



**BILL LEE**  
GOVERNOR

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

**PENNY SCHWINN**  
COMMISSIONER

**Fiscal Review Committee Submission**  
**Contract #33109-0241, Evaluation, Management, Training Associates, Inc.**  
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**PENNY SCHWINN**  
COMMISSIONER

**SUBMITTED VIA ELECTRONIC MAIL**

TO: Fiscal Review Committee

FROM: Penny Schwinn, Commissioner

Date: 11/15/2019

RE: Request to appear before the fiscal review committee regarding the sole-source contract for Project AWARE - agency tracking #: 33109-02421

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Enclosed is the request for a new non-competitive contract with EMT & Associates Inc. to provide evaluation and reporting services for Tennessee's Project AWARE, a 100% federally funded grant program. Project AWARE connects Tennessee school districts with mental health resources needed to serve students and build sustainability at the district-level to continue this work beyond the duration of the grant. EMT has served as the Project AWARE evaluator since its selection via competitive RFQ in 2014. The department received an additional period of federal grant funding to continue building out Project AWARE and expand to four new rural districts in high needs areas (Cocke, Fayette, Hickman and Lake County Schools). Therefore, a new contract is needed in order to continue the evaluation services of EMT for this second grant award period.

The federal grant award requires the State to have a program evaluator and collect and report data on key performance measures. Such data includes the number of individuals at the district who received training in prevention or mental health promotion and the number of students referred to mental health or related services. Without these services, the department will be out of compliance with the federal grant award, which could jeopardize federal funding.

A non-competitive contract is needed because:

- 1) Continuity of services is absolutely critical to the department's ability to build on the successes of this program. EMT & Associates, Inc. is the only provider with experience implementing the Project AWARE grant in Tennessee and knowledge about program outcomes to date.
- 2) The department will utilize the current data and evaluation system developed by EMT & Associates, Inc. for the first AWARE grant when implementing the second AWARE grant. By doing so, data and evaluation results can be compared from one set of school districts (first AWARE grant) to another set of school districts (second AWARE grant). This compatibility of continuing an existing system of data collection and evaluation is paramount to having reliable trend data from which to guide future program development and funding decisions.
- 3) EMT & Associates, Inc. has unique expertise in training school districts on how to effectively utilize Project AWARE data collection tools to ensure accurate data collection and program monitoring among the AWARE school districts.

The proposed contract has a maximum liability of \$680,000.00, 100% federally funded, with a term length of four years and one option to renew.

Supplemental Documentation Required for  
Fiscal Review Committee

*Contact Name:	Joanna Collins	*Contact Phone:	615-770-3869
*Presenter's name(s):	Karen Jensen, Joanna Collins, Jay Klein, Aleah Guthrie		
Edison Contract Number: <i>(if applicable)</i>	N/A	RFS Number: <i>(if applicable)</i>	33109-02421
*Original or Proposed Contract Begin Date:	July 1, 2020	*Current or Proposed End Date:	June 30, 2024
Current Request Amendment Number: <i>(if applicable)</i>	N/A		
Proposed Amendment Effective Date: <i>(if applicable)</i>	N/A		
*Department Submitting:	Department of Education		
*Division:	Whole Child Initiatives		
*Date Submitted:	11-15-19		
*Submitted Within Sixty (60) days:	Yes		
<i>If not, explain:</i>	N/A		
*Contract Vendor Name:	EMT Associates, Inc.		
*Current or Proposed Maximum Liability:	\$680,000.00		
*Estimated Total Spend for Commodities:	\$0		
<b>*Current or Proposed Contract Allocation by Fiscal Year: (as Shown on Most Current Fully Executed Contract Summary Sheet)</b>			
FY: 2021	FY:2022	FY: 2023	FY: 2024
\$170,000.00	\$170,000.00	\$170,000.00	\$170,000.00
<b>*Current Total Expenditures by Fiscal Year of Contract: (attach backup documentation from Edison)</b>			
<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:	\$680,000
<i>Interdepartmental:</i>		<i>Other:</i>	
If “ <i>other</i> ” please define:		N/A	
If “ <i>interdepartmental</i> ” please define:		N/A	
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>		Sole source	
*What were the projected costs of the service for the entire term of the contract prior to contract award? How was this cost determined?		\$680,000. This was determined by the amount paid for these services under the current 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.		<p><b>EMT Associates, Inc. was originally selected through an RFQ in 2014 and have been a critical partner in implementing Project Aware in Tennessee for the last five years. The State received a second grant award to continue expanding Project Aware.</b></p> <p><b>Noncompetitive selection is appropriate to ensure continuity of services and results, including data integrity. A non-competitive contract is needed because:</b></p> <ol style="list-style-type: none"> <li><b>1) EMT &amp; Associates, Inc. is the only Tennessee provider with experience developing a data and evaluation system for TDOE’s SAMHSA funded AWARE grant. They have unique knowledge of the first five years of implementation of the program, which will be critical to continued expansion.</b></li> <li><b>2) The State will utilize the current data and evaluation system developed by EMT for the first AWARE grant when implementing the second AWARE grant. By doing so, data and evaluation results can be compared from one set of school districts (first AWARE grant) to another set of school districts (second AWARE grant). This compatibility of continuing an</b></li> </ol>	

Supplemental Documentation Required for  
Fiscal Review Committee

	<p>existing system of data collection and evaluation is paramount to having reliable trend data from which to guide future program development and funding decisions.</p> <ol style="list-style-type: none"><li>3) EMT has unique expertise in training school districts on how to effectively utilize Project Aware data collection tools to ensure accurate data collection and program monitoring among the AWARE school districts.</li><li>4) State users have extensive training on EMT's system.</li><li>5) The State will be out of compliance with its federal grant award if there is a lapse in services.</li></ol>
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PENDING

# 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.

Upload the completed document and route for approvals by selecting the appropriate SCR e-Form type in Edison. For additional guidance, please see the Special Contracts Request e-Form Job Aid available online at the following:

<https://www.teamtn.gov/cpo/learning-development/cpo-job-aids.html>.

<b>APPROVED</b> <b>[Upload this SCR to e-Forms in Edison. Approvals will be captured in Edison Workflow.]</b>	<b>APPROVED</b> <b>[Upload this SCR to e-Forms in Edison. Approvals will be captured in Edison Workflow.]</b>
CHIEF PROCUREMENT OFFICER                      DATE	COMPTROLLER OF THE TREASURY DATE

**Approval of the SCR does not constitute approval of the final contract.**

Request Tracking #	33109-02421
1. Contracting Agency	Tennessee Department of Education (TDOE)
2. Type of Contract or Procurement Method	<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 _____
3. Requestor Contact Information	Sara Smith, 615-253-4664, Sara.Smith@tn.gov
4. Brief Goods or Services Caption	Tennessee AWARE Performance Reporting and Evaluation System

<b>Request Tracking #</b>	<b>33109-02421</b>
<b>5. Description of the Goods or Services to be Acquired</b>	The contractor will maintain and update the State's web-based data collection, performance measurement, and evaluation system for the Tennessee Project AWARE grant program; collect and analyze federally required performance measurement goals data; provide the State with an evaluation and performance plan; provide grant implementation trainings to districts; maintain a measurement-based Quality Improvement (QI) model to assess implementation; provide required reporting; and submit data and reporting into the federal data system (SPARS).
<b>6. Proposed Contractor</b>	<b>EMT Associates Inc.</b>
<b>7. Name &amp; Address of the Contractor's principal owner(s)</b> – NOT required for a TN state education institution	<b>Victoria Stuart-Cassel, EMT Associates, Inc., 615 Main Street, Suite 110, Nashville, TN 37206</b>
<b>8. 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>	<b>48 months</b>
<b>9. 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
<b>10. eHealth Pre-Approval Endorsement Request</b> – health-related professional, pharmaceutical, laboratory, or imaging	<input checked="" type="checkbox"/> Not Applicable <input type="checkbox"/> Attached
<b>11. Human Resources Pre-Approval Endorsement Request</b> – contracts with an individual, state employee training, or services related to the employment of current or prospective state employees	<input checked="" type="checkbox"/> Not Applicable <input type="checkbox"/> Attached
<b>12. 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,
<b>13. Maximum Contract Cost</b> – with ALL options to extend exercised	<b>\$ 680,000.00</b>
<b>14. Was there an initial government estimate? If so, what amount?</b>	<input checked="" type="checkbox"/> NO <input type="checkbox"/> YES, \$
<b>15. Cost Determination Used-</b> How did agency arrive at the estimate of expected costs?	<b>The costs were based on pricing in the State's current contract with EMT Associates Inc. (#47407)</b>

<b>Request Tracking #</b>	<b>33109-02421</b>
<b>16. Explanation of Fair and Reasonable Price-</b> Explain how agency determined that price is fair and reasonable	The federal grantor, U.S. Department of Health & Human Services, Substance Abuse and Mental Health Services Administration (SAMHSA), allowed only a certain percentage of grant funds to be used for evaluation purposes. The pricing offered is in line with the allowable percentages and with pricing in the current contract.
<b>17. Documentation of Discussions with Contractor-</b> How did agency document discussions with Contractor? Attach documentation to this request as applicable.	EMT is the current provider of evaluation services. The TDOE has maintained documentation of email correspondence and notes from phone calls.
<b>18. Explanation of Need for or requirement placed on the State to acquire the goods or services</b>	<p>The State received a second federal Project Aware grant award from the Substance Abuse &amp; Mental Health Services Administration (SAMHSA) to expand school district access to critical mental health resources and build sustainability at the district level to continue this work.</p> <p>EMT's services are necessary to: (1) ensure that the State is in compliance with the terms of the federal grant award, including evaluation and reporting requirements. The State is required to have an evaluator collect data, document program implementation and outcomes against specific performance measures, and report those outcomes to SAMHSA; (2) provide us with data and reports needed to inform State policy and practices as we engage in this work.</p> <p>Without these services, the State will be out of compliance with the federal grant award, which could also jeopardize future federal grant opportunities.</p>
<b>19. Proposed contract impact on current State operations</b>	The proposed contract will meet the federal grant requirements for TDOE.

**20. Justification** – Specifically explain why the goods or services should be acquired through the procurement method or contract type selected.

**EMT Associates, Inc. was originally selected through an RFQ in 2014 and have been a critical partner in implementing Project Aware in Tennessee for the last five years. The State received a second grant award to continue expanding Project Aware.**

**Noncompetitive selection is appropriate to ensure continuity of services and results, including data integrity. A non-competitive contract is needed because:**

- 1) EMT & Associates, Inc. is the only Tennessee provider with experience developing a data and evaluation system for TDOE's SAMHSA funded AWARE grant. They have unique knowledge of the first five years of implementation of the program, which will be critical to continued expansion.**
- 2) The State will utilize the current data and evaluation system developed by EMT for the first AWARE grant when implementing the second AWARE grant. By doing so, data and evaluation results can be compared from one set of school districts (first AWARE grant) to another set of school districts (second AWARE grant). This compatibility of continuing an existing system of data collection and evaluation is paramount to having reliable trend data from which to guide future program development and funding decisions.**
- 3) EMT has unique expertise in training school districts on how to effectively utilize Project Aware data collection tools to ensure accurate data collection and program monitoring among the AWARE school districts.**
- 4) State users have extensive training on EMT's system.**
- 5) The State will be out of compliance with its federal grant award if there is a lapse in services.**

**Please see attached sole source letter.**

Request Tracking #	33109-02421
<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. Evidence of Contractor's experience & length of experience providing the goods or services to be procured.	The contractor has a 40-year history of professional experience evaluating publicly-funded programs, including a 30- year history evaluating federal, state, and local initiatives funded by SAMHSA. The contractor brings a ten-year history of partnership working with the Tennessee Department of Education's Office of Student Support, and a five-year history partnering on the evaluation of the first five year SAMHSA AWARE grant.
26. 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: Competitive RFQ process Name/Address: Victoria Stuart-Cassel, EMT Associates, Inc., 615 Main Street, Suite 110, Nashville, TN 37206
27. Contractor selection process and efforts to identify reasonable, competitive, procurement alternatives	EMT Associates, Inc. was originally selected through an RFQ in 2014. There is no alternative vendor that has the unique expertise with Project Aware implementation and the infrastructure already built to ensure that there is no lapse in services. We will be out of compliance with the federal grant award if we do not contract with EMT to procure these services. Please see attached sole source letter.

<b>Request Tracking #</b>	<b>33109-02421</b>
<b>Signature Required for all Special Contract Requests</b>	
<b>Signature of Agency head or authorized designee, title of signatory, and date</b> (the authorized designee may sign his or her own name if indicated on the Signature Certification and Authorization document) <b>[Either upload signed SCR in Edison or capture authorized agency approval in Edison Workflow.]</b>	
Signature: _____	Date: _____



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EMT ASSOCIATES, INC.

www.emt.org

CENTER 615  
615 MAIN STREET, SUITE 110  
NASHVILLE, TN 37206

October 10, 2019

Sara A. Smith | Co-Director, TN AWARE  
Office of Student Support  
Andrew Johnson Tower, 12th Floor  
710 James Robertson Parkway, Nashville, TN, 37243  
(615) 253-4664  
Sara.Smith@tn.gov

Dear Sara:

This letter serves as the written justification for a request for a sole source procurement for EMT Associates, Inc. to serve as the statewide evaluator for the Tennessee Department of Education's, Advancing Wellness and Resilience in Education (AWARE) grant program. EMT Associates is a woman-owned small business (WOSB) located in Nashville, TN that specializes in evaluation and applied policy research in the education and health and human services fields. Our firm has a 40-year history of professional experience evaluating publicly-funded programs, including a 30-year history evaluating federal, state, and local initiatives funded by the Substance Abuse and Mental Health Services Administration (SAMHSA). EMT brings a ten-year history of partnership working with the Tennessee Department of Education's Office of Student Support, and a four-year history partnering on the evaluation of the SEA AWARE grant program, which is the subject of this request.

For the following reasons, we believe strongly that EMT possesses the unique and singularly available capability to conduct the SEA AWARE evaluation and would argue that any further delay of the procurement process, or any consideration of an alternative contractor, would be to the serious detriment of the project and its stakeholders:

**First, we believe that EMT is the only company that has the good or service that will meet the state's need.** The SEA AWARE grant was first awarded to the State of Tennessee in September 2014. EMT was later awarded the evaluation contract through a competitive bid process. Since that time EMT has worked with the Department over a four year period to conduct the performance assessment and evaluation of the AWARE grant and to offer guidance as needed, to support implementation of the grant. EMT succeeded in meeting all programmatic requirements, produced high quality deliverables detailed in the contract scope of work, and ensured that all federal performance reports made on behalf of the Department were submitted in a professional and timely manner. EMT has been recognized, both by our clients within the Department of Education and by our SAMSHA Project Officer, for the quality and utility of the work that we have produced. Our team has also been frequently invited to share our work on



SAMHSA Peer to Peer Evaluator calls to promote evaluation best practices with new cohorts of state grantees.

When SAMHSA announced that current AWARE recipients would be eligible to submit applications for a continuation of funding under a new cohort, the Department approached EMT to assist with the development of the grant. EMT was named as a partner in the application and contributed significant in-kind support to shape both the evaluation design and the technical approach. Prior to committing to the proposal development process, EMT requested assurances that our firm would be contracted as the program evaluator. The Department consulted with the CPO and confirmed that the contract, if funded, would not be subject to an open competition.

The AWARE grant was re-awarded to Tennessee in April 2019 to support a continuation of work undertaken as part of the first SEA AWARE grant that would be implemented by the same core collaborative team. We believe that EMT's involvement in this application process significantly contributed to the award of funding based not only on the quality of the written proposal, but on our proven track record of success partnering on the implementation and evaluation of the first SEA AWARE grant. We believe that no other firm could offer the same corporate qualifications or shared history of accomplishment, and that we are uniquely qualified to support the Tennessee Department of Education as a partner on this important effort.

**Second, we believe that an unusual or compelling urgency exists.** When the second AWARE grant was awarded to the Department, EMT was notified that the contract would go forward as a sole source procurement. EMT staff initiated work to support the project launch with the understanding that a contract was forthcoming. The decision to move forward was made to ensure that key deliverables could be completed on time and that mechanisms were in place to ensure state compliance with federal funding requirements under the Government Performance and Results Act (GPRA). To date, EMT has provided work in-kind on the following tasks: preparing the health disparities impact statement; refining and submitting final project goals, objectives, and performance measures; developing evaluation tools (e.g., event sign-in sheets, implementation tracking tools, and outcome measures); adapting the custom-designed referral pathway system to track referrals and inter-agency communications; and instituting a web-based project management tool for monitoring grant progress. These tasks were undertaken to ensure that the state would remain in good standing with SAMHSA while the evaluation contract was being finalized.

Each of these activities are elements of a draft grantee performance assessment plan that is a required component of the grant evaluation, and that had an original submission deadline of three months from the date of the federal contract award. Due to delays in finalizing the state evaluation contract with EMT, SAMHSA approved an extension of the three-month timeline; however, the grant is now in its sixth month. It is unlikely that SAMHSA will approve any additional postponement of the submission deadline, placing the Department at risk of non-compliance. Because the performance assessment plan lays the foundation for the five-year evaluation approach, it is essential that it be developed by a qualified program evaluator.



It is also important to note that the AWARE program model, which was designed collaboratively between the Department and EMT and formally approved by SAMHSA, is now inextricably linked to EMT's evaluation contract and proposed evaluation design. As an example, during the proposal development process, EMT was the lead in identifying the mental health intervention for school social workers that would meet grant requirements for evidence-based programming (EBPs). The intervention requires formal training of school social workers by the program developers—the Oregon Research Institute. Because information on the cost of the training was not available at the time the proposal was submitted, EMT agreed to absorb the cost of professional development into the evaluation budget. Further delay in the procurement process will result in continuing delays of training and implementation around a critical mental health intervention, which is a required element of the proposed grant as approved by SAMHSA.

**Third, we believe that continuity of results is absolutely dependent upon the specific good or service.** The second SEA AWARE grant was proposed to SAMHSA as a continuation of the first AWARE implementation model. The new program design builds on best practices and lessons learned in both programming and in process and outcome measurement, and tests replication of the original project concept in four new rural school settings. As an example, under the auspices of the first AWARE grant, EMT staff was responsible for creating the school-based mental health referral system that tracks access to school-based mental health services and resources. The system allows students, parents, teachers, and other school personnel to electronically request a student mental health assessment, and enables school counselors to confidentially communicate referrals to school social workers and community mental health partners, while protecting student confidentiality and maintaining HIPAA compliance.

Information compiled within the referral system serves as the central source of data used in mandatory performance reporting to SAMSHA. EMT houses the referral system and plays an essential role in supporting use of the referral pathway tools at the local level, including the provision of in-person introductory training for key LEA staff. Removal of our firm from the contract or further delaying implementation would require a major redesign of the fundamental structure of this grant component and would result in a failure of districts to comply with performance reporting expectations outlined under GPRA.

The referral pathway system also provides districts with a no-cost, highly customizable information technology tool for documenting school-based mental health service delivery. This system is an integral part of the AWARE mental health referral process and was a key component of the proposed statewide sustainability and replication plan. The plan supports the dissemination of the referral pathway resources to non-AWARE districts throughout the state of Tennessee to further the goal of expanding school-based mental health access. EMT is in the process of finalizing these sustainability tools and resources and had plans to pilot test them with new grantee LEAs. Removal of our firm from the contract would substantially impact the



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Department's capacity to support sustainability of data monitoring systems for tracking the expansion of school-based mental health systems across the state.

**Finally, we believe that state and district stakeholders have extensive training or experience and use of similar goods or services would require significant reorientation and training.**

As part of our initial planning activities, EMT staff have also dedicated a significant amount of time and resources both to train LEA staff and to establish mechanisms to support evaluation and performance measurement. Specifically, EMT participated in two full-day, in-person planning meetings—one internally with Department staff and one with the four LEA AWARE Directors—to outline expectations for the five-year project evaluation. EMT staff have established relationships with each of the LEA Directors and have begun to provide direct technical assistance on evaluation activities, including formal training on use of evaluation tools. EMT has also invested substantial resources into these early implementation activities. For example, EMT purchased a full-year subscription to the web-based application that will be used by the Department and each of the four pilot LEAs to support performance monitoring over time. Removal of our firm from the contract or further delay of implementation would require significant redesign of evaluation structures and considerable reorientation and training of core LEA staff.

In all, we firmly believe that EMT is uniquely qualified to serve as the AWARE evaluation contractor for the Tennessee Department of Education, particularly given that our firm has been working as the de facto evaluator on the grant for the past five-month period. We have been involved as a core partner since the first grant's inception, and believe we have contributed significantly to its evolution and success over the past four years. We have also willingly invested significant corporate resources into the evaluation effort, in good faith, to ensure that the State of Tennessee would remain in good standing with its federal funders. With the understanding that a contract was assured to us, we also made the decision to forgo other grant opportunities that could have sustained our organization. Any further delay in the contract award would represent a considerable loss in revenue for our firm as a small business entity, would sacrifice months of forward progress, and would negatively impact the health of the grant and the capacity of the four local school systems. Further, if reporting mandates cannot be reasonably met as a result of these delays, it could potentially jeopardize the Department's standing and ability to procure federal funding in the future.



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NASHVILLE, TN 37206

We are respectfully appealing to the state to consider a sole source procurement, and to quickly move forward in preparing a revised contract that will allow us to get back to work. Thank you for your time and consideration. We look forward to your response.

Sincerely,

A handwritten signature in black ink that reads "Victoria Stuart-Cassel". The signature is written in a cursive, flowing style.

Victoria Stuart-Cassel, MPPA  
President  
EMT Associates, Inc.  
615 Main Street, Suite 110  
Nashville, Tennessee 37206  
(615) 678-1037  
[tori@emt.org](mailto:tori@emt.org)



**Grant Number:** 1H79SM081974-01  
**FAIN:** H79SM081974  
**Program Director:** Pat Conner

**Project Title:** The Tennessee Department of Education (TDOE) AWARE-SEA will expand and enhance the state's existing capacity to expand youth and family access to school and community-based mental health resources.

**Organization Name:** TENNESSEE STATE DEPARTMENT OF EDUCATION

**Business Official:** Jennifer Vickery

**Business Official e-mail address:** jennifer.vickery@tn.gov

**Budget Period:** 04/30/2019 – 04/29/2020

**Project Period:** 04/30/2019 – 04/29/2024

Dear Grantee:

The Substance Abuse and Mental Health Services Administration hereby awards a grant in the amount of \$1,800,000 (see "Award Calculation" in Section I and "Terms and Conditions" in Section III) to TENNESSEE STATE DEPARTMENT OF EDUCATION in support of the above referenced project. This award is pursuant to the authority of 520A (290bb-32) of the Public Health Service Act, as amended and is subject to the requirements of this statute and regulation and of other referenced, incorporated or attached terms and conditions.

Award recipients may access the SAMHSA website at [www.samhsa.gov](http://www.samhsa.gov) (click on "Grants" then SAMHSA Grants Management), which provides information relating to the Division of Payment Management System, HHS Division of Cost Allocation and Postaward Administration Requirements. Please use your grant number for reference.

Acceptance of this award including the "Terms and Conditions" is acknowledged by the grantee when funds are drawn down or otherwise obtained from the grant payment system.

If you have any questions about this award, please contact your Grants Management Specialist and your Government Project Officer listed in your terms and conditions.

Sincerely yours,  
Eileen Bermudez  
Grants Management Officer  
Division of Grants Management

See additional information below

**SECTION I – AWARD DATA – 1H79SM081974-01**

**Award Calculation (U.S. Dollars)**

Personnel(non-research)	\$243,861
Fringe Benefits	\$92,781
Travel	\$21,380
Supplies	\$9,000
Contractual	\$1,310,000
Other	\$52,100
<b>Direct Cost</b>	<b>\$1,729,122</b>
<b>Indirect Cost</b>	<b>\$70,878</b>
<b>Approved Budget</b>	<b>\$1,800,000</b>
<b>Federal Share</b>	<b>\$1,800,000</b>
<b>Cumulative Prior Awards for this Budget Period</b>	<b>\$0</b>
 <b>AMOUNT OF THIS ACTION (FEDERAL SHARE)</b>	 <b>\$1,800,000</b>

SUMMARY TOTALS FOR ALL YEARS	
YR	AMOUNT
1	\$1,800,000
2	\$1,800,000
3	\$1,800,000
4	\$1,800,000
5	\$1,800,000

\*Recommended future year total cost support, subject to the availability of funds and satisfactory progress of the project.

**Fiscal Information:**

CFDA Number: 93.243  
 EIN: 1626001445B5  
 Document Number: 19SM81974A  
 Fiscal Year: 2019

<b>IC</b>	<b>CAN</b>	<b>Amount</b>
SM	C96J686	\$1,800,000

IC	CAN	2019	2020	2021	2022	2023
SM	C96J686	\$1,800,000	\$1,800,000	\$1,800,000	\$1,800,000	\$1,800,000

**SM Administrative Data:**

PCC: AWARE-19 / OC: 4145

**SECTION II – PAYMENT/HOTLINE INFORMATION – 1H79SM081974-01**

Payments under this award will be made available through the HHS Payment Management System (PMS). PMS is a centralized grants payment and cash management system, operated by the HHS Program Support Center (PSC), Division of Payment Management (DPM). Inquiries regarding payment should be directed to: The Division of Payment Management System, PO Box 6021, Rockville, MD 20852, Help Desk Support – Telephone Number: 1-877-614-5533.

The HHS Inspector General maintains a toll-free hotline for receiving information concerning fraud, waste, or abuse under grants and cooperative agreements. The telephone number is: 1-

800-HHS-TIPS (1-800-447-8477). The mailing address is: Office of Inspector General, Department of Health and Human Services, Attn: HOTLINE, 330 Independence Ave., SW, Washington, DC 20201.

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### **SECTION III – TERMS AND CONDITIONS – 1H79SM081974-01**

This award is based on the application submitted to, and as approved by, SAMHSA on the above-title project and is subject to the terms and conditions incorporated either directly or by reference in the following:

- a. The grant program legislation and program regulation cited in this Notice of Award.
- b. The restrictions on the expenditure of federal funds in appropriations acts to the extent those restrictions are pertinent to the award.
- c. 45 CFR Part 75 as applicable.
- d. The HHS Grants Policy Statement.
- e. This award notice, INCLUDING THE TERMS AND CONDITIONS CITED BELOW.

#### **Treatment of Program Income:**

##### **Additional Costs**

In accordance with the regulatory requirements provided at 45 CFR 75.113 and Appendix XII to 45 CFR Part 75, recipients that have currently active Federal grants, cooperative agreements, and procurement contracts with cumulative total value greater than \$10,000,000 must report and maintain information in the System for Award Management (SAM) about civil, criminal, and administrative proceedings in connection with the award or performance of a Federal award that reached final disposition within the most recent five-year period. The recipient must also make semiannual disclosures regarding such proceedings. Proceedings information will be made publicly available in the designated integrity and performance system (currently the Federal Awardee Performance and Integrity Information System (FAPIIS)). Full reporting requirements and procedures are found in Appendix XII to 45 CFR Part 75.

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### **SECTION IV – SM Special Terms and Conditions – 1H79SM081974-01**

## **REMARKS**

#### **New Award**

**1. This Notice of Award (NoA) is issued to inform your organization that the application submitted through the Funding Opportunity Announcement (FOA) No. SM-19-003 has been selected for funding.**

**1a)** This NoA also reflects approval of the revised budget submitted *March 07, 2019* by your organization.

**2. Recipients are expected to plan their work to ensure that funds are expended within the 12-month budget period reflected on this Notice of Award.** If activities proposed in the approved budget cannot be completed within the current budget period, SAMHSA cannot guarantee the approval of any request for carryover of remaining unobligated funding.

**3. All responses to award terms and conditions and prior approval requests must be submitted as .pdf documents in the “View Terms Tracking Details” page in eRA Commons.**

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For more information on how to upload a document in response to a tracked term, please reference under heading “**4 Additional Materials – grantee**” in the User Guide located at: [https://era.nih.gov/files/TCM\\_User\\_Guide\\_Grantee.pdf](https://era.nih.gov/files/TCM_User_Guide_Grantee.pdf)

**4. Register Program Director/Project Director (PD) in eRA Commons:**

If you have not already done so, you must register the PD listed on the HHS Checklist in eRA Commons to assign a Commons ID. Once the PD has received their Commons ID, please send this information to your Grants Management Specialist. You can find additional information about the eRA Commons registration process at [https://era.nih.gov/reg\\_accounts/register\\_commons.cfm](https://era.nih.gov/reg_accounts/register_commons.cfm).

**5. Key Staff:**

Key staff (or key staff positions, if staff has not been selected) are listed below:

***Sara Smith, Project Director/Coordinator @ 100% Level of Effort***

***TBD-SMHA Project Co-Coordinator @ 50% Level of Effort***

Any changes to key staff—including level of effort involving separation from the project for more than three months or a 25 percent reduction in time dedicated to the project—requires prior approval and must be submitted as a post-award amendment in eRA Commons.

For additional information on how to submit a post-award amendment, please visit the SAMHSA website: <https://www.samhsa.gov/grants/grants-management/post-award-changes>. Any technical questions regarding the submission process should be directed to the eRA Service Desk: <http://grants.nih.gov/support/>.

**SPECIAL TERMS**

**SPARS**

All SAMHSA recipients are required to collect and submit certain data so that SAMHSA can meet its obligations under the Government Performance and Results Act (GPRA) Modernization Act of 2010 as amended by PL 111-352). These data are gathered quarterly using SAMHSA’s Performance and Accountability Reporting System (SPARS). AWARE-SEA recipients will be expected to:

1. Complete SPARS Annual Goals and Budget training no later than June 30, 2019;
2. Enter Annual Goals and Budget information and data no later than July 30, 2019;
3. Enter performance data into SPARS no later than October 30, 2019. The data to be entered will be for the 4th quarter (July – September 2019).

SPARS can be accessed at <https://spars.samhsa.gov/>.

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## Disparity Impact Statement (DIS)

By **June 30, 2019**, submit via eRA Commons...

The DIS should be consistent with information in your application regarding access, \*service use and outcomes for the program and include three components as described below. Questions about the DIS should be directed to your GPO. Examples of DIS can be found on the SAMHSA website at: <https://www.samhsa.gov/grants/grants-management/disparity-impact-statement>

\*Service use is inclusive of treatment services, prevention services as well as outreach, engagement, training, and/or technical assistance activities.

The disparity impact statement consists of three components:

1. Proposed number of individuals to be served and/or reached by subpopulations in the grant implementation area should be provided in a table that covers the entire grant period. The disparate population(s) should be identified in a narrative that includes a description of the population and rationale for how the determination was made.

2. A quality improvement plan for how you will use your program (GPRA) data on access, use and outcomes to monitor and manage program outcomes by race, ethnicity and LGBT status, when possible. The quality improvement plan should include strategies for how processes and/or programmatic adjustments will support efforts to reduce disparities for the identified sub-populations.

3. The quality improvement plan should include methods for the development and implementation of policies and procedures to ensure adherence to the Enhanced Culturally and Linguistically Appropriate Services (CLAS) Standards and the provision of effective care and services that are responsive to:

- a. Diverse cultural health beliefs and practices;
- b. Preferred languages; and
- c. Health literacy and other communication needs of all sub-populations within the proposed geographic region.

**All responses to award terms and conditions must be submitted as .pdf documents in the “View Terms Tracking Details” page in eRA Commons.**

For more information on how to upload a document in response to a tracked term, please reference under heading “**4 Additional Materials – grantee**” in the User Guide located at: [https://era.nih.gov/files/TCM\\_User\\_Guide\\_Grantee.pdf](https://era.nih.gov/files/TCM_User_Guide_Grantee.pdf)

## **SPECIAL CONDITIONS**

### **Additional Budget Items**

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By **May 31, 2019**, submit via eRA Commons...

These additional items in lieu of the budget proposal:

1. Provide a copy of the "Rental /Car Rental Lease," agreement regarding the charges within the Other cost category for \$5,200.
2. Complete the rental questionnaire (beginning on page 8 of this NoA) regarding the rental charges for \$9,000, within the budget proposal.

**All responses to award terms and conditions must be submitted as .pdf documents in the "View Terms Tracking Details" page in eRA Commons.**

For more information on how to upload a document in response to a tracked term, please reference under heading "**4 Additional Materials – grantee**" in the User Guide located at: [https://era.nih.gov/files/TCM\\_User\\_Guide\\_Grantee.pdf](https://era.nih.gov/files/TCM_User_Guide_Grantee.pdf)

### **Revise Key Personnel Level of Effort**

By **May 31, 2019**, submit via eRA Commons...

**A Key Staff Change appointing a candidate to the following key staff condition as specified in the Funding Opportunity Announcement (FOA# SM-19-003).**

**State Mental Health Agency (SMHA) Project Co-Coordinator @ 50% Level of Effort**

**All responses to award terms and conditions must be submitted as .pdf documents in the "View Terms Tracking Details" page in eRA Commons.**

For more information on how to upload a document in response to a tracked term, please reference under heading "**4 Additional Materials – grantee**" in the User Guide located at: [https://era.nih.gov/files/TCM\\_User\\_Guide\\_Grantee.pdf](https://era.nih.gov/files/TCM_User_Guide_Grantee.pdf)

## **STANDARD TERMS AND CONDITIONS**

### **Standard Terms for Awards**

Your organization must comply with the Standard Terms and Conditions for the Fiscal Year in which your grant was awarded. The Fiscal Year for your award is identified on Page 2 of your Notice of Award. SAMHSA's Terms and Conditions Webpage is located at: <https://www.samhsa.gov/grants/grants-management/notice-award-noa/standard-terms-conditions>.

### **Compliance with Award Terms and Conditions**

FAILURE TO COMPLY WITH THE ABOVE STATED TERMS AND CONDITIONS MAY RESULT IN ACTIONS IN ACCORDANCE WITH 45 CFR 75.3 71, REMEDIES FOR NON-

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COMPLIANCE AND 45 CFR 75.372 TERMINATION. THIS MAY INCLUDE WITHHOLDING PAYMENT, DISALLOWANCE OF COSTS, SUSPENSION AND DEBARMENT, TERMINATION OF THIS AWARD, OR DENIAL OF FUTURE FUNDING.

All previous terms and conditions remain in effect until specifically approved and removed by the Grants Management Officer.

### **Annual Programmatic Progress Report**

By **July 29, 2020**, submit via eRA Commons;

The Programmatic Report is required on an annual basis and must be submitted as a .pdf to the View Terms Tracking Details page in the eRA Commons System no later than 90 days after the end of each 12-month incremental period.

The Annual Programmatic Report must, at a minimum, include the following information:

- Data and progress for performance measures as reflected in your application regarding goals and evaluation activities.
- A summary of key program accomplishments to-date.
- Description of the changes, if any, that were made to the project that differ from the application for this incremental period.
- Description of any difficulties and/or problems encountered in achieving planned goals and objectives including barriers to accomplishing program objectives, and actions to overcome barriers or difficulties.

Note: Recipients must also comply with the GPRA requirements that include the collection and periodic reporting of performance data as specified in the FOA or by the Grant Program Official (GPO). This information is needed in order to comply with PL 102-62, which requires that Substance Abuse and Mental Health Services Administration (SAMHSA) report evaluation data to ensure the effectiveness and efficiency of its programs.

**The response to this term must be submitted as .pdf documents in the View Terms Tracking Details page in eRA Commons. Please contact your Government Program Official (GPO) for program specific submission information.**

For more information on how to upload a document in response to a tracked term, please reference under heading **4 Additional Materials grantee** in the User Guide located at: [https://era.nih.gov/files/TCM\\_User\\_Guide\\_Granttee.pdf](https://era.nih.gov/files/TCM_User_Guide_Granttee.pdf)

Additional information on reporting requirements is available at <https://www.samhsa.gov/grants/grants-management/reporting-requirements>.

### **Annual Federal Financial Report (SF-425)**

By **July 29, 2020**, submit via eRA Commons...

The Federal Financial Report (FFR) (SF-425) is required on an annual basis and should reflect

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only cumulative actual Federal funds authorized and disbursed, the cumulative unobligated balance of the Federal funds for the award, as well as any program income generated during the timeframe covered by the report. Additional guidance to complete the FFR can be found at <http://www.samhsa.gov/grants/grants-management/reporting-requirements>.

FFR reporting must be entered directly into the eRA Commons system. Instructions on how to submit a Federal Financial Report (FFR) via the eRA Commons is available at <https://www.samhsa.gov/sites/default/files/samhsa-grantee-submit-ffr-10-22-17.pptx>.

## Rent Questions to be Answered by the Applicant/Recipient

### Who Owns the Building?

- The [HHS Grants Policy Statement \(PDF | 1.32 MB\)](#) states: "Rental costs under a 'less-than-arms-length' arrangement is allowable only up to the amount that would be allowed under the applicable cost principles had title to the property been vested in the recipient. A less-than-arms-length lease is one in which one party to the lease agreement is able to control or substantially influence the actions of the other. Such leases include, but are not limited to, those between divisions of an organization; between organizations under common control through common officers, directors, or members; and between an organization and its directors, trustees, officers, or key employees (or the families of these individuals), directly or through corporations, trusts, or similar arrangements in which they hold a controlling interest."
- Identify the owner(s) of the building (e.g., individual's or organization's name) for the space costs (rent) included in the budget and describe their relationship (i.e., board member, officer, related party, related organization, etc.) to the grantee organization, if any. Are there any relationships between the grantee organization and the building owner's(s') board members and officers that could be considered a real or apparent conflict of interest
- If grantee owns the building, describe and provide supporting documentation to include:
  - Settlement Statement (HUD 1 Form) for the purchase of the building which reflects the calculation of the purchase price attributable to the building
  - Tax Assessment or Appraisal
  - Documentation supporting estimates for utilities, maintenance, taxes, insurance, etc.
  - IRS Form 4562 (Depreciation and Amortization). Provided below is a sample worksheet of the typical depreciation calculations:

Depreciation amount was determined as follows:	Amount
Total Cost with settlement expenses	\$ _____

	Amount
Depreciation amount was determined as follows:	
Land Allocation (as reflected on IRS Form 4562, Tax Assessment or Appraisal form)	\$ _____
Basis of Building	\$ _____
Monthly Depreciation (# years of life)	\$ _____
Occupancy expenses (e.g., for 9/30/11–9/29/12) were:	
Depreciation	\$ _____
Utilities	\$ _____
Insurance	\$ _____
Repairs and Maintenance	\$ _____
<b>TOTAL</b>	<b>\$ _____</b>

**All Recipients Must Provide:**

1. A signed copy of the current lease which specifically identifies the owner of the facility
2. Whenever rental costs are included in the budget, you must provide a copy of the floor plan and include the following:

The method used to determine the base most often used to allocate space costs is square footage (SF); however, full-time equivalents (FTEs) are sometimes utilized and are acceptable. Calculate the space costs using an appropriate base (SF or FTEs) and provide a copy of the calculation along with documentation supporting the calculation (e.g., lease agreement; documentation supporting estimates for utilities, maintenance, taxes, insurance; FTE or SF analysis; etc.). Other funding sources utilizing space must be identified and included.

- i. If square footage is selected for multiple programs, you must provide a floor plan of the building that specifically identifies the space used exclusively by the SAMHSA grant program, including common areas, and general and administrative areas. Show the individual’s name and position in the space or other identifier. In addition, any other programs supported by the grantee organization must be identified in the floor plan. This will determine SAMHSA’s fair share of the space cost(s).
- ii. If FTEs are selected for multiple programs, you must provide a floor plan of the building that specifically identifies the space used exclusively by the SAMHSA grant program, including common areas, and general and administrative areas. Show the individual’s name and position in the space or other identifier. This will determine SAMHSA’s fair share of the space cost(s). In addition, any other programs supported by the grantee organization must be identified in the floor plan.

## **Indirect vs. Direct Costs:**

- If the budget includes office space and indirect costs, office space is included in the indirect cost pool. Therefore, the grantee may not charge this expense as a direct cost. It will be disallowed. This may require renegotiating with the Division of Cost Allocation to include all office space.
- If the space is a programmatic/service site expense, the cost may be a direct charge.
- If the budget includes office space, but the grantee has not negotiated an indirect cost rate agreement, charging this expense as part of a direct cost is appropriate and will be allowed.

All questions must be answered clearly and justified. Explain how your organization arrived at these figures and how the figures correspond with the approved budget, and submit supporting documentation.

In addition, cross-reference the depreciation, etc. with the budget and supporting documentation.

### **Staff Contacts:**

Margaret Weiser, Program Official

**Phone:** 240-276-2243 **Email:** Margaret.Weiser@SAMHSA.hhs.gov

Ernest Stevens, Grants Specialist

**Phone:** (240) 276-0631 **Email:** Ernest.Stevens@samhsa.hhs.gov **Fax:** (240) 276-1430



## CONTRACT

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

<b>Begin Date</b> July 1, 2020	<b>End Date</b> June 30, 2024	<b>Agency Tracking #</b> 33109-02421	<b>Edison Record ID</b>		
<b>Contractor Legal Entity Name</b> Evaluation, Management, Training Associates, Incorporated			<b>Edison Vendor ID</b> 0000070891		
<b>Goods or Services Caption</b> (one line only) Tennessee AWARE Performance Reporting and Evaluation 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>
2021		\$170,000			\$170,000
2022		\$170,000			\$170,000
2023		\$170,000			\$170,000
2024		\$170,000			\$170,000
<b>TOTAL:</b>		<b>\$680,000</b>			<b>\$680,000</b>
<b>Contractor Ownership Characteristics:</b>					
<input type="checkbox"/> Minority Business Enterprise (MBE): <input type="checkbox"/> African American <input type="checkbox"/> Asian American <input type="checkbox"/> Hispanic American <input type="checkbox"/> Native American					
<input checked="" type="checkbox"/> Woman Business Enterprise (WBE)					
<input type="checkbox"/> Tennessee Service Disabled Veteran Enterprise (SDVBE)					
<input type="checkbox"/> Disabled Owned Business (DSBE)					
<input checked="" 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 type="checkbox"/> Government <input type="checkbox"/> Non-Minority/Disadvantaged <input type="checkbox"/> Other:					
<b>Selection Method &amp; Process Summary</b> (mark the correct response to confirm the associated summary)					
<input type="checkbox"/> Competitive Selection					
<input checked="" type="checkbox"/> Other		<b>EMT Associates, Inc. was originally selected through a competitive RFQ process in 2014. They have served as the program evaluator for the first five years of this project. Noncompetitive selection is appropriate to ensure continuity of services and results, including data integrity. Additionally, State users have extensive training on EMT's system.</b>			
<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</b> (optional)		<b>Account Code</b> (optional)			

ED00001453

72203000

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

**EVALUATION, MANAGEMENT, and TRAINING ASSOCIATES, INC.**

This Contract, by and between the State of Tennessee, **Tennessee Department of Education**, ("State") and **Evaluation, Management, and Training Associates, Inc.**, ("Contractor"), is for the provision of **Tennessee AWARE Performance Reporting and Evaluation System**, 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 **For-Profit Corporation**

Contractor Place of Incorporation or Organization: **Folsom, California**

Contractor Edison Registration ID # **0000070891**

**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. Definitions. For purposes of this Contract, definitions shall be as follows and as set forth in the Contract:
- a. **Government Performance and Results Act ("GPRA")** – Requires federal agencies to engage in performance management tasks such as setting goals, measuring results, and reporting their progress.
  - b. **Local Education Agency ("LEA")** - School district, an entity which operates local public primary and secondary schools.
  - c. **Mental Health Workforce ("Mental Health Workforce")** - An individual who works in one of the following fields: mental health clinician, mental health counselor, psychologist, social worker, caseworker, care coordinator, or emergency/crisis worker.
  - d. **Project AWARE ("Project AWARE")** - Federally funded program intended to build and expand the capacity of State Educational Agencies to increase awareness of mental health issues among school-aged youth, provide training for school personnel and other adults who interact with school-aged youth to detect and respond to mental health issues in children and young adults, and connect children, youth, and families who may have behavioral health issues with appropriate services
  - e. **SAMHSA's Performance Accountability and Reporting System ("SPARS")** - Web-based, centralized data platform hosted by SAMHSA that assists Project AWARE Contractors in setting specific goals that measure program performance on a quarterly basis. SPARS supports the State's compliance with federal reporting requirements. The Contractor designed and implemented SPARS for the State under Contract #47407. SPARS allows for data collection, performance measurement, and evaluation related to Project AWARE.
  - f. **Substance Abuse and Mental Health Services Administration ("SAMHSA")** – A branch of the U.S. Department of Health and Human Services. Current funding agency for Project AWARE.
  - g. **State Education Agency ("SEA")** - State-level government agency responsible for providing information, resources, and technical assistance on educational matters to schools and residents.

- A.3. The Contractor shall manage and maintain all aspects of the State's Project Aware data collection system in Google Apps for Education. The Contractor shall provide all tools needed for data collection, performance measurement, and evaluation for the State and Project AWARE Contractors. This includes maintenance on the following specifications:
- a. Access for State and LEA level personnel to enter data.
  - b. State Single Sign On (SSO) Integration - At the State's request, the Contractor shall support the SSO solution developed by the State to authenticate education users into the System. The State's single SSO is based on industry standard OAuth 2.0 and OpenID Connect.
  - c. Tennessee Education Data System Integration – At the State's request, the State data in the AWARE data collection system shall be securely transferred to the State's education data system platform. The Contractor shall use a REST architectural style, which is a convention-based approach to defining application programming interfaces (APIs). Hypertext Transfer Protocol Secure (HTTPS), using the HTTPS operations (including GET, PUT, POST DELETE) is used as the application protocol. The State and Contractor shall work together to define the needed data elements and frequency of transmission.
  - d. Export capability. The Contractor shall export any required data on a quarterly and annual basis as detailed in Section A.4.
- A.4. The Contractor shall collect and analyze the following SAMHSA required performance measurement goals data at the State and LEA level. The Contractor shall:
- a. Upload Memoranda of Understanding (MOUs) involving state and local partner organizations into SPARS and include a summary in a standard web-based form that summarizes the purpose, content and terms of each MOU (GPRA 1).
  - b. Document the number of individuals trained in mental health prevention and health promotion by participant type, community segment, and geographic location using event-based training registration and sign-in procedures established under Contract #47407 (GPRA 2).
  - c. Document individuals in the Mental Health Workforce trained in mental health practices by participant type, community segment, and geographic location using event-based training registration and sign-in procedures established under Contract #47407 (GPRA 3).
  - d. Assess State and local policy changes (GPRA 4) annually using a coding rubric based on the Robert Wood Johnson Foundation's Healthy School Environments policy coding tool that assesses school mental health, social-emotional climate, and equitable discipline practices in schools. The Contractor shall apply the coding rubric at baseline and review annually to identify any changes to the content and scope of state laws, administrative regulations, and state and local board policies and resolutions tied to grant activities.
  - e. Document the number of youth referred to mental health services (GPRA 5) in real-time using referral pathway management tools created in Google Apps for Education.
  - f. Document the number and percentage of youth receiving mental health services after referral (GPRA 6) in real-time using referral pathway management tools created in Google Apps for Education.
  - g. Document the number of students receiving an informal or formal assessment to determine if they are at risk for a mental health-related concern and may be in need of specific mental health-related intervention(s) (GPRA 7).
- A.5. The Contractor shall provide the State with a Project AWARE evaluation and measurement plan outlining key evaluation questions, proposed study methods, evaluation tasks and timelines, and project deliverables. The provided Project AWARE evaluation shall meet the following criteria:
- a. The plan must be submitted to the State for review and approval within six months of Contract execution.
  - b. The plan must be submitted electronically.
  - c. The Contractor shall revise the plan upon request of the State.

- A.6. The Contractor shall create a program-wide logic model and individual LEA logic models for each of the four LEAs (Cocke, Fayette, Hickman, and Lake Counties). These models shall link school and community needs with planned strategies, expected outputs, and short and long-term outcomes.
- a. The logic models must be submitted to the State for review and approval within six months of Contract execution.
  - b. The models must be submitted electronically to the State.
  - c. The State will review the models annually. The Contractor shall revise the models at the request of the State.
- A.7. The Contractor shall conduct an LEA capacity assessment as part of the initial planning period for each LEA (Cocke, Fayette, Hickman, and Lake Counties) and for each subsequent year of the grant. The LEA capacity assessment shall be submitted to the State electronically within six months of contract execution. The Contractor shall participate in discussions related to integrating the LEA capacity assessment into a statewide school mental health data collection system, to be developed by the State during the Contract Term.
- A.8. The Contractor shall maintain a measurement-based Quality Improvement (QI) model that assesses quality of processes occurring with the LEAs related to: mental health access, assessment, intervention, coordination, and cultural competency.
- a. QI components shall include surveys of student and parent consumers, mental health partners, and school administrators to assess quality of mental health partnerships. In addition to complying with the confidentiality provisions in Sections D.32, E.2., and E.4., the Contractor shall comply with the Protection of Pupil Rights Amendment (PPRA) (20 U.S.C. § 1232h; 34 CFR Part 98).
  - b. Findings shall be detailed in the quarterly reports referenced in Section A.9. with recommendations for course adjustments as needed and presented semi-annually to members of the AWARE State Management Team for input and discussion to shape continuous improvement.
- A.9. Each year of the Contract, the Contractor shall provide quarterly reports electronically detailing evaluation findings and performance measures as defined in Section A. 4. The Contractor shall submit this report to the State's AWARE team.
- A.10. The Contractor shall prepare and submit an annual evaluation report and presentation of key findings to the AWARE State Management Team and produce interim data summaries and reports upon State request. The annual report shall be submitted electronically no later than three months after each year of the Contract term. The report shall be a compilation of all quarterly reports and shall include the following:
- a. Assessment of the State's capacity building activities and the outcomes.
  - b. Assessment of LEA capacity building activities and direct service strategies and the outcomes.
- A.11. The Contractor shall upload the required SAMHSA performance measures from the State and LEA level into SPARS and shall report performance measures in quarterly and annual reports. The Contractor shall provide this service on a quarterly and annual basis. The Contractor shall import the data into SPARS upon approval of the State. The Contractor shall submit the following items into SPARS:
- a. Upload Memoranda of Understanding (MOUs) involving state and local partner organizations into SPARS and include a summary in a standard web-based form that summarizes the purpose, content and terms of each MOU (GPRA 1).
  - b. Document the number of individuals trained in mental health prevention and health promotion by participant type, community segment, and geographic location using event-

based training registration and sign-in procedures established under Contract #47407 (GPRA 2).

- c. Document individuals in the Mental Health Workforce trained in mental health practices by participant type, community segment, and geographic location using event-based training registration and sign-in procedures established under Contract #47407 (GPRA 3).
- d. Assess State and local policy changes (GPRA 4) annually using a coding rubric based on the Robert Wood Johnson Foundation's Healthy School Environments policy coding tool that assesses school mental health, social-emotional climate, and equitable discipline practices in schools. The Contractor shall apply the coding rubric at baseline and review annually to identify any changes to the content and scope of state laws, administrative regulations, and state and local board policies and resolutions tied to grant activities.
- e. Document the number of youth referred to mental health services (GPRA 5) in real-time using referral pathway management tools created in Google Apps for Education.
- f. Document the number and percentage of youth receiving mental health services after referral (GPRA 6) in real-time using referral pathway management tools created in Google Apps for Education.

- A.12. Warranty. Contractor represents and warrants that the term of the warranty ("Warranty Period") shall be the greater of the Term of this Contract or any other warranty generally offered by Contractor, its suppliers, or manufacturers to customers of its goods or services. The goods or services provided under this Contract shall conform to the terms and conditions of this Contract throughout the Warranty Period. Any nonconformance of the goods or services to the terms and conditions of this Contract shall constitute a "Defect" and shall be considered "Defective." If Contractor receives notice of a Defect during the Warranty Period, then Contractor shall correct the Defect, at no additional charge.

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

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

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

- A.13. 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:**

- B.1. This Contract shall be effective for the period beginning on **July 1, 2020** ("Effective Date") and ending on **June 30, 2024** ("Term"). The State shall have no obligation for goods or services provided by the Contractor prior to the Effective Date.
- B.2. Renewal Options. This Contract may be renewed upon satisfactory completion of the Term. The State reserves the right to execute up to **one (1)** renewal options under the same terms and conditions for a period not to exceed twelve (12) months each by the State, at the State's sole

option. In no event, however, shall the maximum Term, including all renewals or extensions, exceed a total of sixty (60) months.

### C. PAYMENT TERMS AND CONDITIONS:

- C.1. Maximum Liability. In no event shall the maximum liability of the State under this Contract exceed **six hundred and eighty thousand dollars (\$680,000.00)** ("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:

<b>Goods or Services Description</b>	<b>Amount</b> (per compensable increment)
Evaluation and Performance Measurement Plan Update; A.5.	\$3,403/ per year
LEA Capacity Assessment; A.7.	\$6,811/ per year
Logic Models; A.6.	\$3,255/ per year
Quarterly Reports (4 per year); A.9.	\$2,906.75/per report; \$11,627 total per year
Management of Data Collection System, Collection and Analysis of Measurement Goals Data, Annual Evaluation Report; A.3., A.4., A.10.	\$110,971/per year
SPARS Upload (4 total); A.11.	\$942/per upload (\$3,767 total)
Youth and Parent Consumer Surveys; A.8.	\$13,492/upon completion
Mental Health Partner Interviews; A.8.	\$9,813/upon completion
School Administrator Surveys; A.8.	\$6,861/upon completion

- 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:

Karen Jensen, Mental Health and Wellness Director  
 Tennessee Department of Education  
 710 James Robertson Parkway, 12<sup>th</sup> Floor  
 Nashville, TN 37253  
[Karen.Jensen@tn.gov](mailto:Karen.Jensen@tn.gov)  
 Telephone: 615-440-2071

- a. Each invoice, on Contractor's letterhead, shall clearly and accurately detail all of the following information (calculations must be extended and totaled correctly):
  - (1) Invoice number (assigned by the Contractor);
  - (2) Invoice date;
  - (3) Contract number (assigned by the State);
  - (4) Customer account name: **Tennessee Department of Education, Whole Child Division.**
  - (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:

Karen Jensen, Mental Health and Wellness Director  
 Tennessee Department of Education  
 710 James Robertson Parkway, 12<sup>th</sup> Floor  
[Karen.Jensen@tn.gov](mailto:Karen.Jensen@tn.gov)  
 Telephone # 615-440-2071  
 FAX # 615-532-8226

The Contractor:

Victoria Stuart-Cassel, President  
 EMT Associates, Incorporated  
 1631 Creekside Drive, Suite 100  
 Folsom, California 95630  
 (916) 983-6680, ext. 211  
[tori@emt.org](mailto:tori@emt.org)

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

D.3. Modification and Amendment. This Contract may be modified only by a written amendment signed by all Parties and approved by all applicable State officials.

- D.4. Subject to Funds Availability. The Contract is subject to the appropriation and availability of State or federal funds. In the event that the funds are not appropriated or are otherwise unavailable, the State reserves the right to terminate this Contract upon written notice to the Contractor. The State's exercise of its right to terminate this Contract shall not constitute a breach of Contract by the State. Upon receipt of the written notice, the Contractor shall cease all work associated with the Contract. If the State terminates this Contract due to lack of funds availability, the Contractor shall be entitled to compensation for all conforming goods requested and accepted by the State and for all satisfactory and authorized services completed as of the termination date. Should the State exercise its right to terminate this Contract due to unavailability of funds, the Contractor shall have no right to recover from the State any actual, general, special, incidental, consequential, or any other damages of any description or amount.
- D.5. Termination for Convenience. The State may terminate this Contract for convenience without cause and for any reason. The State shall give the Contractor at least thirty (30) days written notice before the termination date. The Contractor shall be entitled to compensation for all conforming goods delivered and accepted by the State or for satisfactory, authorized services completed as of the termination date. In no event shall the State be liable to the Contractor for compensation for any goods neither requested nor accepted by the State or for any services neither requested by the State nor satisfactorily performed by the Contractor. In no event shall the State's exercise of its right to terminate this Contract for convenience relieve the Contractor of any liability to the State for any damages or claims arising under this Contract.
- D.6. Termination for Cause. If the Contractor fails to properly perform its obligations under this Contract in a timely or proper manner, or if the Contractor materially violates any terms of this Contract ("Breach Condition"), the State shall have the right to immediately terminate the Contract and withhold payments in excess of compensation for completed services or provided goods. Notwithstanding the above, the Contractor shall not be relieved of liability to the State for damages sustained by virtue of any Breach Condition and the State may seek other remedies allowed at law or in equity for breach of this Contract.
- D.7. Assignment and Subcontracting. The Contractor shall not assign this Contract or enter into a subcontract for any of the goods or services provided under this Contract without the prior written approval of the State. Notwithstanding any use of the approved subcontractors, the Contractor shall be the prime contractor and responsible for compliance with all terms and conditions of this Contract. The State reserves the right to request additional information or impose additional terms and conditions before approving an assignment of this Contract in whole or in part or the use of subcontractors in fulfilling the Contractor's obligations under this Contract.
- D.8. Conflicts of Interest. The Contractor warrants that no part of the Contractor's compensation shall be paid directly or indirectly to an employee or official of the State of Tennessee as wages, compensation, or gifts in exchange for acting as an officer, agent, employee, subcontractor, or consultant to the Contractor in connection with any work contemplated or performed under this Contract.
- The Contractor acknowledges, understands, and agrees that this Contract shall be null and void if the Contractor is, or within the past six (6) months has been, an employee of the State of Tennessee or if the Contractor is an entity in which a controlling interest is held by an individual who is, or within the past six (6) months has been, an employee of the State of Tennessee.
- D.9. Nondiscrimination. The Contractor hereby agrees, warrants, and assures that no person shall be excluded from participation in, be denied benefits of, or be otherwise subjected to discrimination in the performance of this Contract or in the employment practices of the Contractor on the grounds of handicap or disability, age, race, creed, color, religion, sex, national origin, or any other classification protected by federal or state law. The Contractor shall, upon request, show proof of nondiscrimination and shall post in conspicuous places, available to all employees and applicants, notices of nondiscrimination.
- D.10. Prohibition of Illegal Immigrants. The requirements of Tenn. Code Ann. § 12-3-309 addressing the use of illegal immigrants in the performance of any contract to supply goods or services to the

state of Tennessee, shall be a material provision of this Contract, a breach of which shall be grounds for monetary and other penalties, up to and including termination of this Contract.

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

to exercise control or direction over the manner or method by which the other transacts its business affairs or provides its usual services. The employees or agents of one Party are not employees or agents of the other Party.

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

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

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

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

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

principals or the principals of its subcontractors are excluded, disqualified, or presently fall under any of the prohibitions of sections a-d.

- D.24. Force Majeure. "Force Majeure Event" means fire, flood, earthquake, elements of nature or acts of God, wars, riots, civil disorders, rebellions or revolutions, acts of terrorism or any other similar cause beyond the reasonable control of the Party except to the extent that the non-performing Party is at fault in failing to prevent or causing the default or delay, and provided that the default or delay cannot reasonably be circumvented by the non-performing Party through the use of alternate sources, workaround plans or other means. A strike, lockout or labor dispute shall not excuse either Party from its obligations under this Contract. Except as set forth in this Section, any failure or delay by a Party in the performance of its obligations under this Contract arising from a Force Majeure Event is not a default under this Contract or grounds for termination. The non-performing Party will be excused from performing those obligations directly affected by the Force Majeure Event, and only for as long as the Force Majeure Event continues, provided that the Party continues to use diligent, good faith efforts to resume performance without delay. The occurrence of a Force Majeure Event affecting Contractor's representatives, suppliers, subcontractors, customers or business apart from this Contract is not a Force Majeure Event under this Contract. Contractor will promptly notify the State of any delay caused by a Force Majeure Event (to be confirmed in a written notice to the State within one (1) day of the inception of the delay) that a Force Majeure Event has occurred, and will describe in reasonable detail the nature of the Force Majeure Event. If any Force Majeure Event results in a delay in Contractor's performance longer than forty-eight (48) hours, the State may, upon notice to Contractor: (a) cease payment of the fees for the affected obligations until Contractor resumes performance of the affected obligations; or (b) immediately terminate this Contract or any purchase order, in whole or in part, without further payment except for fees then due and payable. Contractor will not increase its charges under this Contract or charge the State any fees other than those provided for in this Contract as the result of a Force Majeure Event.
- D.25. State and Federal Compliance. The Contractor shall comply with all State and federal laws and regulations applicable to Contractor in the Contractor's performance of this Contract.
- D.26. Governing Law. This Contract shall be governed by and construed in accordance with the laws of the State of Tennessee, without regard to its conflict or choice of law rules. The Tennessee Claims Commission or the state or federal courts in Tennessee shall be the venue for all claims, disputes, or disagreements arising under this Contract. The Contractor acknowledges and agrees that any rights, claims, or remedies against the State of Tennessee or its employees arising under this Contract shall be subject to and limited to those rights and remedies available under Tenn. Code Ann. §§ 9-8-101 - 408.
- D.27. Entire Agreement. This Contract is complete and contains the entire understanding between the Parties relating to its subject matter, including all the terms and conditions of the Parties' agreement. This Contract supersedes any and all prior understandings, representations, negotiations, and agreements between the Parties, whether written or oral.
- D.28. Severability. If any terms and conditions of this Contract are held to be invalid or unenforceable as a matter of law, the other terms and conditions of this Contract shall not be affected and shall remain in full force and effect. The terms and conditions of this Contract are severable.
- D.29. Headings. Section headings of this Contract are for reference purposes only and shall not be construed as part of this Contract.
- D.30. Incorporation of Additional Documents. Each of the following documents is included as a part of this Contract by reference. In the event of a discrepancy or ambiguity regarding the Contractor's duties, responsibilities, and performance under this Contract, these items shall govern in order of precedence below:
- a. any amendment to this Contract, with the latter in time controlling over any earlier amendments;

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

To achieve the required coverage amounts, a combination of an otherwise deficient specific policy and an umbrella policy with an aggregate meeting or exceeding the required coverage amounts is acceptable. For example: If the required policy limit under this Contract is for two million dollars (\$2,000,000) in coverage, acceptable coverage would include a specific policy covering one million dollars (\$1,000,000) combined with an umbrella policy for an additional one million dollars (\$1,000,000). If the deficient underlying policy is for a coverage area without aggregate limits (generally Automobile Liability and Employers' Liability Accident), Contractor shall provide a copy of the umbrella insurance policy documents to ensure that no aggregate limit applies to the umbrella policy for that coverage area. In the event that an umbrella policy is being provided to achieve any required coverage amounts, the umbrella policy shall be accompanied by an endorsement at least as broad as the Insurance Services Office, Inc. (also known as "ISO") "Noncontributory—Other Insurance Condition" endorsement or shall be written on a policy form that addresses both the primary and noncontributory basis of the umbrella policy if the State is otherwise named as an additional insured.

Contractor shall provide the State a certificate of insurance ("COI") evidencing the coverages and amounts specified in this Section. The COI must be on a form approved by the TDCI (standard ACORD form preferred). The COI must list each insurer's National Association of Insurance Commissioners (NAIC) number and be signed by an authorized representative of the insurer. The COI must list the State of Tennessee – CPO Risk Manager, 312 Rosa L. Parks Ave., 3<sup>rd</sup> floor Central Procurement Office, Nashville, TN 37243 as the certificate holder. Contractor shall provide the COI ten (10) business days prior to the Effective Date and again thirty (30) calendar days before renewal or replacement of coverage. Contractor shall provide the State evidence that all subcontractors maintain the required insurance or that subcontractors are included under the Contractor's policy. At any time, the State may require Contractor to provide a valid COI. The Parties agree that failure to provide evidence of insurance coverage as required is a material

breach of this Contract. If Contractor self-insures, then a COI will not be required to prove coverage. Instead Contractor shall provide a certificate of self-insurance or a letter, on Contractor's letterhead, detailing its coverage, policy amounts, and proof of funds to reasonably cover such expenses. The State reserves the right to require complete, certified copies of all required insurance policies, including endorsements required by these specifications, at any time.

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

**The insurance obligations under this Contract shall be: (1)—all the insurance coverage and policy limits carried by the Contractor; or (2)—the minimum insurance coverage requirements and policy limits shown in this Contract; whichever is greater. Any insurance proceeds in excess of or broader than the minimum required coverage and minimum required policy limits, which are applicable to a given loss, shall be available to the State. No representation is made that the minimum insurance requirements of the Contract are sufficient to cover the obligations of the Contractor arising under this Contract. The Contractor shall obtain and maintain, at a minimum, the following insurance coverages and policy limits.**

a. Commercial General Liability (“CGL”) Insurance

- 1) The Contractor shall maintain CGL, which shall be written on an ISO Form CG 00 01 occurrence form (or a substitute form providing equivalent coverage) and shall cover liability arising from property damage, premises and operations products and completed operations, bodily injury, personal and advertising injury, and liability assumed under an insured contract (including the tort liability of another assumed in a business contract).

The Contractor shall maintain single limits not less than **one million dollars (\$1,000,000)** per occurrence. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this policy or location of occurrence or the general aggregate limit shall be twice the required occurrence limit.

b. Workers’ Compensation and Employer Liability Insurance

- 1) For Contractors statutorily required to carry workers’ compensation and employer liability insurance, the Contractor shall maintain:
  - i. Workers’ compensation in an amount not less than **one million dollars (\$1,000,000)** including employer liability of one million dollars (**\$1,000,000**) per accident for bodily injury by accident, **one million dollars (\$1,000,000)** policy limit by disease, and **one million dollars (\$1,000,000)** per employee for bodily injury by disease.
- 2) If the Contractor certifies that it is exempt from the requirements of Tenn. Code Ann. §§ 50-6-101 – 103, then the Contractor shall furnish written proof of such exemption for one or more of the following reasons:
  - i. The Contractor employs fewer than five (5) employees;
  - ii. The Contractor is a sole proprietor;

- iii. The Contractor is in the construction business or trades with no employees;
- iv. The Contractor is in the coal mining industry with no employees;
- v. The Contractor is a state or local government; or
- vi. The Contractor self-insures its workers' compensation and is in compliance with the TDCI rules and Tenn. Code Ann. § 50-6-405.

c. Automobile Liability Insurance

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

d. Professional Liability Insurance

- 1) Professional liability insurance shall be written on an occurrence basis or on a claims-made basis. If this coverage is written on a claims-made basis, then:
  - i. The retroactive date must be shown, and must be on or before the earlier of the Effective Date of the Contract or the beginning of Contract work or provision of goods and services;
  - ii. Insurance must be maintained and evidence of insurance must be provided for at least five (5) full years from the date of the final Contract payment; and
  - iii. If coverage is canceled or non-renewed, and not replaced with another claims-made policy form with a retroactive date on or prior to the Contract Effective Date, the Contractor must purchase "extended reporting" or "tail coverage" for a minimum of five (5) full years from the date of the final Contract payment.
- 2) Any professional liability insurance policy shall have a limit not less than **one million dollars (\$1,000,000)** per claim and **two million dollars (\$2,000,000)** in the aggregate; and
- 3) If the Contract involves the provision of services by medical professionals, a policy limit not less than **three million (\$3,000,000)** per claim and **three million dollars (\$3,000,000)** in the aggregate for medical malpractice insurance.

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

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

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

#### **E. SPECIAL TERMS AND CONDITIONS:**

- E.1. Conflicting Terms and Conditions. Should any of these special terms and conditions conflict with any other terms and conditions of this Contract, the special terms and conditions shall be subordinate to the Contract's other terms and conditions.
- E.2. Software License Warranty. Contractor grants a license to the State to use all software provided under this Contract in the course of the State's business and purposes.
- E.3. Software Support and Maintenance Warranty. Contractor shall provide to the State all software upgrades, modifications, bug fixes, or other improvements in its software that it makes generally available to its customers.
- E. 4. Family Educational Rights and Privacy Act & Tennessee Data Accessibility, Transparency and Accountability Act. The Contractor shall comply with the Family Educational Rights and Privacy Act of 1974 (20 U.S.C. 1232(g)) and its accompanying regulations (34 C.F.R. § 99) ("FERPA"). The Contractor warrants that the Contractor is familiar with FERPA requirements and that it will comply with these requirements in the performance of its duties under this Contract. The Contractor agrees to cooperate with the State, as required by FERPA, in the performance of its duties under this Contract. The Contractor agrees to maintain the confidentiality of all education records and student information. The Contractor shall only use such records and information for the exclusive purpose of performing its duties under this Contract. The obligations set forth in this Section shall survive the termination of this Contract.

The Contractor shall also comply with Tenn. Code Ann. § 49-1-701, *et seq.*, known as the "Data Accessibility, Transparency and Accountability Act," and any accompanying administrative rules or regulations (collectively "DATAA"). The Contractor agrees to maintain the confidentiality of all records containing student and de-identified data, as this term is defined in DATAA, in any databases, to which the State has granted the Contractor access, and to only use such data for the exclusive purpose of performing its duties under this Contract.

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

- E.5. Intellectual Property Indemnity. The Contractor agrees to indemnify and hold harmless the State of Tennessee as well as its officers, agents, and employees from and against any and all claims or suits which may be brought against the State concerning or arising out of any claim of an alleged patent, copyright, trade secret or other intellectual property infringement. In any such claim or action brought against the State, the Contractor shall satisfy and indemnify the State for

the amount of any settlement or final judgment, and the Contractor shall be responsible for all legal or other fees or expenses incurred by the State arising from any such claim. The State shall give the Contractor notice of any such claim or suit, however, the failure of the State to give such notice shall only relieve Contractor of its obligations under this Section to the extent Contractor can demonstrate actual prejudice arising from the State's failure to give notice. This Section shall not grant the Contractor, through its attorneys, the right to represent the State of Tennessee in any legal matter, as provided in Tenn. Code Ann. § 8-6-106.

- E.6 Personally Identifiable Information. While performing its obligations under this Contract, Contractor may have access to Personally Identifiable Information held by the State ("PII"). For the purposes of this Contract, "PII" includes "Nonpublic Personal Information" as that term is defined in Title V of the Gramm-Leach-Bliley Act of 1999 or any successor federal statute, and the rules and regulations thereunder, all as may be amended or supplemented from time to time ("GLBA") and personally identifiable information and other data protected under any other applicable laws, rule or regulation of any jurisdiction relating to disclosure or use of personal information ("Privacy Laws"). Contractor agrees it shall not do or omit to do anything which would cause the State to be in breach of any Privacy Laws. Contractor shall, and shall cause its employees, agents and representatives to: (i) keep PII confidential and may use and disclose PII only as necessary to carry out those specific aspects of the purpose for which the PII was disclosed to Contractor and in accordance with this Contract, GLBA and Privacy Laws; and (ii) implement and maintain appropriate technical and organizational measures regarding information security to: (A) ensure the security and confidentiality of PII; (B) protect against any threats or hazards to the security or integrity of PII; and (C) prevent unauthorized access to or use of PII. Contractor shall immediately notify State: (1) of any disclosure or use of any PII by Contractor or any of its employees, agents and representatives in breach of this Contract; and (2) of any disclosure of any PII to Contractor or its employees, agents and representatives where the purpose of such disclosure is not known to Contractor or its employees, agents and representatives. The State reserves the right to review Contractor's policies and procedures used to maintain the security and confidentiality of PII and Contractor shall, and cause its employees, agents and representatives to, comply with all reasonable requests or directions from the State to enable the State to verify or ensure that Contractor is in full compliance with its obligations under this Contract in relation to PII. Upon termination or expiration of the Contract or at the State's direction at any time in its sole discretion, whichever is earlier, Contractor shall immediately return to the State any and all PII which it has received under this Contract and shall destroy all records of such PII.

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

- E.7. Federal Funding Accountability and Transparency Act (FFATA). This Contract requires the Contractor to provide supplies or services that are funded in whole or in part by federal funds that are subject to FFATA. The Contractor is responsible for ensuring that all applicable requirements, including but not limited to those set forth herein, of FFATA are met and that the Contractor provides information to the State as required.

The Contractor shall comply with the following:

- a. Reporting of Total Compensation of the Contractor's Executives.

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

As defined in 2 C.F.R. § 170.315, "Executive" means officers, managing partners, or any other employees in management positions.

- (2) Total compensation means the cash and noncash dollar value earned by the executive during the Contractor's preceding fiscal year and includes the following (for more information see 17 C.F.R. § 229.402(c)(2)):
- i. Salary and bonus.
  - ii. Awards of stock, stock options, and stock appreciation rights. Use the dollar amount recognized for financial statement reporting purposes with respect to the fiscal year in accordance with the Statement of Financial Accounting Standards No. 123 (Revised 2004) (FAS 123R), Shared Based Payments.
  - iii. Earnings for services under non-equity incentive plans. This does not include group life, health, hospitalization or medical reimbursement plans that do not discriminate in favor of executives, and are available generally to all salaried employees.
  - iv. Change in pension value. This is the change in present value of defined benefit and actuarial pension plans.
  - v. Above-market earnings on deferred compensation which is not tax qualified.
  - vi. Other compensation, if the aggregate value of all such other compensation (e.g. severance, termination payments, value of life insurance paid on behalf of the employee, perquisites or property) for the executive exceeds \$10,000.
- b. The Contractor must report executive total compensation described above to the State by the end of the month during which this Contract is awarded.
  - c. If this Contract is amended to extend the Term, the Contractor must submit an executive total compensation report to the State by the end of the month in which the term extension becomes effective.
  - d. The Contractor will obtain a Data Universal Numbering System (DUNS) number and maintain its DUNS number for the term of this Contract. More information about obtaining a DUNS Number can be found at: <http://fedgov.dnb.com/webform/>

The Contractor's failure to comply with the above requirements is a material breach of this Contract for which the State may terminate this Contract for cause. The State will not be obligated to pay any

outstanding invoice received from the Contractor unless and until the Contractor is in full compliance with the above requirements.

#### E.8. Contractor Hosted Services Confidential Data, Audit, and Other Requirements

a. "Confidential State Data" is defined as data deemed confidential by State or Federal statute or regulation. The Contractor shall protect Confidential State Data as follows:

- (1) The Contractor shall ensure that all Confidential State Data is housed in the continental United States, inclusive of backup data.
- (2) The Contractor shall encrypt Confidential State Data at rest and in transit using the current version of Federal Information Processing Standard ("FIPS") 140-2 validated encryption technologies.
- (3) The Contractor and the Contractor's processing environment containing Confidential State Data shall either (1) be in accordance with at least one of the following security standards: (i) International Standards Organization ("ISO") 27001; (ii) Federal Risk and Authorization Management Program ("FedRAMP"); or (2) be subject to an annual engagement by a CPA firm in accordance with the standards of the American Institute of Certified Public Accountants ("AICPA") for a System and Organization Controls for service organizations ("SOC") Type II audit. The State shall approve the SOC audit control objectives. The Contractor shall provide proof of current ISO certification or FedRAMP authorization for the Contractor and Subcontractor(s), or provide the State with the Contractor's and Subcontractor's annual SOC Type II audit report within 30 days from when the CPA firm provides the audit report to the Contractor or Subcontractor. The Contractor shall submit corrective action plans to the State for any issues included in the audit report within 30 days after the CPA firm provides the audit report to the Contractor or Subcontractor.

If the scope of the most recent SOC audit report does not include all of the current State fiscal year, upon request from the State, the Contractor must provide to the State a letter from the Contractor or Subcontractor stating whether the Contractor or Subcontractor made any material changes to their control environment since the prior audit and, if so, whether the changes, in the opinion of the Contractor or Subcontractor, would negatively affect the auditor's opinion in the most recent audit report.

No additional funding shall be allocated for these certifications, authorizations, or audits as these are included in the Maximum Liability of this Contract.

- (4) The Contractor must annually perform Penetration Tests and Vulnerability Assessments against its Processing Environment. "Processing Environment" shall mean the combination of software and hardware on which the Application runs. "Application" shall mean the computer code that supports and accomplishes the State's requirements as set forth in this Contract. "Penetration Tests" shall be in the form of attacks on the Contractor's computer system, with the purpose of discovering security weaknesses which have the potential to gain access to the Processing Environment's features and data. The "Vulnerability Assessment" shall be designed and executed to define, identify, and classify the security holes (vulnerabilities) in the Processing Environment. The Contractor shall allow the State, at its option, to perform Penetration Tests and Vulnerability Assessments on the Processing Environment.
- (5) Upon State request, the Contractor shall provide a copy of all Confidential State Data it holds. The Contractor shall provide such data on media and in a format determined by the State

- (6) Upon termination of this Contract and in consultation with the State, the Contractor shall destroy all Confidential State Data it holds (including any copies such as backups) in accordance with the current version of National Institute of Standards and Technology (“NIST”) Special Publication 800-88. The Contractor shall provide a written confirmation of destruction to the State within ten (10) business days after destruction.

b. Minimum Requirements

- (1) The Contractor and all data centers used by the Contractor to host State data, including those of all Subcontractors, must comply with the State’s Enterprise Information Security Policies as amended periodically. The State’s Enterprise Information Security Policies document is found at the following URL: <https://www.tn.gov/finance/strategic-technology-solutions/strategic-technology-solutions/sts-security-policies.html>.
- (2) The Contractor agrees to maintain the Application so that it will run on a current, manufacturer-supported Operating System. “Operating System” shall mean the software that supports a computer’s basic functions, such as scheduling tasks, executing applications, and controlling peripherals.
- (3) If the Application requires middleware or database software, Contractor shall maintain middleware and database software versions that are at all times fully compatible with current versions of the Operating System and Application to ensure that security vulnerabilities are not introduced.

c. Comptroller Audit Requirements

Upon reasonable notice and at any reasonable time, the Contractor and Subcontractor(s) agree to allow the State, the Comptroller of the Treasury, or their duly appointed representatives to perform information technology control audits of the Contractor and all Subcontractors used by the Contractor. Contractor will maintain and cause its Subcontractors to maintain a complete audit trail of all transactions and activities in connection with this Contract. Contractor will provide to the State, the Comptroller of the Treasury, or their duly appointed representatives access to Contractor and Subcontractor(s) personnel for the purpose of performing the information technology control audit.

The information technology control audit may include a review of general controls and application controls. General controls are the policies and procedures that apply to all or a large segment of the Contractor’s or Subcontractor’s information systems and applications and include controls over security management, access controls, configuration management, segregation of duties, and contingency planning. Application controls are directly related to the application and help ensure that transactions are complete, accurate, valid, confidential, and available. The audit shall include the Contractor’s and Subcontractor’s compliance with the State’s Enterprise Information Security Policies and all applicable requirements, laws, regulations or policies.

The audit may include interviews with technical and management personnel, physical inspection of controls, and review of paper or electronic documentation.

For any audit issues identified, the Contractor and Subcontractor(s) shall provide a corrective action plan to the State within 30 days from the Contractor or Subcontractor receiving the audit report.

Each party shall bear its own expenses incurred while conducting the information technology controls audit.

- d. **Business Continuity Requirements.** The Contractor shall maintain set(s) of documents, instructions, and procedures which enable the Contractor to respond to accidents, disasters, emergencies, or threats without any stoppage or hindrance in its key operations (“Business Continuity Requirements”). Business Continuity Requirements shall include:
- (1) “Disaster Recovery Capabilities” refer to the actions the Contractor takes to meet the Recovery Point and Recovery Time Objectives defined below. Disaster Recovery Capabilities shall meet the following objectives:
    - i. Recovery Point Objective (“RPO”). The RPO is defined as the maximum targeted period in which data might be lost from an IT service due to a major incident: **Twenty-four (24) hours**
    - ii. Recovery Time Objective (“RTO”). The RTO is defined as the targeted duration of time and a service level within which a business process must be restored after a disaster (or disruption) in order to avoid unacceptable consequences associated with a break in business continuity: **Forty-eight (48) hours**
  - (2) The Contractor shall perform at least one Disaster Recovery Test every three hundred sixty-five (365) days. A “Disaster Recovery Test” shall mean the process of verifying the success of the restoration procedures that are executed after a critical IT failure or disruption occurs. The Disaster Recovery Test shall use actual State Data Sets that mirror production data, and success shall be defined as the Contractor verifying that the Contractor can meet the State’s RPO and RTO requirements. A “Data Set” is defined as a collection of related sets of information that is composed of separate elements but can be manipulated as a unit by a computer. The Contractor shall provide written confirmation to the State after each Disaster Recovery Test that its Disaster Recovery Capabilities meet the RPO and RTO requirements.

**IN WITNESS WHEREOF,**

**EVALUATION, MANAGEMENT, AND TRAINING ASSOCIATES, INC.**

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**CONTRACTOR SIGNATURE**

**DATE**

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

**TENNESSEE DEPARTMENT OF EDUCATION:**

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**DR. PENNY SCHWINN, COMMISSIONER**

**DATE**

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

<b>SUBJECT CONTRACT NUMBER:</b>	
<b>CONTRACTOR LEGAL ENTITY NAME:</b>	Evaluation, Management, and Training Associates, Inc.,
<b>EDISON VENDOR IDENTIFICATION NUMBER:</b>	0000070891

**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**