen Plaza Office Building 10<sup>th</sup> Floor  
 400 Deaderick St.  
 Nashville, TN 37243  
[Joyce.munda@tn.gov](mailto:Joyce.munda@tn.gov)  
 Telephone # (615)-253-8338  
 FAX # (615) 532-6790

State Fiscal Contact

Arlen Munden,  
 Deputy Chief Financial Officer  
 Department of Intellectual and Developmental Disabilities  
 Citizens Plaza State Office Building  
 400 Deaderick Street, 9th Floor  
 Nashville, Tennessee 37243  
[Arlen.Munden@tn.gov](mailto:Arlen.Munden@tn.gov)  
 Telephone # 615-532-3031  
 FAX # 615-253-6713

The Contractor:  
 Brian Isgett, Senior Counsel  
 c/o Legal Department  
 Relias Learning LLC  
 111 Corning Road, Suite 250  
 Cary, NC 27518  
[contracts@reliaslearning.com](mailto:contracts@reliaslearning.com)  
 Telephone # 877-200-0020

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

- D.3. Modification and Amendment. This Contract may be modified only by a written amendment signed by all Parties and approved by all applicable State officials.
- D.4. Subject to Funds Availability. The Contract is subject to the appropriation and availability of State or federal funds. In the event that the funds are not appropriated or are otherwise unavailable, the State reserves the right to terminate this Contract upon written notice to the Contractor. The State's exercise of its right to terminate this Contract shall not constitute a breach of Contract by the State. Upon receipt of the written notice, the Contractor shall cease all work associated with the Contract. If the State terminates this Contract due to lack of funds availability, the Contractor shall be entitled to compensation for all conforming goods requested and accepted by the State and for all satisfactory and authorized services completed as of the termination date. Should the State exercise its right to terminate this Contract due to unavailability of funds, the Contractor shall have no right to recover from the State any actual, general, special, incidental, consequential, or any other damages of any description or amount.
- D.5. Termination for Convenience. The State may terminate this Contract for convenience without cause and for any reason. The State shall give the Contractor at least thirty (30) days written notice before the termination date. The Contractor shall be entitled to compensation for all conforming goods delivered and accepted by the State or for satisfactory, authorized services completed as of the termination date. In no event shall the State be liable to the Contractor for compensation for any goods neither requested nor accepted by the State or for any services neither requested by the State nor satisfactorily performed by the Contractor. In no event shall the State's exercise of its right to terminate this Contract for convenience relieve the Contractor of any liability to the State for any damages or claims arising under this Contract.
- D.6. Termination for Cause. If the Contractor fails to properly perform its obligations under this Contract in a timely or proper manner, or if the Contractor materially violates any terms of this Contract ("Breach Condition"), the State shall have the right to immediately terminate the Contract and withhold payments in excess of compensation for completed services or provided goods. Notwithstanding the above, the Contractor shall not be relieved of liability to the State for damages sustained by virtue of any Breach Condition and the State may seek other remedies allowed at law or in equity for breach of this Contract.
- D.7. Assignment and Subcontracting. The Contractor shall not assign this Contract or enter into a subcontract for any of the goods or services provided under this Contract without the prior written approval of the State. Notwithstanding any use of the approved subcontractors, the Contractor shall be the prime contractor and responsible for compliance with all terms and conditions of this Contract. The State reserves the right to request additional information or impose additional terms and conditions before approving an assignment of this Contract in whole or in part or the use of subcontractors in fulfilling the Contractor's obligations under this Contract.
- D.8. Conflicts of Interest. The Contractor warrants that no part of the Contractor's compensation shall be paid directly or indirectly to an employee or official of the State of Tennessee as wages, compensation, or gifts in exchange for acting as an officer, agent, employee, subcontractor, or consultant to the Contractor in connection with any work contemplated or performed under this Contract.

The Contractor acknowledges, understands, and agrees that this Contract shall be null and void if the Contractor is, or within the past six (6) months has been, an employee of the State of Tennessee or if the Contractor is an entity in which a controlling interest is held by an individual who is, or within the past six (6) months has been, an employee of the State of Tennessee.

- D.9. Nondiscrimination. The Contractor hereby agrees, warrants, and assures that no person shall be excluded from participation in, be denied benefits of, or be otherwise subjected to discrimination in the performance of this Contract or in the employment practices of the Contractor on the grounds of handicap or disability, age, race, creed, color, religion, sex, national origin, or any other classification protected by federal or state law. The Contractor shall, upon request, show

- proof of nondiscrimination and shall post in conspicuous places, available to all employees and applicants, notices of nondiscrimination.
- D.10. Prohibition of Illegal Immigrants. The requirements of Tenn. Code Ann. § 12-3-309 addressing the use of illegal immigrants in the performance of any contract to supply goods or services to the state of Tennessee, shall be a material provision of this Contract, a breach of which shall be grounds for monetary and other penalties, up to and including termination of this Contract.
- a. The Contractor agrees that the Contractor shall not knowingly utilize the services of an illegal immigrant in the performance of this Contract and shall not knowingly utilize the services of any subcontractor who will utilize the services of an illegal immigrant in the performance of this Contract. The Contractor shall reaffirm this attestation, in writing, by submitting to the State a completed and signed copy of the document at Attachment A, semi-annually during the Term. If the Contractor is a party to more than one contract with the State, the Contractor may submit one attestation that applies to all contracts with the State. All Contractor attestations shall be maintained by the Contractor and made available to State officials upon request.
  - b. Prior to the use of any subcontractor in the performance of this Contract, and semi-annually thereafter, during the Term, the Contractor shall obtain and retain a current, written attestation that the subcontractor shall not knowingly utilize the services of an illegal immigrant to perform work under this Contract and shall not knowingly utilize the services of any subcontractor who will utilize the services of an illegal immigrant to perform work under this Contract. Attestations obtained from subcontractors shall be maintained by the Contractor and made available to State officials upon request.
  - c. The Contractor shall maintain records for all personnel used in the performance of this Contract. Contractor's records shall be subject to review and random inspection at any reasonable time upon reasonable notice by the State.
  - d. The Contractor understands and agrees that failure to comply with this section will be subject to the sanctions of Tenn. Code Ann. § 12-3-309 for acts or omissions occurring after its effective date.
  - e. For purposes of this Contract, "illegal immigrant" shall be defined as any person who is not: (i) a United States citizen; (ii) a Lawful Permanent Resident; (iii) a person whose physical presence in the United States is authorized; (iv) allowed by the federal Department of Homeland Security and who, under federal immigration laws or regulations, is authorized to be employed in the U.S.; or (v) is otherwise authorized to provide services under the Contract.
- D.11. Records. The Contractor shall maintain documentation for all charges under this Contract. The books, records, and documents of the Contractor, for work performed or money received under this Contract, shall be maintained for a period of five (5) full years from the date of the final payment and shall be subject to audit at any reasonable time and upon reasonable notice by the State, the Comptroller of the Treasury, or their duly appointed representatives. The financial statements shall be prepared in accordance with generally accepted accounting principles.
- D.12. Monitoring. The Contractor's activities conducted and records maintained pursuant to this Contract shall be subject to monitoring and evaluation by the State, the Comptroller of the Treasury, or their duly appointed representatives.
- D.13. Progress Reports. The Contractor shall submit brief, periodic, progress reports to the State as requested.
- D.14. Strict Performance. Failure by any Party to this Contract to require, in any one or more cases, the strict performance of any of the terms, covenants, conditions, or provisions of this Contract shall not be construed as a waiver or relinquishment of any term, covenant, condition, or

provision. No term or condition of this Contract shall be held to be waived, modified, or deleted except by a written amendment signed by the Parties.

- D.15. Independent Contractor. The Parties shall not act as employees, partners, joint venturers, or associates of one another. The Parties are independent contracting entities. Nothing in this Contract shall be construed to create an employer/employee relationship or to allow either Party to exercise control or direction over the manner or method by which the other transacts its business affairs or provides its usual services. The employees or agents of one Party are not employees or agents of the other Party.
- D.16. Patient Protection and Affordable Care Act. The Contractor agrees that it will be responsible for compliance with the Patient Protection and Affordable Care Act ("PPACA") with respect to itself and its employees, including any obligation to report health insurance coverage, provide health insurance coverage, or pay any financial assessment, tax, or penalty for not providing health insurance. The Contractor shall indemnify the State and hold it harmless for any costs to the State arising from Contractor's failure to fulfill its PPACA responsibilities for itself or its employees.
- D.17. Limitation of State's Liability. The State shall have no liability except as specifically provided in this Contract. In no event will the State be liable to the Contractor or any other party for any lost revenues, lost profits, loss of business, decrease in the value of any securities or cash position, time, money, goodwill, or any indirect, special, incidental, punitive, exemplary or consequential damages of any nature, whether based on warranty, contract, statute, regulation, tort (including but not limited to negligence), or any other legal theory that may arise under this Contract or otherwise. The State's total liability under this Contract (including any exhibits, schedules, amendments or other attachments to the Contract) or otherwise shall under no circumstances exceed the Maximum Liability. This limitation of liability is cumulative and not per incident.
- D.18. Limitation of Contractor's Liability. In accordance with Tenn. Code Ann. § 12-3-701, the Contractor's liability for all claims arising under this Contract shall be limited to an amount equal to two (2) times the Maximum Liability amount detailed in Section C.1. and as may be amended, PROVIDED THAT in no event shall this Section limit the liability of the Contractor for: (i) intellectual property or any Contractor indemnity obligations for infringement for third-party intellectual property rights; (ii) any claims covered by any specific provision in the Contract providing for liquidated damages; or (iii) any claims for intentional torts, criminal acts, fraudulent conduct, or acts or omissions that result in personal injuries or death.
- D.19. Hold Harmless. The Contractor agrees to indemnify and hold harmless the State of Tennessee as well as its officers, agents, and employees from and against any and all claims, liabilities, losses, and causes of action which may arise, accrue, or result to any person, firm, corporation, or other entity which may be injured or damaged as a result of acts, omissions, or negligence on the part of the Contractor, its employees, or any person acting for or on its or their behalf relating to this Contract. The Contractor further agrees it shall be liable for the reasonable cost of attorneys for the State to enforce the terms of this Contract.

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

- D.20. HIPAA Compliance. The State and Contractor shall comply with obligations under the Health Insurance Portability and Accountability Act of 1996 ("HIPAA"), Health Information Technology for Economic and Clinical Health ("HITECH") Act and any other relevant laws and regulations regarding privacy (collectively the "Privacy Rules"). The obligations set forth in this Section shall survive the termination of this Contract.

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

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

- D.24. Force Majeure. "Force Majeure Event" means fire, flood, earthquake, elements of nature or acts of God, wars, riots, civil disorders, rebellions or revolutions, acts of terrorism or any other similar cause beyond the reasonable control of the Party except to the extent that the non-performing Party is at fault in failing to prevent or causing the default or delay, and provided that the default or delay cannot reasonably be circumvented by the non-performing Party through the use of alternate sources, workaround plans or other means. A strike, lockout or labor dispute shall not excuse either Party from its obligations under this Contract. Except as set forth in this Section, any failure or delay by a Party in the performance of its obligations under this Contract arising from a Force Majeure Event is not a default under this Contract or grounds for termination. The non-performing Party will be excused from performing those obligations directly affected by the Force Majeure Event, and only for as long as the Force Majeure Event continues, provided that the Party continues to use diligent, good faith efforts to resume performance without delay. The occurrence of a Force Majeure Event affecting Contractor's representatives, suppliers, subcontractors, customers or business apart from this Contract is not a Force Majeure Event under this Contract. Contractor will promptly notify the State of any delay caused by a Force Majeure Event (to be confirmed in a written notice to the State within one (1) day of the inception of the delay) that a Force Majeure Event has occurred, and will describe in reasonable detail the nature of the Force Majeure Event. If any Force Majeure Event results in a delay in Contractor's performance longer than forty-eight (48) hours, the State may, upon notice to Contractor: (a) cease payment of the fees until Contractor resumes performance of the affected obligations; or (b) immediately terminate this Contract or any purchase order, in whole or in part, without further payment except for fees then due and payable. Contractor will not increase its charges under this Contract or charge the State any fees other than those provided for in this Contract as the result of a Force Majeure Event.
- D.25. State and Federal Compliance. The Contractor shall comply with all applicable state and federal laws and regulations in the performance of this Contract.
- D.26. Governing Law. This Contract shall be governed by and construed in accordance with the laws of the State of Tennessee. The Tennessee Claims Commission or the state or federal courts in Tennessee shall be the venue for all claims, disputes, or disagreements arising under this Contract. The Contractor acknowledges and agrees that any rights, claims, or remedies against the State of Tennessee or its employees arising under this Contract shall be subject to and limited to those rights and remedies available under Tenn. Code Ann. §§ 9-8-101 - 407.
- D.27. Entire Agreement. This Contract is complete and contains the entire understanding between the Parties relating to its subject matter, including all the terms and conditions of the Parties' agreement. This Contract supersedes any and all prior understandings, representations, negotiations, and agreements between the Parties, whether written or oral.
- D.28. Severability. If any terms and conditions of this Contract are held to be invalid or unenforceable as a matter of law, the other terms and conditions of this Contract shall not be affected and shall remain in full force and effect. The terms and conditions of this Contract are severable.
- D.29. Headings. Section headings of this Contract are for reference purposes only and shall not be construed as part of this Contract.
- D.30. Incorporation of Additional Documents. Each of the following documents is included as a part of this Contract by reference. In the event of a discrepancy or ambiguity regarding the Contractor's duties, responsibilities, and performance under this Contract, these items shall govern in order of precedence below:
- a. any amendment to this Contract, with the latter in time controlling over any earlier amendments;

- b. this Contract with any attachments or exhibits (excluding the items listed at subsections c. through f., below), which includes [Attachment A];
  - c. any clarifications of or addenda to the Contractor's proposal seeking this Contract;
  - d. the State solicitation, as may be amended, requesting responses in competition for this Contract;
  - e. any technical specifications provided to proposers during the procurement process to award this Contract; and
  - f. the Contractor's response seeking this Contract.
- D.31. Iran Divestment Act. The requirements of Tenn. Code Ann. § 12-12-101 et.seq., addressing contracting with persons as defined at T.C.A. §12-12-103(5) that engage in investment activities in Iran, shall be a material provision of this Contract. The Contractor certifies, under penalty of perjury, that to the best of its knowledge and belief that it is not on the list created pursuant to Tenn. Code Ann. § 12-12-106.
- D.32. Insurance. Contractor shall maintain insurance coverage as specified in this Section. The State reserves the right to amend or require additional insurance coverage, coverage amounts, and endorsements required under this Contract. Contractor's failure to maintain or submit evidence of insurance coverage, as required, is a material breach of this Contract. If Contractor loses insurance coverage, fails to renew coverage, or for any reason becomes uninsured during the Term, Contractor shall immediately notify the State. All insurance companies providing coverage must be: (a) acceptable to the State; (b) authorized by the Tennessee Department of Commerce and Insurance ("TDCI"); and (c) rated A- / VII or better by A.M. Best. All coverage must be on a primary basis and noncontributory with any other insurance or self-insurance carried by the State. Contractor agrees to name the State as an additional insured on any insurance policy with the exception of workers' compensation (employer liability) and professional liability (errors and omissions) insurance. All policies must contain an endorsement for a waiver of subrogation in favor of the State. Any deductible over fifty thousand dollars (\$50,000) must be approved by the State. The deductible and any premiums are the Contractor's sole responsibility. The Contractor agrees that the insurance requirements specified in this Section do not reduce any liability the Contractor has assumed under this Contract including any indemnification or hold harmless requirements.

To achieve the required coverage amounts, a combination of an otherwise deficient specific policy and an umbrella policy with an aggregate meeting or exceeding the required coverage amounts is acceptable. For example: If the required policy limit under this Contract is for two million dollars (\$2,000,000) in coverage, acceptable coverage would include a specific policy covering one million dollars (\$1,000,000) combined with an umbrella policy for an additional one million dollars (\$1,000,000). If the deficient underlying policy is for a coverage area without aggregate limits (generally Automobile Liability and Employers' Liability Accident), Contractor shall provide a copy of the umbrella insurance policy documents to ensure that no aggregate limit applies to the umbrella policy for that coverage area.

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

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

**The Contractor shall obtain and maintain, at a minimum, the following insurance coverages and policy limits.**

a. Commercial General Liability Insurance

- 1) The Contractor shall maintain commercial general liability insurance, which shall be written on an Insurance Services Office, Inc. (also known as ISO) occurrence form (or a substitute form providing equivalent coverage) and shall cover liability arising from property damage, premises/operations, independent contractors, contractual liability, completed operations/products, personal and advertising injury, and liability assumed under an insured contract (including the tort liability of another assumed in a business contract).

The Contractor shall maintain bodily injury/property damage with a combined single limit not less than one million dollars (\$1,000,000) per occurrence and two million dollars (\$2,000,000) aggregate for bodily injury and property damage, including products and completed operations coverage with an aggregate limit of at least two million dollars (\$2,000,000).

b. Workers' Compensation and Employer Liability Insurance

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

c. Automobile Liability Insurance

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

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

**E. SPECIAL TERMS AND CONDITIONS:**

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

E.2. Confidentiality of Records. Strict standards of confidentiality of records and information shall be maintained in accordance with applicable state and federal law. All material and information, regardless of form, medium or method of communication, provided to the Contractor by the State or acquired by the Contractor on behalf of the State that is regarded as confidential under state or federal law shall be regarded as "Confidential Information." Nothing in this Section shall permit Contractor to disclose any Confidential Information, regardless of whether it has been disclosed or made available to the Contractor due to intentional or negligent actions or inactions of agents of the State or third parties. Confidential Information shall not be disclosed except as required or permitted under state or federal law. Contractor shall take all necessary steps to safeguard the confidentiality of such material or information in conformance with applicable state and federal law.

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

E.3. Prohibited Advertising or Marketing. The Contractor shall not suggest or imply in advertising or marketing materials that Contractor's goods or services are endorsed by the State. The restrictions on Contractor advertising or marketing materials under this Section shall survive the termination of this Contract.

E.4. Public Accountability. If the Contractor is subject to Tenn. Code Ann. §§ 8-4-401, *et seq.*, or if this Contract involves the provision of services to citizens by the Contractor on behalf of the State, the Contractor agrees to establish a system through which recipients of services may present grievances about Contractor's operation of the service program. The Contractor shall also display in a prominent place, located near the passageway through which the public enters in order to receive contract-supported services, a sign at least eleven inches (11") in height and seventeen inches (17") in width stating the following:

NOTICE: THIS AGENCY IS A RECIPIENT OF TAXPAYER FUNDING. IF YOU OBSERVE AN AGENCY DIRECTOR OR EMPLOYEE ENGAGING IN ANY ACTIVITY THAT YOU CONSIDER TO BE ILLEGAL, IMPROPER, OR WASTEFUL, PLEASE CALL THE STATE COMPTROLLER'S TOLL-FREE HOTLINE: 1-800-232-5454

The sign shall be of the form prescribed by the Comptroller of the Treasury. The contracting state agency shall request copies of the sign from the Comptroller of the Treasury and provide signs to contractors.

E.5. 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 Contractor, 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 any 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 31 U.S.C. § 1352.

**IN WITNESS WHEREOF,**

**RELIAS LEARNNG LLC:**

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**CONTRACTOR SIGNATURE**

**DATE**

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

**DEPARTMENT OF INTELLECTUAL AND DEVELOPMENTAL DISABILITIES:**

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**DEBRA K. PAYNE COMMISSIONER**

**DATE**

## ATTACHMENT A

## ATTESTATION RE PERSONNEL USED IN CONTRACT PERFORMANCE

<p>If the attestation applies to more than one contract, modify this row accordingly.</p> <p>SUBJECT CONTRACT NUMBER:</p>	
<p>CONTRACTOR LEGAL ENTITY NAME:</p>	<p>RELIAS LEARNING, LLC</p>
<p>EDISON VENDOR IDENTIFICATION NUMBER:</p>	<p>47-2092038</p>

If the attestation applies to more than one contract, modify the following paragraph accordingly.

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

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**CONTRACTOR SIGNATURE**

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

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**PRINTED NAME AND TITLE OF SIGNATORY**


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**DATE OF ATTESTATION**