

FISCAL REVIEW COMMITTEE SUBMISSION

Contract # 33101-2108733111FAF3

NCS Pearson, Inc.

**Universal Screening and Progress Monitoring Assessment Platform for Early
Grades**

1. Cover letter
 2. Supplemental documentation form
 3. Approved STS endorsement
 4. Approved Special Contract Request
 5. Proposed Contract
-



STATE OF TENNESSEE
DEPARTMENT OF EDUCATION
9th FLOOR, ANDREW JOHNSON TOWER
710 JAMES ROBERTSON PARKWAY
NASHVILLE, TN 37243-0375

BILL LEE
GOVERNOR

Penny Schwinn
COMMISSIONER

TO: Executive Director, Fiscal Review Committee

FROM: Dr. Penny Schwinn, Commissioner

DATE: June 9, 2021

RE: Request for Fiscal Review Committee consideration of contract #33101-2108733111FAF3

Please consider the enclosed request for a fee-for-service contract with NCS Pearson, Inc. for a universal screening and progress monitoring assessment platform for early grades.

This procurement is needed to fulfill the requirements of the Literacy Success Act, T.C.A. 49-1-901, et. seq., passed during the First Extraordinary Session. This law requires the Tennessee Department of Education must provide a universal reading screener to all school districts in Tennessee at no cost.

There is an immediate need to improve literacy rates across the state. Given the impacts of school closures, it is imperative that educators can assess learning loss and progress for each student using a reliable and valid mechanism. A universal screener would allow educators to quickly and efficiently target students' specific and unique learning skills and deficits and tailor resources to improve those needs. Therefore, it is essential for the department to procure the universal screener for district implementation in the 2021-22 school year. While a full RFP is not tenable on this timeline, the department competitively solicited bids from four vendors, identified based on current usage in Tennessee districts. The vendors were asked to indicate whether they meet the State's minimum requirements.

Only one vendor met the State's minimum requirements, NCS Pearson, Inc. Therefore, it is in the State's best interest to proceed with contracting with NCS Pearson, Inc. in order to meet the requirements of the law and ensure that districts have the tools needed to improve literacy instruction.

The contract maximum liability will be \$7.5 million for the initial three-year term, 100% federal ESSER funds.

Thank you for your consideration.

Supplemental Documentation Required for Fiscal Review Committee

Instructions:

1. No contract or contract amendment will be placed on the Committee's agenda for consideration until this form has been fully completed and all back-up documentation has been submitted.
2. Please complete each section as it applies to contracts or amendments that are being submitted. Sections denoted with an asterisk (*) are considered mandatory. This information should provide for background information on previous actions, if applicable, that have taken place on the contract document and associated amendments.
3. Add rows as necessary.
4. Submit this document, any attachments, your summary letter, and contract documentation for review by the Fiscal Review Committee.
5. **Contact Name:** Enter first and last name of person to contact with questions about this document or any of the submitted information.
6. **Contact Number:** Enter the telephone number (including extension) of the contact person listed.
7. **Presenter's Name(s):** Enter the name of each person who will be presenting this request to the Committee.
8. **Edison Contract Number:** Enter the contract number issued by the Edison system for this document.
9. **RFS Number:** Enter the Edison system issued RFS number for this document.
10. **Original Contract Begin Date:** Enter the beginning date of the original contract or the proposed effective date for new contracts.
11. **Current End Date:** Enter the end date that is currently reflected in Section B.1. of this contract (prior to amendment request if applicable) or the proposed end date for new contracts.
12. **Current Requested Amendment Number:** Enter the amendment number (*if applicable*) that is currently being requested.
13. **Proposed Amendment Effective Date:** Enter the proposed effective date for the requested amendment (*if applicable*).
14. **Department Submitting:** Enter the title of the agency/department submitting this request.
15. **Division:** Enter the title of the division within the agency/department submitting this request.
16. **Date Submitted:** Enter the date the request was sent to Fiscal Review Committee staff.

Supplemental Documentation Required for Fiscal Review Committee

17. **Submitted Within Sixty (60) days:** Enter yes or no in this blank if request was submitted within 60 days of the proposed effective date.
18. ***If not, explain:*** Provide detailed rationale as to why the deadline for submission was not met. ***Please Note:*** Late submissions will be rolled for one meeting and placed at the end of the agenda.
19. **Contract Vendor Name:** Enter the officially registered vendor name.
20. **Current or Proposed Maximum Liability:** Enter the dollar amount that is reflected on the most current fully executed contract summary sheet and in Section C. 1 or the proposed maximum liability for new contracts.
21. ***For commodities contracts, Estimated Total Spend:*** Enter the estimated total expenditures for the contract if the contract does not have a “maximum liability.”
22. **Current Contract Allocation by Fiscal Year:** Enter the amounts reflected on the contract summary sheet and the corresponding FY. If no contract summary sheet, enter the estimated spend per fiscal year. ****NOTE:** Total of all these columns must add up to maximum liability or estimated total spend as reported in Section 20 or 21 of this document.
23. **Current Total Expenditures by Fiscal Year:** By using Edison enter the amounts that have been expended from this contract by fiscal year breakdown. Not applicable (NA) for new contracts.
24. **Explanation of surplus funds:** If the allocation exceeded the expenditure in any fiscal year, enter the explanation of each surplus funding year.
25. **Explanation of carry forward:** If agency/department has carried forward the surplus funds, enter the authority (and provide copy with this document) of the carry forward provision.
26. **Explanation of overspending contract allocation:** If agency/department has overspent the contract allocation, enter the reasons for excess expenditures and how the funding was attained.
27. **Contract Funding Source/Amount:** Enter the dollar figure in the appropriate category to reflect the source of contract funding.
28. ***If Other, please define:*** If a dollar amount is placed in the “other” category, please define the source represented.
29. ***If Interdepartmental, please define:*** If a dollar amount is place in the “interdepartmental” category, please define all sources represented.

Supplemental Documentation Required for Fiscal Review Committee

30. **Dates of All Previous Amendments or Revisions:** Enter all dates of prior amendment and revision (*including Contract Summary Sheet revisions*) in this section.
31. **Brief Description of Actions in Previous Amendment or Revision:** Enter a brief summary of prior amendments or revisions next to the appropriate effective date of the amendment (e.g. increased maximum liability, added scope items, revised contract summary sheet to reflect funding change, etc.).
32. **Method of Original Award:** Enter the procurement method of original award if requesting amendment (e.g. RFP, Special Request).
33. **Projected Cost Prior to Award and Cost Determination Used:** Enter the total cost projected by the department prior to award and explain how the agency arrived at the estimate of expected costs.
34. **For ALL new sole-source contracts, list the number of potential vendors that could provide the service or goods being procured and why those other options were not considered:** List the number of potential vendors that could provide this good or service; efforts to identify reasonable, competitive procurement alternatives; and how the Department determined a sole-source contract was in the best interest of the State.

Supplemental Documentation Required for Fiscal Review Committee

*Contact Name:	Joanna Collins	*Contact Phone:	Work Cell: (615) 879-1100		
*Presenter's name(s):	Jay Klein, Sam Percy, Charlie Bufalino, Joanna Collins				
Edison Contract Number: <i>(if applicable)</i>		RFS Number: <i>(if applicable)</i>	#33101-2108733111FAF3		
*Original or Proposed Contract Begin Date:	7/1/2021	*Current or Proposed End Date:	6/30/2024		
Current Request Amendment Number: <i>(if applicable)</i>	N/A				
Proposed Amendment Effective Date: <i>(if applicable)</i>	N/A				
*Department Submitting:	TN Department of Education				
*Division:	Academic and Instructional Strategy				
*Date Submitted:	6/9/21				
*Submitted Within Sixty (60) days:	No				
<i>If not, explain:</i>	Start date above is needed to comply with the Literacy Success Act, T.C.A. 49-1-901, et. seq., passed during the First Extraordinary Session				
*Contract Vendor Name:	NCS Pearson, Inc.				
*Current or Proposed Maximum Liability:	\$7.5 million for the initial three-year term				
*Estimated Total Spend for Commodities:					
*Current or Proposed Contract Allocation by Fiscal Year: <i>(as Shown on Most Current Fully Executed Contract Summary Sheet)</i>					
FY: 2022	FY: 2023	FY: 2024	FY: N/A	FY: N/A	FY: N/A
\$2.5M	\$2.5M	\$2.5M	\$	\$	\$
*Current Total Expenditures by Fiscal Year of Contract: <i>(attach backup documentation from Edison)</i>					
FY: N/A	FY: N/A	FY: N/A	FY: N/A	FY: N/A	FY: N/A
\$ N/A	\$ N/A	\$ N/A	\$ N/A	\$ N/A	\$ N/A
IF Contract Allocation has been greater than Contract Expenditures, please give the reasons and explain where surplus funds were spent:			N/A		
IF surplus funds have been carried forward, please give the reasons and provide the authority for the carry forward provision:			N/A		

Supplemental Documentation Required for Fiscal Review Committee

IF Contract Expenditures exceeded Contract Allocation, please give the reasons and explain how funding was acquired to pay the overage:		N/A	
*Contract Funding Source/Amount:			
State:	N/A	Federal:	\$7.5 million, 100% ESSER
<i>Interdepartmental:</i>	N/A	<i>Other:</i>	N/A
If “ <i>other</i> ” please define:			
If “ <i>interdepartmental</i> ” please define:			
Dates of All Previous Amendments or Revisions: <i>(if applicable)</i>		Brief Description of Actions in Previous Amendments or Revisions: <i>(if applicable)</i>	
Method of Original Award: <i>(if applicable)</i>		Sole Source (Approved SCR provided)	
*What were the projected costs of the service for the entire term of the contract prior to contract award? How was this cost determined?		The projected costs are \$7.5M for the initial three-year term. Market research of universal screeners and vendors among other entities was utilized in order to arrive at the estimate of needed funds. This includes calculating estimated costs for licenses and materials for all expected Tennessee students and educators, based on costs posted online and in contracts made with other state agencies. This includes the assessments, the platform for administering and reporting, and support materials.	
*List number of other potential vendors who could provide this good or service; efforts to identify other competitive procurement alternatives; and the reason(s) a sole-source contract is in the best interest of the State.		CPO solicited bids from four vendors identified by the TDOE, based on current usage in TN districts. The vendors were Riverside Insights, Renaissance, and Curriculum Associates.	

Supplemental Documentation Required for
Fiscal Review Committee

	<p>The vendors were asked to indicate whether they meet the State's minimum requirements. Only one vendor met the State's minimum requirements, NCS Pearson, Inc. Therefore, it is in the State's best interest to proceed with contracting with NCS Pearson, Inc.</p>
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STS Pre-Approval Endorsement Request E-Mail Transmittal

TO : STS Contracts
Department of Finance & Administration
https://tn.service-now.com/sp?id=sc_cat_item&sys_id=a912fd4213b46b80316a73d36144b097

For additional instructions please visit:
<https://www.teamtn.gov/sts/planning-services/information-systems-planning/endorsement-request.html>

FROM : Rick Zadd
E-mail : Rick.Zadd@gmail.com

DATE : 4/15/21 Received by STS on Wednesday, April 28, 2021

RE : Request for STS Pre-Approval Endorsement

Applicable RFS # 33101-2108733111FAF3 (END0000850)

State Security Confidential Information Applicability

Under Tenn. Code Ann. §10-7-504(i) vendor identity or a description of the goods or services provided by the vendor shall be confidential.

- ☐ Applicable
☒ Not Applicable

Additional language is attached and endorsement is contingent upon inclusion of this additional language:

- ☐ Applicable
☒ Not Applicable

STS Endorsement Signature & Date:

Stephanie Dedmon, Digitally signed by Stephanie
CIO (WMH) Dedmon, CIO (WMH)
Date: 2021.05.04 14:34:07 -05'00'

Chief Information Officer

NOTE: Proposed contract/grant support is applicable to the subject IT service technical merit.

Applicable RFS # 33101-2108733111FAF3
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Strategic Technology Solutions (STS) pre-approval endorsement is required pursuant to procurement regulations pertaining to contracts with information technology as a component of the scope of service. This request seeks to ensure that STS is aware of and has an opportunity to review the procurement detailed below and in the attached document(s). This requirement applies to any procurement method regardless of dollar amount.

Please indicate STS endorsement of the described procurement (with the appropriate signature above), and return this document via e-mail at your earliest convenience.

Contracting Agency	Department of Education
Agency Contact (name, phone, e-mail)	Rick Zadd, 615-290-6715, Rick.Zadd@tn.gov
Attachments Supporting Request (mark all applicable) Note: The complete draft procurement document and the applicable documents listed below must accompany this request when submitted to STS. Special Contract Requests and Amendment Requests without Agency Head signature are acceptable. STS is aware that these documents will not have CPO signature when submitted with this request. <ul style="list-style-type: none"> <input type="checkbox"/> Solicitation Document <input checked="" type="checkbox"/> Special Contract Request <input type="checkbox"/> Amendment Request <input checked="" type="checkbox"/> Proposed Contract/Grant or Amendment <input type="checkbox"/> Original Contract/Grant and Previous Amendments (if any) 	
Information Systems Plan (ISP) Project Applicability To avoid delay of STS pre-approval, the applicability of an ISP project to the procurement must be confirmed with agency IT staff prior to submitting this request to STS. If necessary, agency IT staff should contact STS Planning with questions concerning the need for an ISP project. IT Director/Staff Name Confirming (required): <ul style="list-style-type: none"> <input type="checkbox"/> Applicable – Approved ISP Project# <input checked="" type="checkbox"/> Not Applicable 	
Subject Information Technology Service Description Provide a brief summary of the information technology services involved. Clearly identify included technologies such as system development/maintenance, security, networking, <i>etc.</i> As applicable, identify the contract or solicitation sections related to the IT services. <p>Vendor will provide a combined Assessments, online Platform, Reporting, Resources, and Training to coherently support early literacy development for Tennessee students, the Tennessee Reading 360 Initiative, the Tennessee Learning Loss Remediation and Student Acceleration Act, and/or the Tennessee Literacy Success Act.</p> <p>Applicable sections include: A.5.a – portions referring to Assessment Reporting Requirements A.5.b – Online Data and Reporting Tool Platform FA Contract includes Security Template language (E.8)</p>	

Special Contract Request

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

NOT required for a contract with a federal, Tennessee, or Tennessee local government entity or a grant.

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

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

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

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

Request Tracking #	33101-2108733111FAF3
1. Contracting Agency	Department of Education
2. Type of Contract or Procurement Method	<input type="checkbox"/> No Cost <input type="checkbox"/> Revenue <input checked="" type="checkbox"/> Sole Source <input type="checkbox"/> Proprietary <input type="checkbox"/> Competitive Negotiation <input type="checkbox"/> Other _____
3. Requestor Contact Information	Brian DiCarlo, Brian.DiCarlo@tn.gov , (615) 938-1245
4. Brief Goods or Services Caption	Universal Screening and Progress Monitoring Assessment Platform for Early Grades

Request Tracking #	33101-2108733111FAF3
5. Description of the Goods or Services to be Acquired	The Contractor shall provide, for all Tennessee students in kindergarten, first grade, second grade, and third grade, an Early Grade Universal Screening and Monitoring System ("EGUSMS") which includes, at a minimum, Universal Screening for Literacy and Math, Dyslexia Screening, Mental Health Screening, Progress Monitoring, data organization, and Online Reporting tools and the Training Resources and Technical Support for any Tennessee educators serving those students to effectively use those tools.
6. Proposed Contractor	NCS Pearson, Inc.
7. Name & Address of the Contractor's principal owner(s) – NOT required for a TN state education institution	Anise Flowers, National Sales Manager Anise.Flowers@Pearson.com (project contact identified on the bid) NCS Pearson, Inc. 19500 Bulverde Road, Suite 201 San Antonio, TX 78259
8. Proposed Contract Period – with ALL options to extend exercised <i>The proposed contract start date shall follow the approval date of this request.</i>	3 year initial with 2 options to renew
9. Strategic Technology Solutions ("STS") Pre-Approval Endorsement Request – information technology (N/A to THDA)	<input type="checkbox"/> Not Applicable <input checked="" type="checkbox"/> Attached
10. eHealth Pre-Approval Endorsement Request – health-related professional, pharmaceutical, laboratory, or imaging	<input checked="" type="checkbox"/> Not Applicable <input type="checkbox"/> Attached
11. Human Resources Pre-Approval Endorsement Request – contracts with an individual, state employee training, or services related to the employment of current or prospective state employees	<input checked="" type="checkbox"/> Not Applicable <input type="checkbox"/> Attached
12. Are these goods or services currently available on a statewide contract? If YES, please explain why the current statewide contract is not being used for this procurement.	<input checked="" type="checkbox"/> NO <input type="checkbox"/> YES,

Request Tracking #	33101-2108733111FAF3
13. Maximum Contract Cost – <i>with ALL options to extend exercised</i>	\$7.5 million initial 3 year term, \$12.5 million if all options to renew are exercised for a total 5 year term
14. Was there an initial government estimate? If so, what amount?	<input checked="" type="checkbox"/> NO <input type="checkbox"/> YES, \$
15. Cost Determination Used- How did agency arrive at the estimate of expected costs?	<p>Market research of universal screeners and vendors among other entities was utilized in order to arrive at the estimate of needed funds: \$3,000,000</p> <p>This includes calculating estimated two years of costs for licenses and materials for all expected Tennessee students and educators, based on costs posted online and in contracts made with other state agencies. This includes the assessments, the platform for administering and reporting, and support materials.</p>
16. Explanation of Fair and Reasonable Price- Explain how agency determined that price is fair and reasonable	<p>Currently, students in Tennessee are in need of additional services that allow for educators to make accurate assessments of their learning needs. A universal screener would allow educators to quickly and efficiently target students' specific and unique learning skills and deficits, and cater resources to improving on those needs. Based on this important task, the funding associated with the screener must be enough to ensure its accuracy and legitimacy in making important decisions about student learning.</p>
17. Documentation of Discussions with Contractor- How did agency document discussions with Contractor? Attach documentation to this request as applicable.	CPO solicited bids from vendors identified by the TDOE

Request Tracking #	33101-2108733111FAF3
18. Explanation of Need for or requirement placed on the State to acquire the goods or services	<p>TDOE recognizes the need to provide educators with meaningful and actionable data when it comes to informing their instruction. Per the TN Literacy Success Act, as found in T.C.A. Title 49 Chapter 1 Part 9, districts are required to include their universal screener in their Foundational literacy skills plan, and TDOE is required to provide a free option.</p> <p>Given the impacts of school closures, it is imperative that educators can assess learning loss and progress for each student using a reliable and valid mechanism. A universal screener would allow educators to quickly and efficiently target students' specific and unique learning skills and deficits and cater resources to improve those needs. This contract enables the TDOE to meet its statutory duties as set forth in the TN Literacy Success Act.</p>
19. Proposed contract impact on current State operations	<p>The contract will provide TN educators with a reliable and valid platform to assess student learning gaps and target state-approved resources toward improvements to instruction. This contract enables the TDOE to meet its statutory duties as set forth in the TN Literacy Success Act.</p>
20. Justification – Specifically explain why the goods or services should be acquired through the procurement method or contract type selected.	<p>The TDOE conducted a formal market survey. CPO solicited bids from four vendors identified by the TDOE, based on current usage in TN districts. The vendors were asked to indicate whether they meet the State's minimum requirements. Only one vendor met the State's minimum requirements, NCS Pearson, Inc. Therefore, it is in the State's best interest to proceed with contracting with NCS Pearson, Inc.</p>
For No Cost and Revenue Contracts Only	
21. What costs will the State incur as a result of this contract? If any, please explain.	
22. What is the total estimated revenue that the State would receive as a result of this contract?	

Request Tracking #	33101-2108733111FAF3
23. Could the State also contract with other parties interested in entering substantially the same agreement? Please explain.	<input type="checkbox"/> NO <input type="checkbox"/> YES
24. Summary of State responsibilities under proposed contract	
For Sole Source and Proprietary Procurements Only	
25. Evidence of Contractor's experience & length of experience providing the goods or services to be procured.	NCS Pearson, Inc., founded in 03/28/1962, develops and markets enterprise application software. The Company provides software applications and technologies for education, testing, assessment, and complex data management.
26. Has the contracting agency procured the subject goods or services before? If yes, provide the method used to purchase the goods or services and the name and address of the contractor.	<input type="checkbox"/> NO <input checked="" type="checkbox"/> YES, for a similar scope of services (not as comprehensive as what we need now) Method: RFP Name/Address: NCS Pearson, Inc., #43017 Greg Jackson, Education Assessment Representative NCS Pearson, Inc. Clinical Assessment business 5601 Green Valley Drive Bloomington, MN 55437-1099 gregory.jackson@pearson.com Telephone # (210) 339-5697 Riverside Assessments, LLC, NV43018 Michele C. Baker Director of Sales – East One Pierce Place, Suite 900W Itasca, Illinois 60143 Michele.baker@riversideinsights.com 850-212-7945

Request Tracking #	33101-2108733111FAF3
27. Contractor selection process and efforts to identify reasonable, competitive, procurement alternatives	The TDOE conducted a formal market survey. CPO solicited bids from four vendors identified by the TDOE, based on current usage in TN districts. The vendors were asked to indicate whether they meet the State's minimum requirements. Only one vendor met the State's minimum requirements, NCS Pearson, Inc. Therefore, it is in the State's best interest to proceed with contracting with NCS Pearson, Inc
Signature Required for all Special Contract Requests	
Signature of Agency head or authorized designee, title of signatory, and date (the authorized designee may sign his or her own name if indicated on the Signature Certification and Authorization document) [Either upload signed SCR in Edison or capture authorized agency approval in Edison Workflow.]	
<div style="display: flex; justify-content: space-between;"> <div>Signature: _____</div> <div>Date: _____</div> </div>	

[Form Approval] Form 5254 (SCR_SS) has been Approved



edison.erp@tn.gov

To Brian DiCarlo



10:40 AM

Retention Policy 90 Day Delete (90 days)

Expires 9/7/2021

You forwarded this message on 6/9/2021 11:19 AM.

Form 5254 (SCR_SS) has been approved. Details are shown below:

Subject: 33101-Universal Screening and Progress Monitoring Assessment Platform for Early Grades

Priority: 2

Due Date: 2021-05-28

Requester: BRIAD1217001

SCR_Sole_Source

Subject 33101-Universal Screening and Progress Monitoring Assessment Platform for Early Grades

[Review/Edit Approvers](#)

SCR Sole Sourcing



OK



CONTRACT

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

Begin Date	End Date	Agency Tracking #	Edison Record ID
Contractor Legal Entity Name			Edison Vendor ID
Goods or Services Caption (one line only) Universal Screening and Progress Monitoring Assessment Platform for Early Grades			
Contractor <input checked="" type="checkbox"/> Contractor		CFDA #	
Funding —	FY	State	Federal
TOTAL:			
Contractor Ownership Characteristics: <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:			
Selection Method & Process Summary (mark the correct response to confirm the associated summary) <input type="checkbox"/> Competitive Selection Describe the competitive selection process used <input type="checkbox"/> Other Describe the selection process used and submit a Special Contract Request			
Budget Officer Confirmation: There is a balance in the appropriation from which obligations hereunder are required to be paid that is not already encumbered to pay other obligations.			
Speed Chart (optional)		Account Code (optional)	

CONTRACT
BETWEEN THE STATE OF TENNESSEE,
DEPARTMENT OF EDUCATION
AND
CONTRACTOR NAME

This Contract, by and between the **State of Tennessee, Department of Education** ("State") and **Contractor Legal Entity Name** ("Contractor"), is for the provision of Universal Screening and Progress Monitoring Assessment Platform for Early Grades, 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/an Individual, For-Profit Corporation, Non-Profit Corporation, Special Purpose Corporation Or Association, Partnership, Joint Venture, Or Limited Liability Company.**

Contractor Place of Incorporation or Organization: **Location**

Contractor Edison Registration ID # **Number**

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. 504 Plan- An individualized learning plan developed under Section 504 of the Rehabilitation Act of 1973.
 - b. Administration – An instance where one or more students participates in an Assessment.
 - c. Alphabetic Knowledge ("letter knowledge") - A student's ability to identify the letters of the alphabet with speed and automaticity and understanding of alphabetic and Print Concepts, as well as their ability to identify and discriminate between letters (visual discrimination).
 - d. Annual Work Plan- A State-approved plan outlining products, milestones, timelines, activities, steps, and resources required for the Contractor to ensure all requirements of Contract are met. The Annual Work Plan guides both project execution and project control and, at a minimum, meets the needs of the program management described in section A.4 of this Contract.
 - e. Assessment – Any activity that records, measures, or evaluates student abilities, performance, knowledge, skills, progress, growth, achievement, risks, strengths, deficits, learning, and/or mastery of any content.
 - f. Assessment Window ("Administration Window") – The term refers to a specified period of time in which teachers/interventionists are to conduct a Benchmark Administration to ensure comparability across different intervention groups, classrooms, schools, or Districts.
 - g. Benchmarking Administration ("Benchmark") – Administration of a Universal Screener at a specific Assessment Window during the year (e.g., fall, winter, spring, summer programming). The Universal Screener shall be Reliable for Benchmarking Administrations with a frequency of at least three (3) times per school year. The Benchmark Administration is intended for all students in a given grade and content area (i.e., 1st Grade Reading Benchmark, 2nd Grade Math Benchmark, etc.) and provides Student Classifications for comparison across time or across different student groups, schools, Districts, etc. All Benchmark Administrations may be used for Screening purposes as well as for Benchmarking.
 - h. Classification ("Student Classification",) – Distinct developmental categorizations that meaningfully and reliably differentiate Student proficiency along a developmental progression, produced when Assessments are Scored.
 - i. Data Taxonomies – Taxonomies represent the hierarchical categorizations of information that are needed by Users. They represent the relationships of entities across levels within the EGUSMS and are used to define access, available functionality, Reporting, abstraction, and other relationships. Each level of a Taxonomy is a Taxon, where one or more records within lower Taxa are found within a higher Taxon. The following Taxonomies can be found within this Contract, and are listed in order of the lowest Taxa to the highest Taxa:

- (1) Report Detail Taxonomy: Item Responses → Item Scores → Subscores → Scores → Classifications → summaries → trends or comparisons
- (2) Skill Taxonomy: Tasks → Subskills → Skills → Skill Domains → Subject Areas → Subjects → Grade Composites
- (3) Membership Taxonomy: Individual Student → Student groups → classes → courses → grade levels → grade bands → schools → Districts → regions → state
- (4) Stakeholder Taxonomy: students and families → educators → school leaders → District leaders → State leaders
- (5) Temporal Taxonomy: Assessment Administration → Benchmarking Period → school year to date → school year → Multiple school years → full longitudinal record
- j. Decoding Skills- A student's ability to apply knowledge of letter-sound relationships as well as letter patterns to correctly pronounce written words
- k. Dyslexia Screening Components – Assessment Components serving to screen students for characteristics of dyslexia as required by T.C.A. § 49-1-229.
- l. Early Grade Universal Screening and Monitoring System ("EGUSMS") – The combined Assessments, online Platform, Reporting, Resources, and Training to coherently support early literacy development for Tennessee students, the Tennessee Reading 360 Initiative, the Tennessee Learning Loss Remediation and Student Acceleration Act, and/or the Tennessee Literacy Success Act.
- m. Encoding-(“Spelling”)-A student's ability to translate speech into writing.
- n. Fair – Evidence that Scores have the same interpretation and meaning for all individuals in the intended population including evidence that when Assessments are administered as intended, items are not systematically biased against any particular student group, and students are not hindered in demonstrating their skills by irrelevant barriers in the test Administration procedures.
- o. Form – A unique set of Items and/or Subtests that are used to provide Student Classifications
- p. Individualized Education Plan ("IEP", "Individualized Education Program") – A plan describing individualized services or changes in learning environment for a child, developed in accordance with 34 C.F.R. §§300.320 through 300.324.
- q. Interoperability ("Interoperable") – The term “Interoperability” refers to the principle of using standardized data formats and data transport protocols to promote the effective exchange and utilization of data between two or more systems or system components. Interoperability is a core design principle for the State's technology development and operations.
- r. Local Education Agency ("LEA", "District") – The term “Local Education Agency” or acronym “LEA” means a school District or school system that is the financial and administrative agency for schools in a certain region of the State.
- s. Mathematics calculation – A student's applying mathematical knowledge at the conceptual level to show use of math computational skills through fluency
- t. Mathematics problem solving – Combination of computation knowledge and application knowledge, and involves the use of mathematical computation skills and fluency, language, reasoning, reading, and visual-spatial skills in solving problems
- u. Mental Health Screening – Screening designed to aid in collecting information regarding at-risk adaptive behavioral and/or emotional problems.
- v. National Norms ("Nationally Normed") -- National Norming refers to calibrating instrument Scores, Classifications, and distribution percentiles with a representative National Sample.
- w. National Sample – A National Sample consists of at least 150 students in each of at least three of nine geographical divisions defined by the U.S. Census Bureau and any statistical transformations required to reflect adequate representation across each demographic category, enabling the selection of normative samples that are representative of the U.S. population and demography at each grade level. National Samples must be used for setting Classifications, Scoring, and percentile norms set before the year 2020.
- x. Number Sense – The ability to use and understand and reason with numbers (e.g., understanding relative value, flexibly add, subtract, multiply and divide, and develop and understanding a wide range of applicable strategies applicable to computational mathematics).
- y. Oral Reading Fluency – Refers to the measure of the student's ability to read a passage for one minute with accuracy, speed, expression and literal recall comprehension.
- z. Phonemic Awareness – A student's ability to manipulate individual sounds (phonemes) in spoken words.

- aa. Phonological Awareness-The ability of a student to identify and manipulate oral language including words, syllables, onsets and rimes and is inclusive of the advanced skills within Phonemic Awareness
- bb. Platform ("EGUSMS Platform") – The Platform refers to all front-end and back-end structures described in this Contract.
- cc. Print Concepts -- The basic elements of text (letters, words), and sequence (left-to-right, top-to-bottom, page-to-page)
- dd. Progress Monitoring ("Progress Monitoring Assessments") – Progress Monitoring is used to assess students' academic performance, to quantify a student rate of improvement or responsiveness to instruction, and to evaluate the effectiveness of instruction. Unlike the Screeners, Progress Monitoring Assessments must be sensitive to growth and require multiple Forms. These assess students' specific reading and/or mathematics skills and have a direct, Reliable, and Valid relationship to Diagnostic and Screener Assessments to show progress on shared Measurement Areas. Some Progress Monitoring Assessments can be Administered simultaneously to an entire class. Progress Monitoring occurs more frequently than Benchmarking Administrations.
- ee. Rapid Naming – ("Rapid Automatized Naming")- ability to quickly and automatically recognize known information e.g. letter/letter combinations, segments of words and words in an efficient and effective manner. E.g. identify a picture, think of its name, and say the name, repeating continually
- ff. Reading Fluency – A student's ability to read a text with appropriate rate, accuracy, and expression.
- gg. Reliable ("Reliability") – The consistency of Scores across replications of a testing procedure including evidence of the consistency of Scores over time, across multiple forms of the Assessment, and/or over multiple scorers.
- hh. Reports ("Reporting") – The Displays providing access to any Student Response or Scoring information across the Data Taxonomies.
- ii. Resources – Refers to additional content made available for Users as Training or for actions or support for using the Platform.
- jj. RTI²/MTSS ("Response to Instruction and Intervention/Multi-Tiered System of Supports", "RTI² Framework", "MTSS") - refers to a multi-tier approach or framework to the early identification and support of students with learning and behavior needs. The tiers are:
 - Tier I: Ensuring all students receive research-based, high-quality, general education instruction.
 - Tier II: In addition to Tier I, extra help is provided to students who have been identified as "at risk" academically or behaviorally.
 - Tier III: In addition to Tier I, extra help is provided to students who have not made significant progress in Tier II or who are significantly below grade level academically or behaviorally. Tier III interventions are more explicit and more intensive than Tier II interventions.
- kk. Score ("Scoring") – The process of converting Student Responses into instructionally meaningful numeric values, evaluations, or Classifications to be used in Reporting.
- ll. Scorer ("Scorer") - The individual responsible for scoring student assessments.
- mm. Screening ("Screening Administration", "Screener") – The term refers to a type of Administration of the Universal Screener, either in part (Subtest) or in full, in which the purpose is to identify students who may be considered "at-risk" of academic failure—including a significant reading deficiency—and in need of further Diagnostic or Survey Level Assessment and additional interventions. Screening Administrations may be conducted at any time for any individual or group of students.
- nn. Sound-Symbol Correspondence (aka "symbol-symbol recognition): – A student's ability to recognize the symbol(s) (letter(s)) and produce the sound that the symbol(s) (letter(s)) represent quickly and automatically.
- oo. Subject ("Subjects") – For the purposes of this Contract, there are two Subjects: "Literacy" or "Reading", which embody all Literacy Subject Areas, and "Math" which represents numeracy.
- pp. Subtest – A set of one or more Items that can Reliably measure, track, Score, and/or provide Classifications that are developmentally and instructionally meaningful for a given Measurement Area. They may function independently as Assessments or as groups, as in the case of Universal Screeners.

- qq. Training – Refers generally to coherently designed capacity building for members of the target audiences.
- rr. Universal Screener – Brief, Uniform Screener Assessment used to screen and measure academic skills (i.e., basic reading skills, reading fluency, reading comprehension, math calculation, math problem solving, and written expression). Universal Screeners are administered multiple times each year. Each of these Administrations is called a Benchmarking Administration.
- ss. Valid/Validity (“Valid”/ “Validity”) – The degree to which evidence and theory support the interpretations of test Scores for proposed uses of tests, including evidence that test Scores can be interpreted as they are intended and can be appropriately used for a specific, defined purpose.

A.3. Scope

- a. The Contractor shall provide, for all Tennessee students in kindergarten, first grade, second grade, and third grade, an Early Grade Universal Screening and Monitoring System (“EGUSMS”) which includes, at a minimum, a Universal Screener for Literacy and Math, Dyslexia Screening, Mental HealthNon-academic Screening, , Progress Monitoring, data organization, and online Reporting tools and the Training Resources and Technical Support for any Tennessee educators serving those students to effectively use those tools.
- b. The EGUSMS provided shall be compliant with all applicable federal and state law and policies, including but not limited to the Every Student Success Act (ESSA), the Family Educational Rights and Privacy Act (FERPA), the Americans with Disabilities Act (ADA), Sections 504 and 508 of the Rehabilitation Act of 1973, the Individuals with Disabilities Education Act (IDEA), T.C.A. § 49-1-229, the Tennessee Learning Loss Remediation and Student Acceleration Act, and the Tennessee Literacy Success Act.

A.4. Program Management

- a. Administration Activities – The Contractor shall provide goods, services, and deliverables for the statewide adoption of an EGUSMS platform.
 - 1. Annual Work Plan – The Contractor shall prepare, within fifteen (15) calendar days of the Contract Effective Date, an Annual Work Plan. The State shall provide feedback to the Contractor and the Contractor shall update the Annual Work Plan until State approval is received. The Annual Work Plan shall include the Contractor’s plan outlining the necessary steps to be performed to ensure all requirements of the Contract are met, indicate areas of responsibility for the Contractor and the State, and describe steps to avoid any disruptions to the deliverables of this Contract. This plan outlines the steps required for the integration of the data and reporting components of the Platform with the State and with District data systems, as needed. It also outlines proposed reporting plans and timelines required within this Contract.
- b. All plans specified in Section A.4.a shall be recorded and delivered in a system and format proposed by the Contractor and approved by the State. Both the State and the Contractor shall have access to and the ability to track all dates, products, and tasks included in the Annual Work Plan and verify completion.
- c. The Contractor shall be responsible for the following activities related to program management:
 - 1. Lead and participate in all status meetings with the project team as outlined in the approved Annual Work Plan and as requested by the State with proposed agendas or meeting content submitted to the State prior to the meeting at a timeframe agreed upon in approved plans. These status updates include action item tracking, risk and issue identification, and collaborate with the State in driving decisions, risk mitigation, and issue resolution.
 - 2. Lead and participate in at least two (2) in-person planning meetings at a location selected by the State with the project team as outlined in the approved Annual Work Plan. The in-person meetings shall be scheduled for, at minimum, four (4) hours each. All travel and associated costs for attending the in-person planning

meetings shall be covered by the Contractor at no expense to the State. These meetings may be switched from in-person to virtual at the State's discretion.

- i. The Contractor shall schedule and lead an initial meeting between the State and Contractor within 15 business days of the Contract Effective Date. The requirements of this meeting include:
 - a. The Contractor and State shall agree upon a date for the initial meeting that is mutually agreeable. The meeting shall occur at the Andrew Johnson Tower in Nashville, TN and last at minimum four (4) hours. Contractor shall be solely responsible for all travel costs associated with this meeting. The in-person meeting may be switched to virtual at the State's discretion.
 - b. The Contractor will be responsible for proposing the agenda and list of attendees and will be responsible for developing the materials for the meeting. The agenda shall include discussion around the proposed initial Annual Work Plan, and the State will be responsible for approving the agenda and list of attendees.

2. Continuity of Contracts – The Contractor shall:

- a. Cooperate fully with the State in providing a transition between the Contractor and the State, or any future vendors, to avoid any disruption of services, requirements, or deliverables to the public, in accordance with the Transition Management Plan as described in Section A.4.a.2 and approved by the State. This plan shall be submitted to the State a minimum of 60 days prior to the end of the Contract Term.

A.5. Assessment and Reporting System

a. Assessments

- (1) The Contractor shall provide to the State a system that meets the following regarding the technical quality and efficiency of Assessments, Scoring, and Reporting that show how the Assessment results meet technical requirements and professional standards. Assessments must:
 - i) Be available to users by July 21, 2021.
 - ii) have a high degree of technical adequacy and be constructed to be administered at during at least three Benchmarking Administration windows per year (fall, winter, and spring);
 - iii) provide Nationally Norm-referenced Scores and/or Classifications;
 - iv) be proven to accurately and effectively measure students' reading skills in the areas of 1) Phonological Awareness; 2) Phonemic Awareness; 3) sound –symbol recognition; 4) alphabetic knowledge 5) Decoding Skills 3) Rapid Reading Fluency; 4) vocabulary, and 5) reading comprehension (Assessments may address one or multiple skill areas);
 - v) meet standards for technical rigor as indicated below in Table 1 below;
 - vi) meet efficiency standards as indicated below in Table 2 below;
 - vii) cover the measured areas indicated in Table 3 below;
 - viii) be constructed to monitor the development of early skills to support a comprehensive evaluation of these component skills;
 - ix) are developmentally appropriate and respectful regarding the cognitive, social, emotional, cultural, and performance demands placed on children;
 - x) provide construct-relevant and instructionally valuable information;
- (2) The State shall be able to specify Assessment Windows for Benchmark Administrations of the Universal Screener, so that Benchmarking is Reliable and logistically manageable by school and district staff.
- (3) Screening Assessments
 - i) Universal Screeners are for Administration to all students at least three (3) times per school year during Benchmark Administration windows. Each Administration Form must meet the requirements outlined in the Tennessee Response to Instruction and Intervention (RTI²) Framework (as found at https://www.tn.gov/content/dam/tn/education/special-education/rti/rti2_manual.pdf), including the Dyslexia Screening Components required by T.C.A. § 49-1-229, meet the relevant technical standards of Table 1 to accurately identify students who are on

grade level, above grade level, and at risk of academic failure—including significant reading deficiency—in each Measured Area in Table 3. These Assessments should provide both Nationally Norm-referenced distribution percentiles and statistics—used for risk-level Classification and to monitor change over time—and standards-based information—used to measure on grade level learning standards. A single Subject Administration should take no more than 30 total minutes for a student to complete.

- (4) Progress Monitoring Assessments
 - i) These are for Administration to students whose performance is being monitored, especially for those who are receiving intervention as part of the Tennessee RTI² Framework. Each Assessment probe should measure student change over time in a single Measured Area (see Table 3), meeting the relevant technical standards in Table 1. Probes must be able to be administered at least once every two weeks (up to 20 Administrations per student, per year). A single Administration should take between 1-7 minutes for a student to complete.
- (5) As described in T.C.A. Title 49, Chapter 6, Part 15, the Contractor may propose, for approval by the State, pre- and post- tests comprised of Assessments found within this Contract for measuring and reporting on learning loss.
- (6) The Contractor shall provide, at the request of the State technical reporting on the Reliability metrics defined in Table 1. Reporting for Validity shall be defined through the Annual Work Plan creation process.

Table 1: Technical Requirements

Standard	Description
Evidence of test Reliability and internal consistency Reliability	Results of Reliability studies are reported for each grade Assessment. Evidence includes, for each age/grade-level, studies that are appropriate given the purpose of the measure and that provide evidence of split-half Reliability, coefficient alpha, test-retest Reliability, and Classification consistency demonstrating correlation ranges of 0.7 or higher*.
	Standard error of measurement or standard estimate of error are reported for Score ranges and cut-scores for each Assessment (age/grade, form, Subtest).
	For Non-academic instruments, inter-rater Reliability studies have been conducted. The group of raters used to establish inter-rater Reliability is representative of instrument administrators. Evidence includes: <ul style="list-style-type: none"> inter-rater Reliability studies conducted are based on a representative sample of educators who will administer the instruments; and inter-rater Reliability coefficients that meet or exceed 0.6*.
	Studies have been conducted to establish Reliability with all subcategories of students who will take the Assessment, including National Norms with representativeness in grade/age, gender, English learner status, special needs status, socioeconomic status, and race/ethnicity.
Progress Monitoring and alternate Form or test-retest Reliability	For academic measures, sufficient forms are provided to allow for Progress Monitoring between Benchmarking Administrations and forms have demonstrated evidence of equivalence or comparability. Technical reviews indicate all forms for each grade level have demonstrated evidence of comparability and content specifications. Evidence includes split-half Reliability and coefficient alpha Reliability with correlations that demonstrate ranges of 0.7 or higher*.
	For Non-academic instruments, test-retest studies or other studies to evaluate measure comparability have been conducted. Evidence includes test-retest Reliability coefficients that meet or exceed 0.7*.

Standard	Description
Evidence of content and construct Validity	<p>Evidence demonstrates the Assessment helps correctly classify students (e.g., identify students with “significant reading deficiencies”, grade-level proficiency) using National Norms so that successful remediation and intervention can be provided. Studies have been conducted with similar Assessments to show that the Assessment measures the intended area, not other irrelevant criteria. Evidence includes the provision of:</p> <ul style="list-style-type: none"> • a clear description that demonstrates the purpose of the Assessment is to screen students for concerns; • content specifications for each grade-level, including a complete description of the test content, purpose(s), and intended use(s); Assessment blueprint as appropriate; • studies of construct Validity, such as convergent and discriminant analysis, demonstrating significant indicators of relationship with correlations at or above 0.7*.
Evidence of criterion/predictive Validity accurately identifying students	<p>Evidence reported to demonstrate that the Assessments have Validity to correctly identify students with and without each Classification used within the systems (e.g., “significant reading deficiency”). Evidence includes:</p> <ul style="list-style-type: none"> • a clear definition of the criterion or measure that was used to establish concurrent Validity; • studies with similar Assessments that demonstrate the Assessment measures reading ability, not other irrelevant criteria; • Validity correlations at or above 0.7*; <p>For each type of Validity reported, the lower bound of the confidence interval around the median coefficient met or exceeded 0.6*. Appropriately justified analyses include measures that are external to the Progress Monitoring Assessments.</p>
Classifications are based upon well-designed studies and processes using National Samples	<p>The Assessment has established Scores for students' levels of proficiency and growth to be used in Classifications, goal setting, and decision-making. Growth Scores and Classifications are sensitive to measure discrete changes in the students' performance based on their responsiveness to intervention. Evidence indicates:</p> <ul style="list-style-type: none"> • Reliable Nationally Normed percentiles demonstrate accuracy at five percent (5%) intervals; • a description of the acceptable, recognized process used to establish recommended cut points; • the norming sample is a large representative National Sample of students at the same grade level and is representative of the testing population according to gender, EL status, special needs status, socioeconomic status, and race; • Classification accuracy analyses provide evidence that the measure appropriately identifies students as indicated in the description of the purpose of the measure, demonstrating values that meet or exceed 0.8*. <p>There is guidance for Classification and Score interpretation with instructionally meaningful descriptions outlining their significance and use, and the basis for establishing decision rules for setting and revising goals shall be (1) evidence-based; (2) based on analysis of Progress Monitoring measurement collected frequently over the period that is necessary for the decision rules, and (3) from a National Sample of students.</p>

Coefficient measures in Table 1 with an asterisk (*) may vary from the value only if it is demonstrated that the coefficients are within an acceptable range given the expected relationship with the criterion measure(s).

Table 2: Efficiency Criteria

Standard	Description
1. Standardization of materials and procedures for Administration	<p>Administration protocol is scripted and provides precise guidelines; recommended Administration Windows are clearly identified; materials are provided, or clear guidelines are provided if materials are to be created; includes both electronic and hard copy Administration manuals that are clear and concise; self-paced Training materials required for Reliable Screening with certification of completion, Progress Monitoring, interpretation of Scoring and Classifications, use of Reporting Platform.</p>

2. Efficiency of Implementation	Implementation Resources are explicit, provide clearly identified steps and procedures for school and District personnel to manage implementation of the EGUSMS, including implementation guides with recommended Training, scheduling and logistics support, and implementation monitoring frameworks.
3. Efficiency of Administration	The amount of time needed to administer the Assessment is reasonable and balanced to the information provided. <ul style="list-style-type: none"> Each measure used in Progress Monitoring takes less than three (3) minutes on average Universal Screening takes less than thirty (30) minutes for each of Literacy and Math on average
4. Flexibility of Assessment formats	The formats offered to administer the Assessment are flexible to local contexts. <ul style="list-style-type: none"> Examiners can use digital record forms to administer and Score the administered measures online Assessments are available as PDFs, are easily accessed, and can be viewed and printed within the user interface and subsequently entered into the online system after the Administration
5. Efficiency of Scoring	The amount of time needed to Score the Assessment is reasonable and balanced to the information provided; computer-assisted Scoring is available; procedures for calculating Scores are clear; Scores can be stored and reported electronically. <ul style="list-style-type: none"> Scores are automatically captured, calculated, uploaded to the data system, Scored, and are available immediately in the system Results are reported as Scores by measure and composite using National Norm-referenced percentiles
6. Efficiency in Data and Reporting	The system automatically organizes and Reports data, including the Reporting required of schools and Districts in T.C.A. § 49-1-905(c)(6) and T.C.A. §49-6-1509(a).
7. Accommodations clearly stated and described for applicable students	The individual student learning needs for students with disabilities and English learners are directly addressed with accommodations. Evidence includes: <ul style="list-style-type: none"> approved accommodations that do not compromise the interpretation or purpose of the test; specific Administration guidelines provided for implementing any accommodations; information about how to address accommodations specifically addressed in the Training materials or program; and suggestions for implementing accommodations that are research or evidence-based.
8. Technical Support	Technical support is available for all users Monday through Friday 7:00 a.m. EST to 4:00 p.m. CST beginning June 14, 2021 throughout the duration of the contract.

Table 3. Minimum Required Measurement Areas for Screening and Progress Monitoring

Grade	Literacy	Math	Non-academic
Kindergarten	<ul style="list-style-type: none"> Print Concepts Letter Knowledge Fluency* Sound-Symbol Correspondence* Phonological Awareness Phoneme Segmentation* Word/Nonsense Word Fluency Decoding/Word Reading Fluency* 	<ul style="list-style-type: none"> Number Naming Fluency Quantity Total Fluency Quantity Difference Fluency Concepts and Applications Number Comparison Fluency 	<ul style="list-style-type: none"> Emotional and Behavioral Risks Executive Functioning Risks
Grade 1	<ul style="list-style-type: none"> Decoding/Word Reading Fluency* Letter/sound fluency Phoneme Segmentation 	<ul style="list-style-type: none"> Quantity Total Fluency Quantity Difference Fluency Concepts and Applications 	<ul style="list-style-type: none"> Emotional and Behavioral Risks Executive Functioning Risks

	<ul style="list-style-type: none"> • Word/Nonsense Word Fluency • Oral Reading Fluency* • Sound-symbol Correspondence • Spelling/Encoding 	<ul style="list-style-type: none"> • Number Comparison Fluency • Arithmetic Facts Fluency 	
Grades 2 and 3	<ul style="list-style-type: none"> • Oral Reading Fluency* • Spelling/Encoding • Reading Comprehension • Silent Reading Fluency 	<ul style="list-style-type: none"> • Concepts and Applications • Computation Fluency • Number Comparison Fluency • Number Sense 	<ul style="list-style-type: none"> • Emotional and Behavioral Risks • Executive Functioning Risks

Measurement Areas in Table 3 with an asterisk (*) are required to be included in Progress Monitoring. Progress Monitoring shall support enough forms for monitoring at least twenty (20) times during the school year.

b. Online Data and Reporting Tool Platform

- (1) The Platform shall follow all applicable federal and state regulations and policies, including but not limited to ESSA, FERPA, ADA, and Tennessee law, including any requirements for data sharing and security as defined in this Contract.
- (2) All components of the EGUSMS Platform shall allow different access levels for different types of Users including but not limited to families, educators, school leaders, District leaders, and State personnel.
 - i) The Contractor shall have, within the platform, the ability to integrate with the State's Single Sign On (SSO) solution to determine role based access control for user groups.
 - ii) The State requests SSO integration support OAUTH2.0 protocol for authentication/authorization.
- (3) All components of the EGUSMS platform shall be accessible at minimum on the latest version of Chrome (40+), Internet Explorer (10+), Firefox (40+), Edge, Opera, and Safari as per current industry standards and with subsequent years subject to current industry standards at that time.
- (4) Reporting shall provide clear, detailed, and actionable information for each relevant user group. The Contractor shall provide meaningful text, imagery, and Resources for use on the Platform which allows teachers to accurately interpret Scores and Classifications, including but not limited to Screening, Progress Monitoring, goal setting as outlined in Table 4.
 - i) Reporting shall inform RTI²/MTSS (Response to Instruction and Intervention/Multi-Tiered System of Supports); IEPs, 504 Plans, and other individualized learning plans; and data based decision making. Reporting shall be able to meaningfully represent data in tabular formats, visual formats such as graphs, with user-friendly descriptions and shall allow for comparisons of data against National Samples, state and local data, and progress measures.
 - ii) The Platform shall provide both canned and ad-hoc reporting capabilities for users to create reports
 - iii) The Platform shall provide the ability to extract data via an API for use in advanced analytics as needed/requested by the State.

Table 4: Minimum Online Tool Functionality

Component	Specifications
Screening Reporting	Offers visibility into overall student performance, Classifications, Scores, and risk levels, with the ability to determine if composite Scores improved, declined, or remained the same across Administrations and views for tracking over time.
Progress Monitoring Reporting	<ul style="list-style-type: none"> • Allows users to easily track both achievement and growth over time using visual comparisons of student performance against goals and national norms. • Indicates achievement and growth relative to expectations.

Component	Specifications
Individual Student Reporting	<ul style="list-style-type: none"> Allows for users to view contextualized and prioritized Screening Reporting and Progress Monitoring Reporting simultaneously for an individual student.
Home Literacy Reporting	<ul style="list-style-type: none"> Pursuant to T.C.A. § 49-1-905(d) and T.C.A. § 49-1-229(c), provides families information describing the student's progress in foundational literacy skills. Allows Users to print on one page to send home and use them as a basis for discussion at parent-teacher conferences.
Comparison Reporting	<ul style="list-style-type: none"> Provides grouped summaries and correlation Reports to easily track and compare Reporting from other Reports for user selected aggregations and student groups across the Data Taxonomies. Provides prioritized focus areas and identifies areas of need across student groups.
Goal Setting and Reporting	<ul style="list-style-type: none"> Is intended to provide insight into student Progress Monitoring and Benchmarking through the establishment of appropriate progress measures. Generate group growth Reports, which display the distribution of student rate of improvement growth percentiles at the class, grade, school, and District levels.

c. Training Materials and Resources

- (1) The Contractor shall provide all Users Training materials and Resources needed for Valid and Reliable Administrations, Scoring and Reporting.
- (2) The Contractor shall provide Training and support to each LEA for Screening and Progress Monitoring with the tool and for the use of data collected and generated by the tool.

d. Data Handling, storage, and availability requirements

- (1) The Contractor shall be responsible for ensuring that the handling of data meets all state and federal requirements for the handling of required data, including the requirements in Section E, and is Interoperable with the State's data systems.
- (2) The Contractor shall meet the governance rules for the relevant data sets and approved by the State, including the steps taken to ensure Interoperability across the levels of the Data Taxonomies and Reporting of those aggregations, and is responsible for ensuring all data is available year-over-year for the duration of the Contract Term.
- (3) The Contractor shall have the ability to export and transmit data in the structures and formats provided by the State for the State's information systems. The data export structure shall be compliant with the EdFi 3.1 standard as per State standards.
 - i) The Contractor shall have the ability to send data via either API or file transfer, or some other pre-determined communication method to be agreed upon between the contractor and the State.
- (4) Data generated from an Assessment Administration using the Platform shall be immediately available within the Platform for authorized Users.
- (5) The Contractor shall store and make available, upon the request by the State, any raw data collected, used, extracted, or derived from any State or 3rd party data source, used in the data preparation, any intermediary data files/tables created or used during transformation/preparation, and the final data tables used to support users of the EGUSMS for the duration of the Contract Term.
- (6) To meet data needs and ensure student and teacher data is consistent and accurate, all assessment and reporting data shall follow state rules for student, teacher, class, school and district linking.
- (7) The Contractor shall provide the ability for schools and districts to add students as needed to the data while requiring accurate linking metadata for the student.

A.5. Score Card. The State shall utilize a Score Card and 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 reserves the right to exercise any other rights available to it under this Contract or at law or equity in lieu of reductions under this section, provided that if the State reduces a payment percentage based on this Section A.5. for a delay,

outage, error, failure to deliver, or other missed deliverable, the State will not also impose Liquidated Damages for the same delay, outage, error, failure to deliver, or other missed deliverable.

KPI	Issue/Metric	Payment Rate	Documentation Method	Scope Reference
Technical Support Services	<ul style="list-style-type: none"> Average Wait Times for technical support requests are less than thirty (30) minutes during business hours, and 100% of technical support requests are responded to within one (1) working day of receipt, and 95% of issues reported are resolved within three (3) business days of receipt and, 95% customer satisfaction as measured by a customer service response of "Agree" or "Strongly Agree" and positively worded statements/questions on a customer service survey provided by the Contractor 	1.0	Contractor summary reports Customer service survey	A.5.a
	<ul style="list-style-type: none"> Average Wait Times for technical support requests are less than forty-five (45) minutes during business hours, and 100% of technical support requests are responded to within two (2) working days of receipt, and 85% of issues reported are resolved within three (3) business days of receipt and, 85% customer satisfaction as measured by a customer service response of "Agree" or "Strongly Agree" and positively worded statements/questions on a customer service survey provided by the Contractor 	0.8		
	<ul style="list-style-type: none"> Average Wait Times for technical support requests are greater than or equal to forty-five (45) minutes during business hours, and Not all technical support requests are responded to within two (2) working days of receipt, and Less than 85% of issues reported are resolved within three (3) business days of receipt and, Less than 80% customer satisfaction as measured by a customer service response of "Agree" or "Strongly Agree" and positively worded statements/questions on a 	0.4		

	customer service survey provided by the Contractor			
Training and Efficiency	<ul style="list-style-type: none"> 100% of Assessment Administrations have supporting materials and resources that meet 100% of the criteria in rows 1 -5 of Table 2. 	1.0	User Training materials and resources	A.5.c
	90% of Assessment Administrations have supporting materials and resources that meet 100% of the criteria in rows 1 -5 of Table 2.	0.8	Platform Reporting	
	80% of Assessment Administrations have supporting materials and resources that meet 100% of the criteria in rows 1 -5 of Table 2.	0.4	Reports	

- A.6. Warranty.** Contractor represents and warrants that the term of the warranty ("Warranty Period") shall be the greater of the Term of this Contract or any other warranty 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.7. Inspection and Acceptance.** The State shall have the right to inspect all goods or services provided by Contractor under this Contract. If, upon inspection, the State determines that the goods or services are Defective, the State shall notify Contractor, and Contractor shall re-deliver the goods or provide the services at no additional cost to the State. If after a period of thirty (30) days following delivery of goods or performance of services the State does not provide a notice of any Defects, the goods or services shall be deemed to have been accepted by the State.

B. TERM OF CONTRACT:

- B.1 Term of Contract: This Contract shall be effective on **July 1, 2021** ("Effective Date") and extend for a period of thirty-six (**36**) months after the Effective Date ("Term"). The State shall have no obligation for goods or services provided by the Contractor prior to the Effective Date.
- B.2 Renewal Options: This Contract may be renewed upon satisfactory completion of the Term. The State reserves the right to execute up to three (3) 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) calendar 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 seven million five hundred thousand dollars and zero cents (**\$7,500,000.00**) ("Maximum Liability"). This Contract does not grant the Contractor any exclusive rights. The State does not guarantee that it will buy any minimum quantity of goods or services under this Contract. Subject to the terms and conditions of this Contract, the Contractor will only be paid for goods or services provided under this Contract after a purchase order is issued to Contractor by the State or as otherwise specified by this Contract.
- C.2. Compensation Firm. The payment methodology in Section C.3. of this Contract shall constitute the entire compensation due the Contractor for all goods or services provided under this Contract regardless of the difficulty, materials or equipment required. The payment methodology includes all applicable taxes, fees, overhead, and all other direct and indirect costs incurred or to be incurred by the Contractor.
- C.3. Payment Methodology. The Contractor shall be compensated based on the payment methodology for goods or services authorized by the State in a total amount as set forth in Section C.1.
- a. The Contractor's compensation shall be contingent upon the satisfactory provision of goods or services as set forth in Section A.
 - b. The Contractor shall be compensated based upon the following payment methodology:

Goods or Services Description	Amount (per compensable increment)
Early Grade Universal Screening and Monitoring System ("EGUSMS") for all Tennessee students in kindergarten, first grade, second grade, and third grade which includes, at a minimum, Universal Screening for Literacy and Math, Dyslexia Screening, Non-academic Screening, Progress Monitoring, data organization, and Online Reporting tools and the Training Resources and Technical Support for any Tennessee educators to effectively use those tools.	\$ Number

- 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:

Tammy Billington
Tammy.billington@tn.gov
 State of Tennessee
 Department of Education
 710 James Robertson Parkway
 Nashville, TN 37243

- 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 Strategy
 - (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
710 James Robertson Pkwy, Nashville, TN 37243
Lisa.Coons@tn.gov
Telephone # 615-571-6145

The Contractor:

Contractor Contact Name & Title
Contractor Name
Address
Email Address
Telephone # Number

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

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

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

- D.9. Nondiscrimination. The Contractor hereby agrees, warrants, and assures that no person shall be excluded from participation in, be denied benefits of, or be otherwise subjected to discrimination in the performance of this Contract or in the employment practices of the Contractor on the

grounds of handicap or disability, age, race, creed, color, religion, sex, national origin, or any other classification protected by federal or state law. The Contractor shall, upon request, show proof of nondiscrimination and shall post in conspicuous places, available to all employees and applicants, notices of nondiscrimination.

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

shall not be construed as a waiver or relinquishment of any term, covenant, condition, or provision. No term or condition of this Contract shall be held to be waived, modified, or deleted except by a written amendment signed by the Parties.

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

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

- D.20. HIPAA Compliance. The State and Contractor shall comply with obligations under the Health Insurance Portability and Accountability Act of 1996 ("HIPAA"), Health Information Technology for Economic and Clinical Health ("HITECH") Act and any other relevant laws and regulations regarding privacy (collectively the "Privacy Rules"). The obligations set forth in this Section shall survive the termination of this Contract.
- a. Contractor warrants to the State that it is familiar with the requirements of the Privacy Rules, and will comply with all applicable requirements in the course of this Contract.
 - b. Contractor warrants that it will cooperate with the State, including cooperation and coordination with State privacy officials and other compliance officers required by the Privacy Rules, in the course of performance of the Contract so that both parties will be in compliance with the Privacy Rules.
 - c. The State and the Contractor will sign documents, including but not limited to business associate agreements, as required by the Privacy Rules and that are reasonably necessary to keep the State and Contractor in compliance with the Privacy Rules. This provision shall not apply if information received or delivered by the parties under this Contract is NOT "protected health information" as defined by the Privacy Rules, or if the Privacy Rules permit the parties to receive or deliver the information without entering into a business associate agreement or signing another document.
 - d. The Contractor will indemnify the State and hold it harmless for any violation by the Contractor or its subcontractors of the Privacy Rules. This includes the costs of responding to a breach of protected health information, the costs of responding to a government enforcement action related to the breach, and any fines, penalties, or damages paid by the State because of the violation.
- D.21. Tennessee Consolidated Retirement System. Subject to statutory exceptions contained in Tenn. Code Ann. §§ 8-36-801, *et seq.*, the law governing the Tennessee Consolidated Retirement System ("TCRS"), provides that if a retired member of TCRS, or of any superseded system administered by TCRS, or of any local retirement fund established under Tenn. Code Ann. §§ 8-35-101, *et seq.*, accepts State employment, the member's retirement allowance is suspended during the period of the employment. Accordingly and notwithstanding any provision of this Contract to the contrary, the Contractor agrees that if it is later determined that the true nature of the working relationship between the Contractor and the State under this Contract is that of "employee/employer" and not that of an independent contractor, the Contractor, if a retired member of TCRS, may be required to repay to TCRS the amount of retirement benefits the Contractor received from TCRS during the Term.
- D.22. Tennessee Department of Revenue Registration. The Contractor shall comply with all applicable registration requirements contained in Tenn. Code Ann. §§ 67-6-601 – 608. Compliance with applicable registration requirements is a material requirement of this Contract.
- D.23. Debarment and Suspension. The Contractor certifies, to the best of its knowledge and belief, that it, its current and future principals, its current and future subcontractors and their principals:
- a. are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any federal or state department or agency;
 - b. have not within a three (3) year period preceding this Contract been convicted of, or had a civil judgment rendered against them from commission of fraud, or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, state, or local) transaction or grant under a public transaction; violation of federal or state antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification, or destruction of records, making false statements, or receiving stolen property;

- c. are not presently indicted or otherwise criminally or civilly charged by a government entity (federal, state, or local) with commission of any of the offenses detailed in section b. of this certification; and
- d. have not within a three (3) year period preceding this Contract had one or more public transactions (federal, state, or local) terminated for cause or default.

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

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

D.30. Incorporation of Additional Documents. Each of the following documents is included as a part of this Contract by reference. In the event of a discrepancy or ambiguity regarding the Contractor's duties, responsibilities, and performance under this Contract, these items shall govern in order of precedence below:

- a. any amendment to this Contract, with the latter in time controlling over any earlier amendments;
- b. this Contract with any attachments or exhibits (excluding the items listed at subsections c. through f., below), which includes **Attachments A and B**;
- 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., 3rd 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 copies of all required insurance policies, including endorsements required by these specifications, at any time.

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

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

a. Commercial General Liability ("CGL") Insurance

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

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

b. Workers' Compensation and Employer Liability Insurance

- 1) For Contractors statutorily required to carry workers' compensation and employer liability insurance, the Contractor shall maintain:
 - i. Workers' compensation in an amount not less than one million dollars (\$1,000,000) including employer liability of one million dollars (\$1,000,000) per accident for bodily injury by accident, one million dollars (\$1,000,000) policy limit by disease, and one million dollars (\$1,000,000) per employee for bodily injury by disease.

2) If the Contractor certifies that it is exempt from the requirements of Tenn. Code Ann. §§ 50-6-101 – 103, then the Contractor shall furnish written proof of such exemption for one or more of the following reasons:

- i. The Contractor employs fewer than five (5) employees;
- ii. The Contractor is a sole proprietor;
- iii. The Contractor is in the construction business or trades with no employees;
- iv. The Contractor is in the coal mining industry with no employees;
- v. The Contractor is a state or local government; or
- vi. The Contractor self-insures its workers' compensation and is in compliance with the TDCI rules and Tenn. Code Ann. § 50-6-405.

c. Automobile Liability Insurance

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

d. Professional Liability Insurance

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

e. Technology Professional Liability (Errors & Omissions)/Cyber Liability Insurance

- 1) The Contractor shall maintain technology professional liability (errors & omissions)/cyber liability insurance appropriate to the Contractor's profession in an amount not less than ten million dollars (\$10,000,000) per occurrence or claim and ten million dollars (\$10,000,000) annual aggregate, covering all acts, claims, errors, omissions, negligence, infringement of intellectual property (including copyright, patent and trade secret); network security and privacy risks, including but not limited to unauthorized access, failure of security, information theft, damage to destruction of or alteration of electronic information, breach of privacy perils, wrongful disclosure and release of private information, collection, or other negligence in the handling of confidential information, and including coverage for related regulatory fines, defenses, and penalties.
- 2) Such coverage shall include data breach response expenses, in an amount not less than ten million dollars (\$10,000,000) and payable whether incurred by the State or Contractor, including but not limited to consumer notification, whether or not required by law, computer forensic investigations, public relations and crisis management firm fees, credit file or identity monitoring or remediation services and expenses in the performance of services for the State or on behalf of the State hereunder.

f. Crime Insurance

- 1) The Contractor shall maintain crime insurance, which shall be written on a "loss sustained form" or "loss discovered form" providing coverage for third party fidelity, including cyber theft and extortion. The policy must allow for reporting of circumstances or incidents that may give rise to future claims, include an extended reporting period of no less than two (2) years with respect to events which occurred but were not reported during the term of the policy, and not contain a condition requiring an arrest or conviction.

Any crime insurance policy shall have a limit not less than one million dollars (\$1,000,000) per claim and one million dollars (\$1,000,000) in the aggregate. Any crime insurance policy shall contain a Social Engineering Fraud Endorsement with a limit of not less than two hundred and fifty thousand dollars (\$250,000). This insurance may be written on a claims-made basis, but in the event that coverage is cancelled or non-renewed, the Contractor shall purchase an extended reporting or "tail coverage" of at least two (2) years after the Term.

- 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. 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.3. Intellectual Property Indemnity. The Contractor agrees to indemnify and hold harmless the State of Tennessee as well as its officers, agents, and employees from and against any and all claims or suits which may be brought against the State concerning or arising out of any claim of an alleged patent, copyright, trade secret or other intellectual property infringement. In any such claim or action brought against the State, the Contractor shall satisfy and indemnify the State for the amount of any settlement or final judgment, and the Contractor shall be responsible for all legal or other fees or expenses incurred by the State arising from any such claim. The State shall give the Contractor notice of any such claim or suit, however, the failure of the State to give such notice shall only relieve Contractor of its obligations under this Section to the extent Contractor can demonstrate actual prejudice arising from the State's failure to give notice. This Section shall not grant the Contractor, through its attorneys, the right to represent the State of Tennessee in any legal matter, as provided in Tenn. Code Ann. § 8-6-106.
- E.4. Software License Warranty. Contractor grants a license to the State to use all software provided under this Contract in the course of the State's business and purposes.
- E.5. Software Support and Maintenance Warranty. Contractor shall provide to the State all software upgrades, modifications, bug fixes, or other improvements in its software that it makes generally available to its customers.
- E.6. Extraneous Terms and Conditions. Contractor shall fill all orders submitted by the State under this Contract. No purchase order, invoice, or other documents associated with any sales, orders, or supply of any good or service under this Contract shall contain any terms or conditions other than as set forth in the Contract. Any such extraneous terms and conditions shall be void, invalid and unenforceable against the State. Any refusal by Contractor to supply any goods or services under this Contract conditioned upon the State submitting to any extraneous terms and conditions shall be a material breach of the Contract and constitute an act of bad faith by Contractor.
- E.7. **Contractor Hosted Services Confidential Data, Audit, and Other Requirements**
- a. "Confidential State Data" is defined as data deemed confidential by State or Federal statute or regulation. The Contractor shall protect Confidential State Data as follows:
- (1) The Contractor shall ensure that all Confidential State Data is housed in the continental United States, inclusive of backup data.
 - (2) The Contractor shall encrypt Confidential State Data at rest and in transit using the current version of Federal Information Processing Standard ("FIPS") 140-2 validated encryption technologies.
 - (3) The Contractor and the Contractor's processing environment containing Confidential State Data shall either (1) be in accordance with at least one of the following security standards: (i) International Standards Organization ("ISO") 27001; (ii) Federal Risk and Authorization Management Program ("FedRAMP"); or (2) be subject to an annual engagement by a CPA firm in accordance with the standards of the American

Institute of Certified Public Accountants ("AICPA") for a System and Organization Controls for service organizations ("SOC") Type II audit. The State shall approve the SOC audit control objectives. The Contractor shall provide proof of current ISO certification or FedRAMP authorization for the Contractor and Subcontractor(s), or provide the State with the Contractor's and Subcontractor's annual SOC Type II audit report within 30 days from when the CPA firm provides the audit report to the Contractor or Subcontractor. The Contractor shall submit corrective action plans to the State for any issues included in the audit report within 30 days after the CPA firm provides the audit report to the Contractor or Subcontractor.

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

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

- (4) The Contractor must annually perform Penetration Tests and Vulnerability Assessments against its Processing Environment. "Processing Environment" shall mean the combination of software and hardware on which the Application runs. "Application" shall mean the computer code that supports and accomplishes the State's requirements as set forth in this Contract. "Penetration Tests" shall be in the form of attacks on the Contractor's computer system, with the purpose of discovering security weaknesses which have the potential to gain access to the Processing Environment's features and data. The "Vulnerability Assessment" shall be designed and executed to define, identify, and classify the security holes (vulnerabilities) in the Processing Environment. The Contractor shall allow the State, at its option, to perform Penetration Tests and Vulnerability Assessments on the Processing Environment.
- (5) Upon State request, the Contractor shall provide a copy of all Confidential State Data it holds. The Contractor shall provide such data on media and in a format determined by the State
- (6) Upon termination of this Contract and in consultation with the State, the Contractor shall destroy all Confidential State Data it holds (including any copies such as backups) in accordance with the current version of National Institute of Standards and Technology ("NIST") Special Publication 800-88. The Contractor shall provide a written confirmation of destruction to the State within ten (10) business days after destruction.

b. Minimum Requirements

- (1) The Contractor and all data centers used by the Contractor to host State data, including those of all Subcontractors, must comply with the State's Enterprise Information Security Policies as amended periodically. The State's Enterprise Information Security Policies document is found at the following URL: <https://www.tn.gov/finance/strategic-technology-solutions/strategic-technology-solutions/sts-security-policies.html>.
- (2) The Contractor agrees to maintain the Application so that it will run on a current, manufacturer-supported Operating System. "Operating System" shall mean the software that supports a computer's basic functions, such as scheduling tasks, executing applications, and controlling peripherals.

- (3) If the Application requires middleware or database software, Contractor shall maintain middleware and database software versions that are at all times fully compatible with current versions of the Operating System and Application to ensure that security vulnerabilities are not introduced.

c. **Comptroller Audit Requirements**

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

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

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

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

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

- d. **Business Continuity Requirements.** The Contractor shall maintain set(s) of documents, instructions, and procedures which enable the Contractor to respond to accidents, disasters, emergencies, or threats without any stoppage or hindrance in its key operations ("Business Continuity Requirements"). Business Continuity Requirements shall include:

- (1) "Disaster Recovery Capabilities" refer to the actions the Contractor takes to meet the Recovery Point and Recovery Time Objectives defined below. Disaster Recovery Capabilities shall meet the following objectives:
 - i. Recovery Point Objective ("RPO"). The RPO is defined as the maximum targeted period in which data might be lost from an IT service due to a major incident: 12 hours
 - ii. Recovery Time Objective ("RTO"). The RTO is defined as the targeted duration of time and a service level within which a business process must be restored after a disaster (or disruption) in order to avoid unacceptable consequences associated with a break in business continuity: 8 hours
- (2) The Contractor and the Subcontractor(s) shall perform at least one Disaster Recovery Test every three hundred sixty-five (365) days. A "Disaster Recovery Test"

shall mean the process of verifying the success of the restoration procedures that are executed after a critical IT failure or disruption occurs. The Disaster Recovery Test shall use actual State Data Sets that mirror production data, and success shall be defined as the Contractor verifying that the Contractor can meet the State's RPO and RTO requirements. A "Data Set" is defined as a collection of related sets of information that is composed of separate elements but can be manipulated as a unit by a computer. The Contractor shall provide written confirmation to the State after each Disaster Recovery Test that its Disaster Recovery Capabilities meet the RPO and RTO requirements.

E.8. 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.9. 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

- E.10. Federal Funding Accountability and Transparency Act (FFATA). This Contract requires the Contractor to provide supplies or services that are funded in whole or in part by federal funds that are subject to FFATA. The Contractor is responsible for ensuring that all applicable requirements, including but not limited to those set forth herein, of FFATA are met and that the Contractor provides information to the State as required.

The Contractor shall comply with the following:

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

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

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

- (2) Total compensation means the cash and noncash dollar value earned by the executive during the Contractor's preceding fiscal year and includes the following (for more information see 17 C.F.R. § 229.402(c)(2)):
 - i. Salary and bonus.
 - ii. Awards of stock, stock options, and stock appreciation rights. Use the dollar amount recognized for financial statement reporting purposes with

respect to the fiscal year in accordance with the Statement of Financial Accounting Standards No. 123 (Revised 2004) (FAS 123R), Shared Based Payments.

- iii. Earnings for services under non-equity incentive plans. This does not include group life, health, hospitalization or medical reimbursement plans that do not discriminate in favor of executives, and are available generally to all salaried employees.
 - iv. Change in pension value. This is the change in present value of defined benefit and actuarial pension plans.
 - v. Above-market earnings on deferred compensation which is not tax qualified.
 - vi. Other compensation, if the aggregate value of all such other compensation (e.g. severance, termination payments, value of life insurance paid on behalf of the employee, perquisites or property) for the executive exceeds \$10,000.
- b. The Contractor must report executive total compensation described above to the State by the end of the month during which this Contract is awarded.
 - c. If this Contract is amended to extend the Term, the Contractor must submit an executive total compensation report to the State by the end of the month in which the term extension becomes effective.
 - d. The Contractor will obtain a Data Universal Numbering System (DUNS) number and maintain its DUNS number for the term of this Contract. More information about obtaining a DUNS Number can be found at: <http://fedgov.dnb.com/webform/>

The Contractor's failure to comply with the above requirements is a material breach of this Contract for which the State may terminate this Contract for cause. The State will not be obligated to pay any outstanding invoice received from the Contractor unless and until the Contractor is in full compliance with the above requirements.

E.11. Lobbying. The Contractor certifies, to the best of its knowledge and belief, that:

- a. No federally appropriated funds have been paid or will be paid, by or on behalf of the Contractor, to any person for influencing or attempting to influence an officer or employee of an agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.
- b. If any funds other than federally appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with any contract, grant, loan, or cooperative agreement, the Contractor shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
- c. The Contractor shall require that the language of this certification be included in the award documents for all sub-awards at all tiers (including subcontracts, sub-grants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into and is a prerequisite for making or entering into this transaction imposed by 31 U.S.C. § 1352.

E.12 Liquidated Damages. If the Contractor fails to perform in accordance with any term or provision of this contract, only provides partial performance of any term or provision of the Contract, violates any warranty, or any act prohibited or restricted by the Contract occurs, ("Liquidated Damages Event"), the State may assess damages on Contractor ("Liquidated Damages"). The State shall notify the Contractor of amounts to be assessed as Liquidated Damages. The Parties agree that due to the complicated nature of the Contractor's obligations under this Contract it would be difficult to specifically designate a monetary amount for Contractor's failure to fulfill its obligations regarding the Liquidated Damages Event as these amounts are likely to be uncertain and not easily proven. Contractor has carefully reviewed the Liquidated Damages contained in Attachment A and agrees that these amounts represent a reasonable relationship between the amount and what might reasonably be expected in the event of a Liquidated Damages Event, and are a reasonable estimate of the damages that would occur from a Liquidated Damages Event. The Parties agree that the Liquidated Damages represent solely the damages and injuries sustained by the State in losing the benefit of the bargain with Contractor and do not include any injury or damage sustained by a third party. The Contractor agrees that the Liquidated Damages are in addition to any amounts Contractor may owe the State pursuant to the indemnity provision or any other sections of this Contract. The State is not obligated to assess Liquidated Damages before availing itself of any other remedy. The State may choose to discontinue Liquidated Damages and avail itself of any other remedy available under this Contract or at law or equity.

IN WITNESS WHEREOF,

CONTRACTOR LEGAL ENTITY NAME:

CONTRACTOR SIGNATURE

DATE

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**

SUBJECT CONTRACT NUMBER:	
CONTRACTOR LEGAL ENTITY NAME:	
EDISON VENDOR IDENTIFICATION NUMBER:	

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.

PRINTED NAME AND TITLE OF SIGNATORY**DATE OF ATTESTATION**

Contract Attachment B: Liquidated Damages

To effectively manage contractual performance, the State has established Liquidated Damages associated with the Contractor's obligations with respect to the Contract. The Contractor is expected to perform according to a certain level of standards. If these standards are not met, the State is entitled to impose liquidated damage assessments. Damages are included in this Attachment.

The Parties agree that the Liquidated Damages represent solely the anticipated damages and injuries sustained by the State in losing the benefit of the bargain with Contractor and do not include any injury or damage sustained by a third party.

Payment of Liquidated Damages: It is agreed by the State and the Contractor that any liquidated damages assessed by the State shall be due and payable to the State within forty-five (45) calendar days after Contractor receipt of the Invoice containing an assessment of Liquidated Damages. If payment is not made by the due date, the Liquidated Damages amount may be withheld from future payments by the State without further notice.

Platform delivery	Cost per State business day
EGUSMS Platform - the Contractor's failure to provide the EGUSMS platform as required by Section A.5 of this Contract during any of the three Benchmark Administration windows shall subject the Contractor to Liquidated Damages for each business day after the Contractor receives a notice of non-compliance from the State until the non-compliance is remedied by the Contractor.	\$9,000.00
EGUSMS Platform - the Contractor's failure to provide the EGUSMS platform as required by Section A.5 of this Contract during any time other than during any of the three Benchmark Administration windows shall subject the Contractor to Liquidated Damages for each business day after the Contractor receives a notice of non-compliance from the State until the non-compliance is remedied by the Contractor.	\$2,500.00