



**TENNESSEE TECHNOLOGICAL UNIVERSITY
REQUEST FOR QUOTATION**

Department: Telecommunications
Requisition No.: Voice/Data Ser / Farm&Pav

Tennessee Technological University
Purchasing Office
P. O. Box 5041, 220 W. 10th Street
Cookeville, TN 38505-0001
www.tntech.edu/purchasing/
Fax: (931) 372-3727

Date: 9/21/09
Contact: Judy M. Hull
Phone: (931) 372-3452
Email: jmhull@tntech.edu

Bids must be received in the Purchasing Office by 3:00 p.m. on 10/12/09.

Bid subject to the enclosed Standard Purchasing Terms and Conditions and/or Prohibited Provisions.

Unless otherwise requested, quote on each item separately. Unit prices shall be shown. If unable to furnish items as specified, submit sample and/or complete descriptive specifications of substitute offered. Failure to do so may result in rejection of bid. University is exempt from state, federal, and local taxes; do not include taxes in quotation. Quote F.O.B., Cookeville, TN unless otherwise noted in bid. Minimum payment terms are Net 30 days. Prepayment is not allowed. Quotation must be typewritten or in ink and signed by an authorized official. Signature certifies agreement to the terms and conditions noted above. Bidders may be present at bid opening and/or may contact the Purchasing Office for bid results, which are available upon request after recommendation of award. Faxed bids totaling less than \$25,000 are acceptable, if immediately confirmed in writing on University forms.

THIS IS NOT AN ORDER

ITEM NO.	Qty	UNIT	DESCRIPTION	UNIT PRICE	TOTAL
			<p align="center">CONTRACT</p> <p>Please bid to provide voice and data services at three off-site locations to Tennessee Technological University for an initial contract term of two (2) years, with the option to renew for three (3) years with mutual consent of the University and the Contractor.</p> <p>The three locations include</p> <ul style="list-style-type: none"> • Hyder-Burks Ag Pavilion, • Dairy Barn Office, and • Greenhouse. <p>The University presently phone and/or data service at each of these locations, and a list of the locations, types and numbers of lines, current phone numbers and the current provider for each is attached. (See Attachment A.)</p> <p>All billing and service issues and correspondence will be coordinated through the University's Telecommunications Office throughout the term of the contract.</p> <p>All bidders are to quote net prices after any volume or promotional discounts and to list any additional fees that may not be included in this RFP.</p> <p>The University's Telecommunications and ITS departments have already made wiring provisions to enable the voice and data services within the</p>		



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			<p>building at each of the locations described in Attachment A. Any wiring changes that need to be made in order to deliver higher data speeds or telephone services will be made by the successful bidder. The successful bidder will be required to terminate the voice and data services to the designated locations (demark points) inside each of the buildings where service is required.</p> <p>Please note that all existing telephone numbers as listed in this RFQ must be ported to provide uninterrupted service at these locations. In addition, E911 services are required for all telephone lines.</p> <p>Attachment A contains the list of goods/services for which the University requests pricing and may include in any contract which results from this process. The University reserves the right to choose from the quoted services, features and hardware in a manner to establish the best service package for each location, at its sole discretion.</p> <p>Bids will be evaluated best on the University's determination of the best service package for each location, based on the offerings provided in the RFQ responses.</p> <p>The University reserves the right to contract with more than one vendor for the goods/services contained herein.</p> <p>Note: The attached Standard Terms and Conditions and Prohibited Provisions shall be considered an integral part of this Request for Quotation and any Purchase Order resulting from this process. The University, as a state entity, is strictly governed with respect to contractual issues. The Prohibited Provisions (see attached) provide information regarding what is considered impermissible contractual clauses. Bidder agrees that any contract provided with its bid response may be revised/amended in a manner to bring it into conformity with Tennessee law. The University may reject any bid at any point in this process in which a bidder seeks to bind University to terms contrary to those allowable (in accordance with the documentation provided herein). Submittal of a response to this RFQ signifies agreement to this provision, which cannot be waived.</p> <p>Note: Prices quoted are to be firm for the initial 2-year contract period. At the time of renewal, Contractor may request price increase to the extent such increase has been experienced by Contractor and written substantiation of increase can be provided. University may accept requested price increase or choose to rebid, at its sole discretion.</p> <p>*****</p> <p>GENERAL CONTRACT PROVISIONS:</p> <ul style="list-style-type: none"> • <u>Conflict of Interest.</u> The Contractor warrants that no part of the total contract amount provided herein shall be paid directly or indirectly to any officer, agent, employee, sub-contractor or 		



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			<p>consultant in connection with any work contemplated or performed relative to this purchase order. If the Contractor is an individual, the Contractor warrants that within the past six (6) months he/she has not been and during the term of this purchase order will not become an employee of the State of Tennessee.</p> <ul style="list-style-type: none"> • <u>Non-Discrimination.</u> The parties agree to comply with Titles VI and VII of the Civil Rights Act of 1964, Title IX of the Education Amendments of 1972, Section 504 of the Rehabilitation Act of 1973, Executive Order 11,246, American Disabilities Act of 1990 and the related regulations to each. Each party assures that it will not discriminate against any individual including, but not limited to, employees or applicants for employment and/or students because of race, religion, creed, color, sex, age, disability, veteran status or national origin. • The parties also agree to take affirmative action to ensure that applicants are employed and that employees are treated during their employment without regard to their race, religion, creed, color, sex, age, disability, veteran status or national origin. Such demotion or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection available to employees and applicants for employment. • <u>Liability.</u> The Contractor, being an independent contractor and not an employee of the University, agrees to hold harmless the University from any and all liability not specifically provided for in this contract. • <u>Insurance.</u> The Contractor, being an independent contractor and not an employee of the University, agrees to carry adequate public liability and other appropriate forms of insurance, to pay all taxes incurred in performance of this purchase order, and otherwise protect and hold the University harmless from any and all liability arising as a result of this purchase order which does not result from the University's own negligence. • <u>Early Termination.</u> This purchase order may be terminated by either party by giving written notice to the other, at least thirty (30) days before the effective date of termination. In that event, the Contractor shall be entitled to receive just and equitable compensation for any satisfactory authorized work completed as of the termination date. • <u>Termination Due to Lack of Funds.</u> The University reserves the right to cancel this purchase order at June 30 of any year covered by this purchase order including any renewals thereof, if sufficient funding is not available from state and/or federal funds. • <u>Termination for Cause.</u> If the Contractor fails to fulfill in a timely 		



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			<p>and proper manner its obligations under this purchase order, or if the Contractor shall violate any of the terms of this purchase order, the University shall have the right to immediately terminate this purchase order and withhold payments in excess of fair compensation for work completed.</p> <ul style="list-style-type: none"> • Notwithstanding the above, the Contractor shall not be relieved of liability to the University for damages sustained by virtue of any breach of this purchase order by the Contractor. • <u>Amendment.</u> This purchase order may only be modified by written amendment executed by all parties hereto. • <u>Audit.</u> The Contractor shall maintain documentation for all charges against the University under this purchase order. The books, records and documents of the Contractor, insofar as they relate to work performed or money received under this purchase order, shall be maintained for a period of three (3) full years from the date of the final payment, and shall be subject to audit, at any reasonable time and upon notice, by the University or the Comptroller of the Treasury, or their duly appointed representatives. • <u>Assignment.</u> The Contractor shall not assign this purchase order or enter into sub-contracts for any of the work described herein without obtaining the prior written approval of the University or Tennessee Board of Regents, as appropriate. Approval shall not be given if the proposed sub-contractor was or is currently ineligible to bid on the purchase order. • <u>Extension to Other Entities.</u> The terms, conditions and pricing of this purchase order are extended to other institution(s) within the Tennessee Board of Regents and University of Tennessee systems. Does Bidder agree? ____ yes ____ no • <u>Governing Law.</u> This purchase order shall be construed in accordance with the laws and Constitution of the State of Tennessee. • <u>Terms and Conditions.</u> The terms and conditions of this purchase order and any duly authorized change orders shall be the sole terms and conditions that apply to this purchase. Any subsequent terms and conditions set forth by the vendor on invoices or in any other manner, shall not apply unless expressly agreed to in writing by the University. • <u>Voluntary Buyout Program.</u> The Contractor acknowledges and understands that, for a period of two (2) years beginning August 16, 2008, restrictions are imposed on former state employees 		



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			<p>who received a State of Tennessee Voluntary Buyout Program (VBP) severance payment with regard to contracts with state agencies that participated in the VBP.</p> <p>a. The State will not contract with either a former state employee who received a VBP severance payment or an entity in which a former state employee who received a VBP severance payment or the spouse of such an individual holds a controlling financial interest.</p> <p>b. The State may contract with an entity with which a former state employee who received a VBP severance payment is an employee or an independent contractor. Notwithstanding the foregoing, the Contractor understands and agrees that there may be unique business circumstances under which a return to work by a former state employee who received a VBP severance payment as an employee or an independent contractor of a State contractor would not be appropriate, and in such cases the State may refuse Contractor personnel. Inasmuch, it shall be the responsibility of the State to review Contractor personnel to identify any such issues.</p> <p>c. With reference to either subsection a. or b. above, a contractor may submit a written request for a waiver of the VBP restrictions regarding a former state employee and a contract with a state agency that participated in the VBP. Any such request must be submitted to the State in the form of the VBP Contracting Restriction Waiver Request format available from the state and the Internet at www.state.tn.us/finance/rds/ocr/waiver.html. The determination on such a request shall be at the sole discretion of the head of the state agency that is a Party to this Contract, the Commissioner of Finance and Administration, and the Commissioner of Human Resources.</p> <p>*****</p> <p>NOTE: The Purchasing Office has implemented a new vendor database. All Contractors are required to register with the Purchasing Office in order to continue doing business with the University.</p> <p>If you have already done so please enter your vendor number in the slot below; otherwise go online at the link listed to register, and enter the number you are given when the application process is complete.</p> <p>TTU Vendor Number: _____</p> <p>http://www.tntech.edu/purchasing/vendorreg/vendorap.asp</p> <p>*****</p>		



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			<p align="center">ATTESTATION RE PERSONNEL USED IN CONTRACT PERFORMANCE</p> <table border="1" style="width: 100%;"> <tr> <td style="width: 50%;">CONTRACTOR LEGAL ENTITY NAME:</td> <td></td> </tr> <tr> <td>FEDERAL EMPLOYER IDENTIFICATION NUMBER: (or Social Security Number)</td> <td></td> </tr> </table> <p>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. If the Contractor is discovered to have breached this attestation, the Contractor shall be prohibited from supplying goods/services to any TBR institution/state for a period of one (1) year from the date of discovery of the breach. (Rules of Finance and Administration, 0620.)</p> <p>Signature & Date:</p> <hr/> <p><small>NOTICE: This attestation MUST be signed by an individual empowered to contractually bind the contractor. If said individual is not the chief executive or president, this document shall attach evidence showing the individual's authority to contractually bind the Contractor.</small></p>	CONTRACTOR LEGAL ENTITY NAME:		FEDERAL EMPLOYER IDENTIFICATION NUMBER: (or Social Security Number)			
CONTRACTOR LEGAL ENTITY NAME:									
FEDERAL EMPLOYER IDENTIFICATION NUMBER: (or Social Security Number)									

BIDDER IS TO COMPLETE INFORMATION AND SIGN BID BELOW.

_____ Cash / Time discounts, if any _____
 (Firm Name)

_____ No. of days to deliver ARO _____
 (Address)

_____ Phone / Fax / E-mail _____
 (City, State, Zip)

 (Authorized Signature of Bidder)

 (Date)

NOTE: UNSIGNED BIDS WILL BE REJECTED WITHOUT CONSIDERATION.

Tennessee Technological University is an EEO/AA/Title IX/Section 504/ADA employer

RFQ - STANDARD TERMS & CONDITIONS

1. PREPARATION AND SUBMISSION OF BID.

- a. Failure to examine any drawings, specifications, or instructions will be at the Bidder's risk.
- b. **BID SUBMITTAL / SIGNATURE:** Bid should give the full name and business address of the Bidder. If the Bidder is a corporation, the name shall be stated as it is in the corporate charter. Bids must be signed in ink by the Bidder's authorized agent. Unsigned bids will be rejected. Bids are to be sealed and the outside of the envelope is to reference the bid number. The person signing the bid must show his title, and if requested by the University, must furnish satisfactory proof of his or her authority to bind his or her company in contract. Bidder understands that by submitting a bid with an authorized signature, it shall constitute an offer to the University. Bids must be typewritten or in ink; otherwise they may not be considered. Purchase orders will be issued to the firm name appearing on the bid.
- c. Bids are to be received in the location designated on the bid no later than the specified date and time. Late bids will NOT be opened or considered.
- d. No erasures are permitted. Errors may be crossed out and corrections printed in ink or typewritten adjacent to error and must be initialed in ink by person signing bid.
- e. Discounts other than "Time" or "Cash" offered should be deducted from the unit price. Discounts of less than 20 days will not be considered in evaluation of bid.
- f. **Specifications:** Reference to available specifications shall be sufficient to make the terms of the specifications binding on the Bidder. The use of the name of a manufacturer, or any special brand or make in describing an item does not restrict the Bidder to that manufacturer or specific article, unless specifically stated. Comparable products of other manufacturers will be considered if proof of compatibility is contained in the bid. Bidders are required to notify the University's Chief Procurement Officer whenever specifications procedures are not perceived to be fair and open. All suggestions or objections shall be made in writing and received by the Chief Procurement Officer at least three (3) working days prior to the bid opening. The articles on which the bids are submitted must be equal or superior to that specified. **Informative and Descriptive Literature:** The Bidder must show brand or trade names of the articles bid, when applicable. It shall be the responsibility of the vendor, including vendors whose product is referenced, to furnish with the bid such specifications, catalog pages, brochures or other data as will provide an adequate basis for determining the quality and functional capabilities of the product offered. Failure to provide this data may be considered valid justification for rejection of bid.
- g. **Samples:** Samples of items when called for, must be furnished free of expense, and if not destroyed will, upon Bidder's request within ten (10) days of bid opening, be returned at the Bidder's expense. Each sample must be labeled with the Bidder's name, manufacturer's brand name and number, bid number and item reference.
- h. **Time of Performance:** The number of calendar days in which delivery is to be made after receipt of order shall be stated in the bid and may be a factor in making an award, price notwithstanding. If no delivery time is stated in the bid, Bidder agrees that delivery is to be made within two weeks (10 business days) of order.
- i. Transportation and delivery charges should be included in the price and be fully prepaid by the vendor to the destination specified in the bid. Bid prices shall include delivery of all items F.O.B. destination.
- j. New materials and supplies must be delivered unless otherwise specifically stated in the bid.
- k. Alternate/multiple bids will not be considered unless specifically called for in the bid.
- l. **Bond requirements.** The University reserves the right to require that the selected vendor post a performance and/or payment bond in such amount as deemed reasonable by the University. Any bond requirement should be included in the bid, itemized separately.
- m. Only bids submitted on bid forms furnished by the University will be considered, except that the University reserves the right to consider telephone, faxed or electronically submitted bids for purchases totaling less than \$25,000 if received by the deadline and confirmed in writing within five (5) days on University forms.
- n. By signing this bid where indicated, the Bidder agrees to strictly abide by all state and federal statutes and regulations. The Bidder further certifies that this bid is made without collusion or fraud.
- o. **FAILURE TO BID / ERROR IN BID.** Failure to bid without advising the University that future invitations for bids are desirable may result in removal from University's bidders' list covering this category of items. In case of error in the extension of prices in the bid, the unit price will govern. Late bids will NOT be opened or considered. Bidders are cautioned to verify their bids before submission, as amendments received after the bid deadline will not be considered. No bid shall be altered, amended or withdrawn after opening. After bid opening, a Bidder may withdraw a bid only when there is obvious clerical error such as a misplaced decimal point, or when enforcement of the bid would impose unconscionable hardship due to an error in the bid resulting in a quotation substantially below the other bids received. Bid withdrawals will be considered only upon written request of the Bidder.

2. INSPECTION. All bids will be publicly opened and are subject to public inspection after the award. Bidders may be present at bid opening.

3. ACCEPTANCE AND AWARD. The University reserves the right to reject any and all bids and to waive any informality in bids and, unless otherwise specified by the Bidder to accept any item in the bid. Action to reject all bids shall be taken for unreasonably high prices, errors in the bid documents, cessation of need, unavailability of funds, or any other reason approved by the University / Tennessee Board of Regents, as appropriate.

- a. Contracts and purchases will be made with the lowest, responsible, qualified Bidder. The quality of the articles to be supplied, their conformity with the specifications, their suitability to the requirements of the University, cash discount offered and the delivery terms will be taken into consideration.
- b. The University reserves the right to order up to 10% more or less than the quantity listed in the bid.
- c. If a Bidder fails to state a time within which a bid must be accepted, it is understood and agreed that the University shall have sixty (60) days to accept.
- d. A written purchase order mailed or otherwise furnished, to the successful Bidder within the time period specified in the bid results in a binding contract without further action by either party. The contract may not be assigned without written University consent.
- e. If the appropriate space is marked on the bid, other state institutions of higher education may purchase off the contract during the same period as the University.

4. DISCOUNT PERIOD. Time in connection with discount offered will be computed from the date of delivery at destination, or from the date correct invoices are received, whichever is later.

5. DEFAULT OF SELECTED VENDOR. In case of vendor default, the University may procure the articles or services from other sources and hold the defaulting vendor responsible for any resulting cost.

6. INSPECTION OF PURCHASES. Articles received which are not equivalent will not be accepted and will be picked up by the vendor or returned to vendor, shipping charges collect. University shall have a reasonable period in which to inspect and accept or reject materials without liability. If necessity requires University to use nonconforming materials, an appropriate reduction in payment may be made.

7. TAXES. University is tax exempt; do not include taxes in quotation. Vendors making improvements or additions to, or performing repair work on real property for University are liable for any applicable sales or use tax on tangible personal property used in connection with the contract or furnished to vendors by the state for use under the contract.

8. NONDISCRIMINATION. The University and Bidder agree to comply with Titles VI and VII of the Civil Rights Act of 1964, Title IX of the Education Amendments of 1972, Section 504 of the Rehabilitation Act of 1973, Executive Order 11,246, the Americans with Disabilities Act of 1990 and the related regulations to each. Each party assures that it will not discriminate against any individual including, but not limited to employees or applicants for employment and/or students, because of race, religion, creed, color, sex, age, disability, veteran status or national origin.

9. PROHIBITIONS / NO VENDOR CONTRACT FORM / TENNESSEE LAW / AUDIT. Acceptance of gifts from vendors is prohibited. TCA §12-3-106. Bidding by state employees is prohibited. TCA §12-4-103. The Bidder warrants that no part of the total contract amount shall be paid directly or indirectly to any officer or employee of the State of Tennessee. The contract documents for purchase under this bid request shall consist of the successful Bidder's bid and the University's purchase order. **Bidders may not require any other written contract terms or conditions, nor may any other terms and conditions be imposed by means of subsequent documents, such as invoices, warranty agreements, license agreements, etc. Should the Bidder request exceptions to terms and conditions and/or those proposed by the Bidder vary from the bid and TBR Policies and Guidelines, University may render the bid unresponsive and subject the bid to rejection. The contract shall be governed by Tennessee law.** For all awards other than for a firm, fixed price, vendor shall maintain books and records for a period of three (3) years from final payment, and these records shall be subject to audit by the State.

10. PURCHASING POLICIES / BID PROTEST. This bid request and any award made hereunder are subject to the policies and guidelines of the Tennessee Board of Regents (www.tbr.edu) and University (www.tntech.edu). Bid protest procedures are available at: http://www.tbr.edu/policies_guidelines/business_policies/4-02-10-00.htm Reference Section VII of this policy.

11. PROHIBITION ON HIRING ILLEGAL IMMIGRANTS. By responding to this bid, the Bidder is attesting that the Bidder will not knowingly utilize the services of illegal immigrants and will not knowingly utilize the services of any subcontractor that does so in delivery of the goods / services under this order. If the Bidder is discovered to have breached this attestation, the Bidder shall be prohibited from supplying goods / services to any TBR institution / State for a period of one (1) year from the date of discovery of the breach. Rules of Finance and Administration, 0620.

The following are “Prohibited Provisions” that must not be included in any Hardware/Software Licensing Agreements as they violate State of Tennessee Law. Please modify your standard terms and conditions accordingly.

Unacceptable Provisions

- a) Disclaimer of vendor’s liability for incidental, exemplary, or consequential damages;
- b) Disclaimer by vendor of express or implied warranties of merchantability and fitness for a particular purpose;
- c) Limitation on dollar amount of damages recoverable by state from vendor;
- d) Limitation on time permitted Institution for bringing legal action against vendor.
- e) Requirement of payment by Institution in advance of delivery or prior to acceptance of products and services;
- f) Requirement that Institution pay taxes of any kind;
- g) Passing of risk of loss or title to Institution before delivery and/or installation of products;
- h) Right of Vendor to enter Institution’s premises without notice to remove equipment or product upon alleged default by Institution;
- i) Assessment of penalties or liquidated damages against Institution;
- j) Award of Attorney’s fees to Vendor in the event of legal action against Institution;
- k) Governing Law other than Tennessee;
- l) Arbitration clause designating third party to settle legal disputes;
- m) Consent to jurisdiction in courts outside Tennessee;
- n) Indemnification or holding harmless of vendor by Institution;
- o) Payment of travel/per diem expenses in excess of maximum limitations set forth in Tennessee Board of Regents (TBR) policy.

Essential Contents of the Agreement

The following provisions should be considered as essential terms and conditions of your proposal.

- A. Non-discrimination. The parties agree to comply with Title VI and VII of the Civil Rights Act of 1964, Title IX of the Education Amendments of 1972, Section 504 of the Rehabilitation Act of 1973, Executive Order 11,246, American Disabilities Act of 1990 and the related regulations to each. Each party assures that it will not discriminate against any individual including, but not limited to, employees or applicants for employment and/or students, because of race, religion, creed, color, sex, age, disability, veteran status or national origin.

The parties also agree to take affirmative action to ensure that applicants are employed and that employees are treated during the employment without regard to their race, religion, creed, color, sex, disability, veteran status or national origin. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection available to employees and applicants for employment.

- B. Indemnification. The State of Tennessee, its officers, agents, and employees shall be held harmless from liability from any claims, damages and actions of any nature arising from the use of any materials furnished by the vendor, provided that such liability is not attributable to negligence on the part of the using agency or failure of the suing agency to use the materials in the manner outlined by the vendor in descriptive literature or specifications submitted with the vendor’s bid.

- C. Copyright and Patent Liability.

- 1) The vendor shall, at his own expense, be entitled to and shall have the duty to defend any suit which may be brought against the State of Tennessee to the extent that it is based on a claim that the products or services furnished infringe a United States copyright or patent. The vendor shall further indemnify the State against any award of damages and costs made against the State by final judgment of a court of last resort in any such suit. The Licensee or State Board of Regents shall provide vendor immediate notice in writing of the Institution of such claim and full right and opportunity to conduct the defense

thereof, together with all available information and reasonable cooperation, assistance and authority to enable vendor to do so. No cost or expenses shall be incurred for the account of the vendor without written consent. The Attorney General for the State of Tennessee reserves the right to participate in the defense of any such action. Vendor shall not be liable for any award of judgment against the Licensee or State of Tennessee reached by compromise or settlement unless the vendor accepts the compromise or settlement. Vendor shall have the right to enter into negotiations for and the right to effect settlement or compromise of any such action, but no such settlement or compromise shall be binding upon the State of Tennessee or using Institution unless approved by the State and the Licensee.

- 2) If, in the vendor's opinion, the products or services furnished under said contract are likely to, or do become, the subject of a claim of infringement of a United States copyright or patent, then without diminishing the vendor's obligation to satisfy the final award, the vendor may at its option and expense:
 - a) Procure for the using Institution, TBR, and/or the State of Tennessee the right to continue using the products and services.
 - b) Replace or modify the alleged infringing products or services with other equally suitable products or services that are satisfactory to the using Institution and TBR so that they become noninfringing.
 - c) Remove the products or discontinue the services and cancel any future charges pertaining thereto.

Provided however, that the vendor will not exercise option [2.c] until the vendor, using Institution and the TBR have determined that options [2.a] and [2.b] are impractical.

- 3) Vendor however, shall have no liability to the State or using Institution if any such copyright or patent infringement or claim thereof is based upon or arises out of:
 - a) The use of the products or services in combination with apparatus or devices not supplied or approved by the Vendor.
 - b) The use of the products or services in a manner for which the products or services were neither designed nor contemplated.
 - c) The claimed infringement of any copyright or patent in which the Licensee or State of Tennessee has any direct or indirect interest by license or otherwise.

D. Shipment. Shipment by F.O.B. destination terms is preferred; however, if vendor ships F.O.B. shipping point, the agreement should specify that freight is to be prepaid and that risk of loss will remain on seller until goods are physically delivered to the Institution.

E. Cancellation. Vendor may request cancellation of a purchase order or contract and the State may grant relief only if the vendor is prevented from performance by an act of war, order of legal authority, Act of God, or other unavoidable causes not attributed to the fault or negligence of the contractor.

F. Payment. Payment for any item delivered may be withheld by the Institution until all requirements of the contract have been complied with in full.

G. Default. In case of any default of the vendor, the Institution may procure the product or services from other sources and hold the Vendor responsible for any damages incurred including, but not limited to, excess cost or handling charges.

H. Audit Records. The Institution shall have the right to audit the books and records of any vendor of products or services for any contract other than a firm fixed-price contract. Such books or records shall be maintained by the contractor or subcontractor for a period of three (3) years from the date of the final payment under the contract.

I. Conflict of Interest. The Vendor warrants that no part of the total contract amount provided herein shall be paid directly or indirectly to any officer or employee of the State of Tennessee as wages, compensation, or gifts in exchange for acting as officer, agent, employee, subcontractor or consultant to the Vendor in connection with any work contemplated or performed relative to this contract.