


**PRO FORMA CONTRACT DRAFTED IN COMPLIANCE WITH CURRENT APPLICABLE MODEL**

 <h2 style="text-align: center;">CONTRACT</h2> <p style="text-align: center;">(fee-for-goods or services contract with an individual, business, non-profit, or governmental entity of another state)</p>					
<b>Begin Date</b>		<b>End Date</b>		<b>Agency Tracking #</b>	
3/12/21		3/11/22		33101- 2005933105FAS5	
<b>Edison Record ID</b>					69466
<b>Contractor Legal Entity Name</b>					<b>Edison Vendor ID</b>
TNTP Inc					130932
<b>Goods or Services Caption</b> (one line only)					
PreK-4 Foundational Reading Skills Educator Training					
<b>Contractor</b>			<b>CFDA #</b>		
<input checked="" type="checkbox"/> Contractor			84.425C		
<b>Funding —</b>					
<b>FY</b>	<b>State</b>	<b>Federal</b>	<b>Interdepartmental</b>	<b>Other</b>	<b>TOTAL Contract Amount</b>
21		4,032,000.00			4,032,000.00
22		4,032,000.00			4,032,000.00
<b>TOTAL:</b>		<b>8,064,000.00</b>			<b>8,064,000.00</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 type="checkbox"/> Woman Business Enterprise (WBE)					
<input type="checkbox"/> Tennessee Service Disabled Veteran Enterprise (SDVBE)					
<input type="checkbox"/> Disabled Owned Business (DSBE)					
<input type="checkbox"/> Tennessee Small Business Enterprise (SBE): \$10,000,000.00 averaged over a three (3) year period or employs no more than ninety-nine (99) employees.					
<input 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)					
Competitive Selection			Request for Proposals		
<input type="checkbox"/> Other			Describe the selection process used and submit a Special Contract Request		
<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)		

**CONTRACT**  
**BETWEEN THE STATE OF TENNESSEE,**  
**DEPARTMENT OF EDUCATION**  
**TNTP Inc**

This Contract, by and between the State of Tennessee, Department of Education ("State") and TNTP Inc ("Contractor"), is for the provision of PreK–4 Foundational Reading Skills Educator Training, 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 Non-Profit Corporation  
 Contractor Place of Incorporation or Organization: New York, NY  
 Contractor Edison Registration ID # 130932

**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. Course One. The first of the two-part training sequence on Foundational Reading Skills and TNFSCS implementation; addresses Foundational Reading Skills and the scientific research on how they develop; designed for Participants to complete asynchronously (i.e., at their own pace without real-time instructor interaction) using the State's learning management system, Open edX, over the course of one week.
  - b. Course Two. The second of the two-part training sequence on Foundational Reading Skills and TNFSCS implementation; uses the TNFSCS to train Participants in Scientifically-Based instructional methods for developing Foundational Reading Skills using a sounds-first approach focused on Oral Language; delivered to Participants synchronously (i.e., in real time with instructor interaction) in summer of 2021 as well as available in a Flexible Content form suited to varied delivery options.
  - c. Cueing ("Cueing"). An instructional method that encourages students to use guessing, rather than decoding, as a strategy for word recognition. Three types of cues are usually used: meaning, syntax, and visual.
  - d. Decoding ("Decoding"). The ability to apply knowledge of letter-sound relationships as well as letter patterns to correctly pronounce written words.
  - e. Flexible Content ("Flexible Content"). Instructional materials, including assessments of learning, that can be housed in the State's learning management system and can be used to structure trainings using a variety of delivery methods, including in-person synchronous, virtual synchronous, and virtual asynchronous formats.
  - f. Foundational Reading Skills ("Foundational Reading Skills"). The continuum of skills that research has demonstrated are required to systematically teach reading, including Phonological Awareness, Phonemic Awareness, fluency, Decoding, and vocabulary development.
  - g. PreK–4 Educator ("PreK-4 Educator"). Any general or special education teacher, library specialist, or school principal who instructs or supports students in grades pre-K through 4 in Tennessee.
  - h. Leveled Literacy ("Leveled Literacy"). The practice of "matching" students to texts based on their measured reading proficiency level, which can slow the learning of struggling readers by confining them to overly simple, below-grade-level texts.
  - i. MSV ("MSV"). Stands for meaning, syntax, and visual which are the three types of "cues" students are often encouraged, inappropriately, to use in place of systematic Decoding to read words. For example, faced with the sentence "John is fixing his bicycle," a student unfamiliar with the word "fixing" might use syntax to infer that the unknown word represents an action done to a bicycle, in addition to the orthographic-phonetic cue that the action begins with an "f," to guess the correct word ("What begins with an 'f' and can be done to a bicycle?") rather than Decoding it phoneme by phoneme.

- j. Oral Language (“Oral Language”). Spoken language, including spoken words and articulated sounds. Also referred to as vocal language.
- k. Participant (“Participant”). Any preK–4 Educator (up to 10,000 classroom teachers and up to 1,000 others) participating in Course One or Course Two.
- l. Performance Data (“Performance Data”). Demonstrations of Participant skills and knowledge (e.g., on a test or task)
- m. Performance Task (“Performance Task”). A demonstration of learning for purposes of assessment that requires learners to apply knowledge, understanding, and skill in authentic ways—i.e., in ways that approximate “real-world” tasks and situations they will encounter outside of the assessment context. A Performance Task assessing Participant learning in Course Two may involve recording a model lesson using the TNFSCS materials, for example.
- n. Phonemic Awareness (“Phonemic Awareness”). The specific ability to focus and manipulate individual sounds in spoken words.
- o. Phonological Awareness (“Phonological Awareness”). The ability to manipulate Oral Language including words, syllables, onsets and rimes.
- p. Scientifically-Based (“Scientifically-Based”). Practices or programs that have been evaluated using the scientific method with rigorous data analyses and that have been accepted through general or majority consensus by independent experts through objective and scientific peer review.
- q. Significant Reading Deficiency (“Significant Reading Deficiency”). Student literacy results that do not meet the minimum skill levels of reading competency, as defined by the State, in the areas of Phonemic Awareness, phonics, vocabulary development, reading fluency, oral reading skills, and reading comprehension for the student's grade level.
- r. Teacher Efficacy (“Teacher Efficacy”). Self-reported levels of confidence in ability to act effectively on new learning.
- s. Tennessee Foundational Skills Curriculum Supplement (“TNFSCS”). An open-source suite of instructional materials and aligned supports for teachers, designed to support the teaching of Tennessee’s foundational skills standards for English language arts in grades preK–2.

### A.3 Course Materials.

The Contractor shall provide all materials needed for Course One and Course Two training on Foundational Reading Skills.

- a. For Course One, the Contractor shall develop and deliver training materials to the State in a form compatible with the State’s learning management system, Open edX. Materials for Course One shall provide direct instruction on key scientific concepts and findings related to reading development. Concepts shall include Phonemic Awareness, Phonological Awareness, phonics, fluency, Decoding, and vocabulary. Course One materials shall include an end-of-course assessment of Participant learning, and they shall be designed for Participants to complete asynchronously (i.e., with Participants completing it at their own pace without real-time instructor interaction) over the course of one week.
- b. For Course Two, the Contractor shall develop and deliver training materials to be used in the Contractor’s in-person delivery of training in summer 2021, as well as electronic Flexible Content versions of materials that the State will use to train additional PreK–4 Educators in both virtual and in-person formats. Materials for Course Two shall be based on the TNFSCS and its sounds-first approach to foundational skills, and they shall include direct instruction on and practice with the instructional methods used in the TNFSCS. Course Two materials shall include trainer manuals, Participant resources, slide decks, and an end-of-course Performance Task assessing Participant learning. The Contractor shall deliver the Performance Task results to the State.
- c. All course materials shall be grounded in scientific research and adult learning theory, use multiple modes of learning, meet ADA compliance requirements, and provide clear connections to the cognitive science that grounds sounds-first approaches to developing

Foundational Reading Skills. No materials and Instructional Approaches shall incorporate MSV (Cueing), Leveled Literacy practices, or workshop approaches. Supports for adult mastery, including checks for understanding, mastery building, and conceptual reinforcement shall be evident in materials and course outlines.

- d. The Course 1 assessment should have approximately 25 questions and take less than one hour for participants to complete. The Course 2 performance task should take less than one hour for a team of participants to complete, including preparation, delivery, and any debrief or extension, within course time.

#### A.4. Classroom Kits.

- a. The Contractor shall provide take-home Classroom Materials Kits to all Participants who are classroom teachers (up to 10,000) at the completion of Course Two. Participants will be able to choose from two types of Kit:
- (1) Decodable Kit: Eight (8) classroom sets (25 copies each) of decodable readers aligned to the TNFSCS units for the teacher's selected grade level, printed in color; or
  - (2) Sounds-First Kit: A bound version of the Sounds-First Volume(s) for the teacher's selected grade level, plus other ancillary materials such as Code Charts (see grade 1 ancillary materials here as an example: [https://bestforall.tnedu.gov/resource/tnfscs-1st-grade-ancillary-materials?book=3289&binder\\_id=3313](https://bestforall.tnedu.gov/resource/tnfscs-1st-grade-ancillary-materials?book=3289&binder_id=3313))
- b. The Contractor shall be responsible for all assembling, sorting, shipping, and dissemination of Participant materials and the Classroom Kits to all Participants who are classroom teachers.

#### A.5. Course Delivery.

- a. The Contractor shall not be responsible for delivery of Course One to Participants. The Contractor shall provide delivery of Course Two for up to 11,000 Participants. Course Two shall focus on ensuring that all Participants are prepared to use all components of the TNFSCS in daily instruction. The course shall expose Participants to content relevant to the full scope and trajectory of Foundational Reading Skills development while supporting them to apply learning to their unique roles and responsibilities (e.g., grade 1 teacher, library specialist, principal).
- b. Course Two shall be a one-week course delivered at multiple sites and times over the course of summer 2021. Sites will span all eight CORE regions of the state (see map at <https://www.tn.gov/education/about-tdoe/centers-of-regional-excellence.html>); each site will serve up to 50 Participants at a time, and 12 week-long sessions will be held in each region between May 24 and August 13, 2021. The table below summarizes these plans.

#### c. **Summer Training Delivery Plan**

	<b>Sites Per Region</b>	<b>Capacity Per Region</b>	<b>Total Sites</b>	<b>Total Capacity</b>
Week of May 24	2-3	100-150	20	1,000
Week of May 31*	2-3	100-150	20	1,000
Week of June 7	2-3	100-150	20	1,000
Week of June 14	2-3	100-150	20	1,000
Week of June 21	2-3	100-150	20	1,000
Week of June 28	2-3	100-150	20	1,000
Week of July 5*	2-3	100-150	20	1,000
Week of July 12	2-3	100-150	20	1,000
Week of July 19	2-3	100-150	20	1,000
Week of July 26	2-3	100-150	20	1,000

Week of August 2	2-3	100-150	20	1,000
Week of August 9	2-3	100-150	20	1,000
<b>Summer Total</b>	<b>24-36</b>	<b>1200-1800</b>	<b>240**</b>	<b>12,000***</b>

\* On weeks with Monday holidays, courses will be four extended days or meet on Saturday.

\*\* Sites may be reused; 240 “deliveries” will occur. The State will manage site selection.

\*\*\* Total summer enrollment will be capped at 11,000. Enrollment may vary by week.

#### A.6. Logistics Management.

- a. Administrative Tasks – The Contractor shall perform administrative tasks including, but not limited to, printing and distribution of materials; pre-registration, on-site registration, and check-in; tracking of attendance and completion (for use by the State and Participants’ districts in order to provide a \$1000 stipend to each Participant), and other tasks as requested by the State. The State will recruit Participants, secure Course Two sites, and identify a point of contact for the Contractor to work with at each site. The Contractor shall provide the State with administrative support necessary for successful completion of these tasks, including timely communication with the State and coordination with other contractors as necessary and as authorized by the State.
- b. Contingency Plans – The Contractor shall be responsible for developing and implementing contingency plans for delivery of Course Two, which the State may invoke at its discretion (e.g., in the event of a local state of emergency due to a COVID-19 outbreak) and which the Contractor may invoke based on public health guidance (but not based solely on internal policy). Virtual delivery of training may be an acceptable contingency plan provided that it is synchronous (i.e., in real time with instructor interaction). Contingency plans are subject to State approval and shall be implemented at no additional cost to the State.

#### A.7. Project Management.

- a. Work Plan – Upon Contract execution, the State will provide feedback on the proposed plan submitted in response to RFP Attachment 6.2 Section C.11 .The Contractor shall prepare, within five (5) calendar days of receiving the State’s feedback, a revised Work Plan. The Work Plan shall incorporate the schedules for each activity required by this Contract. Specifically, the requirements for the Work Plan include the following:
  - i. The Work Plan shall outline by task and due date each activity to be performed. The Work Plan shall indicate areas of responsibility for the Contractor and the State. The Work Plan shall serve as a monitoring document to be used by the State to track and ensure timely completion of tasks as scheduled. The Contractor shall meet all deadlines outlined in the Work Plan unless otherwise approved by the State.  
The Work Plan shall include the following.
    - (1) A content development section, logistics section, and process management section.
    - (2) All process steps and timelines for material development, proofing, feedback rounds with the State, printing timeline, shipping and dissemination processes.
    - (3) All process steps and timeline for working with State-secured venues to plan logistics of trainings (e.g., parking directions for participants, rooms and entrances to be used).
    - (4) Planning meeting schedule, agenda development, and location.
    - (5) Any use of subcontractors.
    - (6) Business processes and steps for all project work tasks and deliverables, including initiation and completion dates, and task responsibilities needed to deliver training and materials on time.
  - ii. The Work Plan shall be delivered in a format as determined by the State. Both the State and the Contractor shall have access to and the ability to track all dates in the Work Plan. Any changes to the Work Plan require approval in writing by the State.

- iii. The Contractor shall establish secure websites for use in maintaining the Work Plan or other communications, including but not limited to, posting materials for review with the State for Contract management. The Work Plan and any related or supporting materials shall be considered delivered and final after written notification is given to the Contractor via email or other electronic methods by the State.
- iv. Management Meetings – The Contractor shall: Convene at least one (1) weekly management meeting between the Contractor and the State. These management meetings shall include a review of the key activities, deliverables, and dates and provide an opportunity to discuss task implementation and status. During the Course Two training window, management meetings shall occur at least one (1) time per day or as deemed necessary by the State. The meeting can be virtual or in person at the State's offices in Nashville, at the discretion of the State.
- v. Schedule of Goods, Services, or Deliverables – The State shall have the opportunity to review and approve all goods, services, or deliverables purchased under this Contract. The State reserves the right to determine specific details of goods, services, or deliverables under this Contract. Changes to any goods, services, or deliverables provided by the Contractor under this Contract shall only be made with State's written approval. The Contractor shall not disseminate any written information, materials, or deliverables associated with this Contract to the field, public, or any other third party without the State's prior written approval. All modifications or corrections of goods, services, or deliverables shall be at the Contractor's sole cost and expense.

**b. Work Plan Timeline – Deliverables shall be provided by the dates below, unless otherwise approved by the State. Any approved changes will be codified in the Work Plan.**

3 calendar days after Contract effective date	The State provides feedback on draft Work Plan and course outlines submitted as part of RFP Response (see RFP items C.1, C.2, C.7, C.8, & C.11)
5 days after State delivers feedback on course outlines submitted as part of RFP response	The Contractor delivers revised Work Plan to The State; The State provides the Contractor with a rubric detailing review criteria for course materials
5 days after State provides Contractor with rubric	The State delivers names and points of contact for all Course Two in-person sites to the Contractor; The Contractor delivers draft Course One materials and Flexible Content for Course Two to the State
3 days after Contractor delivers draft Course materials	The State delivers feedback on draft course materials to the Contractor
5 days after State delivers feedback on draft course materials	The Contractor delivers final Course One materials and Flexible Content for Course Two to the State
April 30, 2021	The Contractor delivers logistical plans for Course Two delivery, tailored to specific dates and sites and including distribution of course materials and classroom materials kits, to the State
May 24, 2021	In-person Course Two delivery begins
August 13, 2021	In-person Course Two delivery concludes

August 30, 2021	The Contractor submits all Participants' Course Two Performance Tasks scores to the State
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- c. Project Team – The Contractor shall provide the State with a project team to support the scope of work defined in this Contract, including the delivery of training, venue management, materials distribution onsite, and registration and attendance data reporting.
- i. The Contractor shall assign a single point of contact to manage all inquiries related to materials, training, and technical assistance required for this Contract. This point of contact shall have experience leading trainings on a similar scale as the described training in Section A.5, and shall have the authority to bind the Contractor.
  - ii. The Contractor team members assigned to this Contract must have, at a minimum, the necessary technical experience, knowledge, and operational experience in the following areas:
    - (1) Managing or coordinating the development and implementation of large- scale projects similar to the planned training;
    - (2) Communicating effectively orally and in writing;
    - (3) Implementing large-scale, multi-week, multi-session Foundational Reading Skills trainings; and
    - (4) Working knowledge of the TNFSCS.
  - iii. As requested by the State, the Contractor shall provide a personnel roster and resumes of key people who shall be assigned to perform duties or services under this Contract. The roster shall indicate the annual full-time equivalent (“FTE”) of each of the key people proposed for this Contract, by year. The State reserves the right to reject key personnel proposed for the project team for lack of technical qualifications for their proposed role in the project.
  - iv. The Contractor shall not remove, reassign, or reduce FTE responsibility for any key personnel without prior written notification to and approval by the State.
  - v. The Contractor shall provide qualified replacements in the event that key personnel become unavailable to provide services at the levels specified in the Contract due to resignation, illness, or other factors affecting availability. The Contractor shall provide the State with written notice immediately upon determination of the need for replacement personnel. The Contractor shall also provide the State with written notification and the resumes or vitae of all replacement personnel proposed for the project team. The State reserves the right to reject key replacement personnel proposed for the project team for lack of technical qualifications for their proposed role in the project.
- d. Continuity of Contracts – The Contractor shall
- i. Participate in joint meetings with other State contractors or other groups identified by the State as needed. Participation shall include preparation of support materials and other documentation.
  - ii. Cooperate fully with the State and any future contractor designated by the State, in the event that part or all of the services under this Contractor are transitioned to a new contractor or to the State. The Contractor shall provide a transition plan, including essential data, materials, or other documentation a future contractor would need to implement similar responsibilities to those required of the Contractor under this Contract.
  - iii. Work with any State-appointed contractor in the handling of any Participant attendance, course completion, and Performance Task scoring data to support any reporting or other activities as requested by the State.

A.8. Quality Control and Assurance.

The Contractor shall provide accurate, consistent, timely fulfillment of all requirements in this Contract. As part of the Work Plan described in Section A.7.a, the Contractor shall provide comprehensive and detailed plans for quality assurance specific to these trainings, including error correction and mitigation strategies in the case of defective, inconsistent or late delivery.

- a. Quality Control – The Contractor shall provide detailed, standardized, quality control procedures for review and approval by the State. Approved quality control procedures shall be included in the Work Plan for each course and associated materials. The Contractor shall provide quality control measures including but not limited to the following:
  - i. A written proposal for a comprehensive check that all content has been created and presented in print and digital versions and are rendered error-free in all versions. Subsequently, a written report documenting successful completion of the comprehensive check must be produced by the Contractor upon completion of Course Two delivery.
  - ii. A plan approved by the State for monitoring and maintaining the quality of printed materials, and their timely and accurate delivery.
- b. Error Correction – The Contractor is responsible for correcting any errors in goods, services, or deliverables at the Contractor’s expense, arising from activities that are the responsibility of the Contractor including but not limited to, print errors, late or incorrect delivery of print materials, late or inaccurate delivery of classroom implementation toolkits, or late, inaccurate, incomplete or inconsistent rosters or attendance data. Such corrections may involve activities that include but are not limited to the following:
  - i. Analyses to identify the root cause and extent of errors;
  - ii. Editing, revising, reproducing, or reprinting materials; and
  - iii. Reproducing corrected materials.
- c. The Contractor shall provide documentation to the State of the procedures and results of the Contractor’s Quality Assurance and error correction activities within one week of the error. The Contractor shall include a summary report after Course Two delivery is completed.

A.9.

All work products developed or produced by the Contractor under this Contract shall constitute “works made for hire” or have similar status under relevant intellectual property law. The State shall have full, final, and perpetual ownership rights to all work products or other content and materials customized by the Contractor for the State under this Contract. The Contractor shall ensure that the State has perpetual, royalty-free licensing rights to any off-the-shelf content and training materials to which the Contractor, or any third party, has preexisting intellectual property ownership rights. At no cost to the State, the Contractor shall obtain and provide any necessary intellectual property licenses or permissions to use materials provided or used under this Contract in perpetuity.

A.10. Score Card

- a. The State shall utilize a Score Card with Key Performance Indicators (“KPIs”) to measure the Contractor’s performance against expected outcomes. The Score Card and KPIs shall be utilized to evaluate the Contractor’s performance for the purpose of determining the percentage to be paid (payment rate) to the Contractor as set forth in Section C.3. of this Contract. The State shall give notice to the Contractor of the results of the Scorecard on or before the fifteenth (15th) day following the end of each calendar year during the term (e.g. if the calendar year ends June 30 the State shall give notices to the Contractor by July 15th, etc.) The parties agree to an annual true-up of the compensation due to the Contractor in Section C.3. of this Contract within thirty (30) days of the notices of Scorecard results, whereby the Contractor’s compensation shall be adjusted in accordance with the score card results.

**Draft Materials Course One**



<b>Metric/KPI</b>	<b>Payment Rate</b>	<b>Documentation Method</b>	<b>Scope Reference</b>
Materials that are submitted to State meet at least 85% of expected criteria (as defined by a rubric to be provided to Contractor by State within 14 days of Contract Effective Date as specified in A.7.b., Work Plan Timeline).	1.0	<ul style="list-style-type: none"> <li>• Approved Work Plan</li> <li>• Written feedback from State using provided criteria</li> </ul>	A.3. Course Materials
Materials that are submitted to State meet 60–84% of expected criteria (as defined by a rubric to be provided to Contractor by State within 14 days of Contract Effective Date as specified in A.7.b., Work Plan Timeline).	0.7		
Materials that are submitted to the State meet fewer than 60% of expected criteria (as defined by a rubric to be provided to Contractor by State within 14 days of Contract Effective Date as specified in A.7.b., Work Plan Timeline).	0.0		

#### Draft Materials Course Two

<b>Metric/KPI</b>	<b>Payment Rate</b>	<b>Documentation Method</b>	<b>Scope Reference</b>
Materials that are submitted to State meet at least 85% of expected criteria (as defined by a rubric to be provided to Contractor by State within 14 days of Contract Effective Date as specified in A.7.b., Work Plan Timeline).	1.0	<ul style="list-style-type: none"> <li>• Approved Work Plan</li> <li>• Written feedback from State using provided criteria</li> </ul>	A.3. Course Materials
Materials that are submitted to State meet 60–84% of expected criteria (as defined by a rubric to be provided to Contractor by State within 14 days of Contract Effective Date as specified in A.7.b., Work Plan Timeline).	0.7		
Materials that are submitted to State meet fewer than 60% of expected criteria (as defined by a rubric to be provided to Contractor by State within 14 days of Contract Effective Date as specified in A.7.b., Work Plan Timeline).	0.0		

#### Final Materials Course One

<b>Metric/KPI</b>	<b>Payment Rate</b>	<b>Documentation Method</b>	<b>Scope Reference</b>
Materials that are submitted to State meet 100% of expected criteria (as defined by a rubric to be provided to Contractor by State within 14 days of Contract Effective Date as specified in A.7.b., Work Plan Timeline).	1.0	<ul style="list-style-type: none"> <li>• Approved Work Plan</li> <li>• Written feedback from State using provided criteria</li> </ul>	A.3. Course Materials
Materials that are submitted to State meet 70–99% of expected criteria (as	0.7		

defined by a rubric to be provided to Contractor by State within 14 days of Contract Effective Date as specified in A.7.b., Work Plan Timeline).			
Materials that are submitted to State meet fewer than 70% of expected criteria (as defined by a rubric to be provided to Contractor by State within 14 days of Contract Effective Date as specified in A.7.b., Work Plan Timeline).	0.0		

### Final Materials Course Two

Metric/KPI	Payment Rate	Documentation Method	Scope Reference
Materials that are submitted to State meet 100% of expected criteria (as defined by a rubric to be provided to Contractor by State within 14 days of Contract Effective Date as specified in A.7.b., Work Plan Timeline).	1.0	<ul style="list-style-type: none"> <li>• Approved Work Plan</li> <li>• Written feedback from State using provided criteria</li> </ul>	A.3. Course Materials
Materials that are submitted to State meet 70–99% of expected criteria (as defined by a rubric to be provided to Contractor by State within 14 days of Contract Effective Date as specified in A.7.b., Work Plan Timeline).	0.7		
Materials that are submitted to State meet fewer than 70% of expected criteria (as defined by a rubric to be provided to Contractor by State within 14 days of Contract Effective Date as specified in A.7.b., Work Plan Timeline).	0.0		

### Classroom Materials Kits

Metric/KPI	Payment Rate	Documentation Method	Scope Reference
At least 98% of kits delivered to participants (i.e., an average of 49 in each 50-Participant cohort) by deadline are complete, undamaged, and correctly assembled.	1.0	<ul style="list-style-type: none"> <li>• Approved Work Plan;</li> <li>• Inventory and Quality Control of kits</li> </ul>	A.4. Classroom Kits A.6. Logistics A.7. Project Management A.8 Quality Control and Assurance
90–97% of kits delivered to participants by deadline (i.e., an average of 45–48 in each 50-Participant cohort) are complete, undamaged, and correctly assembled.	0.7		
Fewer than 90% (i.e., an average of fewer than 45 in each 50-Participant cohort) are complete, undamaged, and correctly assembled.	0.0		

### Participant Performance

Metric/KPI	Payment Rate	Documentation Method	Scope Reference
<ul style="list-style-type: none"> <li>• At least 80% of course completers (including both Course 1 and Course 2 completers) demonstrate proficiency on the end-of-course assessment.</li> </ul>	1.0	<ul style="list-style-type: none"> <li>• Assessment results obtained and delivered to State by Contractor</li> </ul>	A.3. Delivery of Performance Task results
<ul style="list-style-type: none"> <li>• At least 65% of course completers (including both Course 1 and Course 2 completers) demonstrate proficiency on the end-of-course assessment.</li> </ul>	0.7		
<ul style="list-style-type: none"> <li>• Fewer than 65% of course completers (including both Course 1 and Course 2 completers) demonstrate proficiency on the end-of-course assessment.</li> </ul>	0.0		

### Logistics

Issue/Metric	Payment Rate	Documentation Method	Scope Reference
<ul style="list-style-type: none"> <li>At least 85% of Course Two completers “strongly agree” or “agree” that course logistics—including communication, venue operations, and materials dissemination—were consistently smooth; AND</li> <li>At least 85% of tasks and deliverables delineated in the contract, Work Plan, and any other agreements (e.g., emails) are completed on required timelines and to required specifications.</li> </ul>	1.0	<ul style="list-style-type: none"> <li>End-of-course surveys administered by the State or its designee (survey instrument to be developed by State in collaboration with Contractor)</li> <li>Approved Work Plan</li> <li>Written communication between Contractor and State (e.g., email requests and responses)</li> </ul>	A.6. Logistics Management A.7 Project Management A.8 Quality Control and Assurance
<ul style="list-style-type: none"> <li>At least 85% of Course Two completers “strongly agree” or “agree” that course logistics—including communication, venue operations, and materials dissemination—were consistently smooth; OR</li> <li>At least 85% of tasks and deliverables delineated in the contract, Work Plan, and any other agreements (e.g., emails) are completed on required timelines and to required specifications.</li> </ul>	0.7		
<ul style="list-style-type: none"> <li>Fewer than 85% of course completers “strongly agree” or “agree” that course logistics—including communication, venue operations, and materials dissemination—were consistently smooth; AND</li> <li>Fewer than 85% of tasks and deliverables delineated in the contract, Work Plan, and any other agreements (e.g., emails) are completed on required timelines and to required specifications.</li> </ul>	0.0		

### Contractor responsiveness

Issue/Metric	Payment Rate	Documentation Method	Scope Reference
<ul style="list-style-type: none"> <li>Contractor responds to State communications (e.g., calls, emails) within 2 business days 100% of the time; AND</li> <li>Contractor incorporates State feedback and input into plans, activities, and deliverables on agreed-upon timelines at least 90% of the time.</li> </ul>	1.0	<ul style="list-style-type: none"> <li>Approved Work Plan</li> <li>Written communication between Contractor and State (e.g., email requests and responses)</li> </ul>	A.6. Logistics Management A.7 Project Management A.8 Quality Control and Assurance
<ul style="list-style-type: none"> <li>Contractor responds to State communications (e.g., calls, emails) within 2 business days less than 100% of the time; OR</li> <li>Contractor incorporates State feedback and input into plans, activities, and deliverables on agreed-upon timelines less than 90% of the time.</li> </ul>	0.7		
<ul style="list-style-type: none"> <li>Contractor responds to State communications (e.g., calls, emails)</li> </ul>	0.0		

<p>within 2 business days less than 100% of the time; AND</p> <ul style="list-style-type: none"> <li>• Contractor incorporates State feedback and input into plans, activities, and deliverables on agreed-upon timelines less than 90% of the time.</li> </ul>			
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- A.11. 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.12. 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 March 12, 2021 (“Effective Date”) and ending on March 11, 2022 (“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 two (2) 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.
- B.3. Term Extension. The State may extend the Term an additional period of time, not to exceed one hundred-eighty (180) days beyond the expiration date of this Contract, under the same terms and conditions, 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 eight million and sixty-four thousand dollars (\$8,064,000) ("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 (per compensable increment)</b>
<b>Draft Materials Course One</b> Section A.3; Subject to evaluation of Contractor's performance as set forth in Section A.10.	\$ 110,000/each
<b>Draft Materials Course Two</b> Section A.3; Subject to evaluation of Contractor's performance as set forth in Section A. 10.	\$ 150,000/each
<b>Final Materials Course One</b> Section A.3; Subject to evaluation of Contractor's performance as set forth in Section A. 10.	\$ 374,000/each
<b>Final Materials Course Two</b> Section A.3; Subject to evaluation of Contractor's performance as set forth in Section A. 10.	\$ 55,000/each
<b>Classroom Materials Kits</b> Section A.4; Subject to evaluation of Contractor's performance as set forth in Section A. 10.	\$ 2,875,000/each
<b>Course Two Delivery</b> Sections A.5, A.6	\$3,200,000/each
<b>Participant Performance</b> Section A.3.(b); Subject to evaluation of Contractor's performance as set forth in Section A. 10.	\$ 600,000/each
<b>Logistics</b> Section A.6., A.7., A.8; Subject to evaluation of Contractor's performance as set forth in Section A. 10.	\$ 625,000/upon completion
<b>Contractor Responsiveness</b> Section A.7.; Subject to evaluation of Contractor's performance as set forth in Section A. 10.	\$ 50,000/each
<b>Work Plan</b> Section A.7.	\$ 25,000/each

Note: See Contract Section A. 10. Score Card for how KPIs will be used to measure Contractor's performance against expected outcomes. The payment amounts for the goods and services in this table will be multiplied by the corresponding payment rate determined by the State via the Score Card evaluation. The State reserves the right to exercise any other rights available to it under this Contract or at law under this Section.

- 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:

Tennessee Department of Education  
 Office of Standards and Materials  
 710 James Robertson Parkway  
 Andrew Johnson Tower  
 11<sup>th</sup> Floor  
 Nashville, TN 37243  
 (615) 741-0720

- 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; Office of Standards and Materials
  - (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:

Lisa Coons  
Tennessee Department of Education  
Office of Standards and Materials  
11th Floor, Andrew Johnson Tower  
710 James Robertson Pkwy Nashville, TN 37243  
[Lisa.Coons@tn.gov](mailto:Lisa.Coons@tn.gov)



Telephone # (615) 571-6145  
 FAX # (615) 532-4989 ATTN: Lisa Coons

The Contractor:

Regan Kelly  
 TNTP  
 500 7th Ave, 8th floor  
 New York, NY 10018  
 regan.kelly@tntp.org  
 Telephone # (310) 594-3514  
 Fax # (718) 643-9202

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, epidemics, pandemics, diseases, quarantines, other extraordinary events determined to constitute a public health risk 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), which includes Attachment A;
  - c. any clarifications of or addenda to the Contractor's proposal seeking this Contract;
  - d. the State solicitation, as may be amended, requesting responses in competition for this Contract;
  - e. any technical specifications provided to proposers during the procurement process to award this Contract; and
  - f. the Contractor's response seeking this Contract.
- D.31. Iran Divestment Act. The requirements of Tenn. Code Ann. § 12-12-101, *et seq.*, addressing contracting with persons as defined at 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.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. Additional lines, items, or options. At its sole discretion, the State may make written requests to the Contractor to add lines, items, or options that are needed and within the Scope but were not included in the original Contract. Such lines, items, or options will be added to the Contract through a Memorandum of Understanding ("MOU"), not an amendment.
- a. After the Contractor receives a written request to add lines, items, or options, the Contractor shall have ten (10) business days to respond with a written proposal. The Contractor's written proposal shall include:
    - (1) The effect, if any, of adding the lines, items, or options on the other goods or services required under the Contract;
    - (2) Any pricing related to the new lines, items, or options;
    - (3) The expected effective date for the availability of the new lines, items, or options; and
    - (4) Any additional information requested by the State.
  - b. The State may negotiate the terms of the Contractor's proposal by requesting revisions to the proposal.
  - c. To indicate acceptance of a proposal, the State will sign it. The signed proposal shall constitute a MOU between the Parties, and the lines, items, or options shall be incorporated into the Contract as if set forth verbatim.
  - d. Only after a MOU has been executed shall the Contractor perform or deliver the new lines, items, or options.
- E.3. 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.4. State Furnished Property. The Contractor shall be responsible for the correct use, maintenance, and protection of all articles of nonexpendable, tangible personal property furnished by the State for the Contractor's use under this Contract. Upon termination of this Contract, all property furnished by the State shall be returned to the State in the same condition as when received, less ordinary wear and tear. Should the property be destroyed, lost, or stolen, the Contractor shall be responsible to the State for the fair market value of the property at the time of loss.
- E.5. Prohibited Advertising or Marketing. The Contractor shall not suggest or imply in advertising or marketing materials that Contractor's goods or services are endorsed by the State. The restrictions on Contractor advertising or marketing materials under this Section shall survive the termination of this Contract.
- E.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.

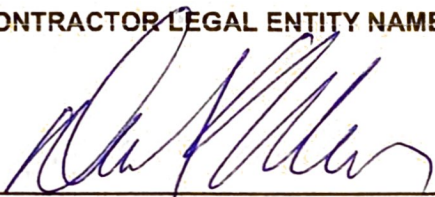
The Contractor shall report to the State any instances of unauthorized access to or potential disclosure of PII in the custody or control of Contractor ("Unauthorized Disclosure") that come to the Contractor's attention. Any such report shall be made by the Contractor within twenty-four (24) hours after 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. 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.

**IN WITNESS WHEREOF,**

**CONTRACTOR LEGAL ENTITY NAME: TNTP Inc**



2/26/21

**CONTRACTOR SIGNATURE**

**DATE**

DANIEL WEISBERG, CEO

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

**TENNESSEE DEPARTMENT OF EDUCATION:**

**PENNY SCHWINN, COMMISSIONER**

**DATE**

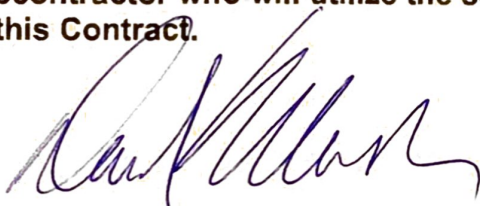
## ATTACHMENT A

## ATTESTATION RE PERSONNEL USED IN CONTRACT PERFORMANCE

If the attestation applies to more than one contract, modify this row accordingly.  SUBJECT CONTRACT NUMBER:	69466
CONTRACTOR LEGAL ENTITY NAME:	TNTP Inc
EDISON VENDOR IDENTIFICATION NUMBER:	130932

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

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



## 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.

DANIEL WEISBERG, CEO

## PRINTED NAME AND TITLE OF SIGNATORY

2/26/21

## DATE OF ATTESTATION