

**DATE: RFA AMENDMENT RELEASE DATE: 3/12/21**

## Tutoring and Summer Learning Loss Programming Request for Applications Tracking #: 2114233105FAF0

### State's responses to vendor questions and comments

**RFA IS AMENDED AS FOLLOWS:**

**1. The State's responses to questions and comments in the table below amend and clarify this RFA.**

Any restatement of RFA text in the Question/Comment column shall NOT be construed as a change in the actual wording of the RFA document.

#	QUESTION / COMMENT	STATE RESPONSE
1	Will rolling delivery of content throughout the school year be acceptable?	Summer content must be completed before the start of summer programming. Tutoring content may be completed throughout the calendar year, on a schedule mutually agreed upon by TDOE and the vendor.
2	Will the DOE accept a math only proposal?	One vendor must provide a bid that covers all services included in the scope of the RFA. However, subcontractors may be used, subject to approval by the State. See question 2(d) under RFA Application Components and Section D.7. of the pro forma contract regarding the use of subcontractors.
3	Will the DOE accept a bid without the STREAM minicamp?	One vendor must provide a bid that covers all services included in the scope of the RFA. However, subcontractors may be used, subject to approval by the State. See question 2(d) under RFA Application Components and Section D.7. of the pro forma contract regarding the use of subcontractors.
4	Is it the DOE's expectation that one vendor	One vendor must provide a bid that

#	QUESTION / COMMENT	STATE RESPONSE
	will create all components or is it possible that multiple vendors will be awarded?	covers all services included in the scope of the RFA. However, subcontractors may be used, subject to approval by the State. See question 2(d) under RFA Application Components and Section D.7. of the pro forma contract regarding the use of subcontractors.
5	Can a vendor partner with a subcontractor to provide an aspect of the programing?	Yes. See question 2(d) under RFA Application Components and Section D.7. of the pro forma contract.
6	Must the vendor utilize TN's foundational skills program, or can vendor use another program to fulfill foundational skills instruction?	The vendor can choose to use the TN Foundational Skills curriculum supplement or the vendor can choose to address foundational skills instruction using one of the adopted materials in the 2019 ELA adoption list <a href="#">here</a> .
7	When do the tutor training components need to be completed? Is it expected that all tutors will be fully trained prior to the launch of sessions for students?	<p>Tutor training certification components must be final and accepted by the State by July 1, 2021.</p> <p>The State amends this RFA and pro forma contract to include this detail. See below.</p> <p>Yes, it is expected that all tutors will be fully trained prior to the launch of sessions for students.</p>
8	Will the DOE accept a bid that contains Grades K-8 only for ELA content?	One vendor will have to provide a bid that covers all services included in the scope of the RFA. However, subcontractors may be used, subject to approval by the State. See question 2(d) under RFA Application Components and Section D.7. of the pro forma contract regarding the use of subcontractors.
9	How many students per instructor are projected for mini-camp lessons?	This will vary dependent on the school district structure for their camp.
10	Can teacher prep videos be provided per topic instead of for each session?	Teacher prep videos should prepare the tutor for the session and the outcomes of each session and should not be topically based.
11	When will deliverables be due for summer school programming, STREAM mini-camps, and tutoring respectively?	All deliverables related to summer programming and STREAM mini-camps must be final and accepted by the State in three phases: the first two weeks of content by April 26, 2021; the third and fourth week of content by May 10, 2021, and the fifth and sixth week of content by May 24, 2021.

#	QUESTION / COMMENT	STATE RESPONSE
		<p>All deliverables related to the tutor certification trainings must be final and accepted by the state by July 1, 2021.</p> <p>All deliverables related to Tutoring lessons must be final and accepted by the State in phases: the first ten (10) lessons and all related content and supports by July 19, 2021, and each of the subsequent set of ten (10) lessons due on two week rotations thereafter until completion. See below.</p> <p>The State amends this RFA and pro forma contract to include this detail.</p>
12	Are tutor lesson plans and student materials requested as print materials? Will PDFs suffice?	Materials should be provided in both Word versions and PDFs.
13	Will students have the ability to access print materials, including books and workbooks?	Districts will have the choice to provide print materials dependent on the tutoring situation in their district.
14	Can programs align to specific core ELA and Math curricula used in TN or does the program need to be curriculum-agnostic and therefore able to be used by all TN students, regardless of the core curriculum utilized by their school?	<p>Materials can be aligned to specific materials on the state textbook adoption list for ELA or math, but deliverables must include all components of materials required for implementation so that they can be implemented in any district regardless of which materials it has adopted and purchased. State adoption lists may be found at these links: adoption here:</p> <p><a href="#">Math (1 of 4)</a></p> <p><a href="#">Math (2 of 4)</a></p> <p><a href="#">Math (3 of 4)</a></p> <p><a href="#">Math (4 of 4)</a></p> <p><a href="#">ELA (1 of 1)</a></p>
15	We noticed the RFA is for both ELA and Math. We offer Math content only. Will applications be accepted from vendors who provide services for one of the content areas?	One vendor will have to provide a bid that covers all services included in the scope of the RFA. However, subcontractors may be used, subject to approval by the State. See question 2(d) under RFA Application Components and Section D.7. of the pro forma contract regarding the use of subcontractors.
16	We offer math content, so would be able to provide the math content development components; however, we would want to	The bid will be awarded to a single vendor. A vendor can choose to partner with additional providers as part of a

#	QUESTION / COMMENT	STATE RESPONSE
	partner with a provider that offers Training, Learning Collaboration Systems and/or Project Management capabilities. Is the state open to “match making” high quality applications that cover portions of the RFA (e.g. content but not project management) or is the state only accepting applications that cover all of the components (meaning we would need to “match make” ourselves prior to submitting and submit in partnership with another organization)?	singular bid (with the providers as subcontractors); however, the bid will have to cover all services included in the scope of the RFA. Subcontractors may be used, subject to approval by the State. See question 2(d) under RFA Application Components and Section D.7. of the pro forma contract regarding the use of subcontractors.
17	Is the State planning to award multiple vendors?	One vendor will have to provide a bid that covers all services included in the scope of the RFA. However, subcontractors may be used, subject to approval by the State. See question 2(d) under RFA Application Components and Section D.7. of the pro forma contract regarding the use of subcontractors.
18	Will the State consider making separate awards for content / instructional materials and tutoring services?	One vendor will have to provide a bid that covers all services included in the scope of the RFA. However, subcontractors may be used, subject to approval by the State. See question 2(d) under RFA Application Components and Section D.7. of the pro forma contract regarding the use of subcontractors.
19	Will the State accept a joint response between two vendors?	The bid will be awarded to a single vendor. A vendor can choose to partner with additional providers as part of a singular bid (with the providers as subcontractors); however, the bid will have to cover all services included in the scope of the RFA.
20	Will the State consider long-term licensing in lieu of ownership or perpetual licensing?	The state requires ownership or perpetual licensing of all content.
21	With regard to the RTI components described for each grade band ( <i>Thirty (30) minutes of RTI2 Tier II and Tier III content for both ELA and math, for each grade, each day</i> ) – would it be acceptable to meet this requirement through digital, asynchronous curriculum?	RTI components may be delivered using digital, asynchronous supports during the school day.
22	Due to the current pandemic, our office continues to operate remotely, including our authorized signers. Would it be acceptable to have the required bid form signed electronically via secure DocuSign instead of a wet signature?	The State accepts certified digital signatures and wet signatures. A document that is signed digitally must be sent as a pdf with the digital signature stamp on it, not through a link to the DocuSign system.
23	Will this contract be rewarded to one vendor	One vendor will have to provide a bid

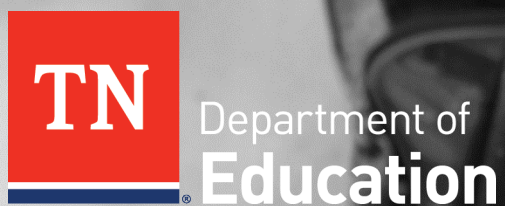
#	QUESTION / COMMENT	STATE RESPONSE
	or is there opportunity for multiple vendors to be chosen to support different components of the project?	that covers all services included in the scope of the RFA. A vendor can choose to partner with additional providers as part of a singular bid (with the providers as subcontractors); however, the bid will have to cover all services included in the scope of the RFA. Subcontractors may be used, subject to approval by the State. See question 2(d) under RFA Application Components and Section D.7. of the pro forma contract regarding the use of subcontractors.
24	We noticed the RFA is for both ELA and Math. As you know, <b>[Redacted Vendor Information]</b> offers Math content only. Do you know if applications will be accepted from vendors who provide services for one of the content areas?	One vendor will have to provide a bid that covers all services included in the scope of the RFA. However, subcontractors may be used, subject to approval by the State. See question 2(d) under RFA Application Components and Section D.7. of the pro forma contract regarding the use of subcontractors.
25	Looking through the RFA components, <b>[Redacted Vendor Information]</b> is an excellent fit for the Math content development components; however, we would want to partner with a provider that offers Training, Learning Collaboration Systems and/or Project Management capabilities. Is the state open to “match making” high quality applications that cover portions of the RFA (e.g. content but not project management) or is the state only accepting applications that cover all of the components (meaning we would need to “match make” ourselves prior to submitting)?	The bid will be awarded to a single vendor. A vendor can choose to find partners with additional providers as part of a singular bid (with the providers as subcontractors); however, the bid will have to cover all services included in the scope of the RFA and the State will not combine partners with multiple bids through this process. However, subcontractors may be used, subject to approval by the State. See question 2(d) under RFA Application Components and Section D.7. of the pro forma contract regarding the use of subcontractors.

2. The following is added as Section A.3.(n) of the pro forma:

n. Deliverables on the following deadlines: All deliverables related to summer programming and STREAM mini-camps must be final and accepted by the State in three phases: the first two weeks of content by April 26, 2021; the third and fourth week of content by May 10, 2021, and the fifth and sixth week of content by May 24, 2021. All deliverables related to the tutor certification trainings must be final and accepted by the State by July 1, 2021. All deliverables related to Tutoring lessons must be final and accepted by the State in phases: the first ten (10) lessons and all related content and supports by July 19, 2021, and each of the subsequent set of ten (10) lessons due on two week rotations thereafter until completion.

**RFA Amendment Effective Date.** The revisions set forth herein shall be effective upon release. All other terms and conditions of this RFA not expressly amended herein shall remain in full force and effect.





# Tutoring and Summer Learning Loss Programming 2021 Request for Applications (RFA)

Tennessee Department of Education | March 2021

**Application Due Date: March 25, 2021**

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# General Information

## ***Background***

The COVID-19 pandemic has created an urgent need to address learning loss for students in Tennessee. Students across the state have a range of experiences as it relates to access and opportunity based on internet connectivity, quarantine time, and other factors. The Tennessee General Assembly passed the Tennessee Learning Loss Remediation and Student Acceleration Act as a thoughtful and bold way to address this urgent issue. This Act ensures the provision of programming to support local education agencies (LEAs) and provides LEAs with structure and funding to run out-of-school programs. As part of the Act, six (6) weeks of summer programming will be open for 1st–8th grade students in Summer 2021 and Summer 2022, in addition to afterschool programming focused on STREAM. Beginning in Summer 2023, and for every summer thereafter, four weeks of programming and afterschool support will be provided. Further, tutor training and afterschool tutoring content will be developed for year-long tutoring support for students in grades K-10.

The goal of the project is to develop high-quality training for tutors and non-credentialed teachers, content for summer and tutor programming, ongoing professional development, and technology-based communication supports. Students in Tennessee may need additional minutes in order to experience the same amount of growth that they otherwise would have should the pandemic not have happened. These programs should provide targeted support for students with strong training opportunities. Ultimately, students participating in the summer school or tutoring program should experience significant academic growth.

## ***Procurement Purpose***

The department is seeking a vendor to provide content for summer learning loss programming and tutoring, as well as resources to support tutor training.

See the attached [pro forma contract](#) that includes a detailed scope of services. This substantially represents the contract document that the awarded Contractor must sign. If a State of TN entity is the awardee, the interagency model template will be used.

The maximum liability for this project is ten million dollars (\$10,000,000.00) for an initial term of twelve (12) months, and there will be two (2) one-year options to renew.

## ***Communications***

Applicants must direct communications concerning this request for applications to the following person designated as the solicitation coordinator:

Yvette Blue, Senior Director, Learning Acceleration

Office of Academics  
 Department of Education  
 710 James Robertson Parkway  
 Andrew Johnson Tower, 11<sup>th</sup> Floor  
 Nashville, TN 37243  
 615.571.6145  
 Yvette.Blue@tn.gov  
 Cc: Lisa.Coons@tn.gov

## Review Process

All complete application packages meeting the requirements and received by the department on or before the application deadline will be forwarded to a review committee. The committee will provide each application with a merit score based upon the review criteria and rubric. A copy of the scoring rubric can be found in [Attachment B](#). The overall score will serve as the basis for selection.

This request for applications by the department does not create rights, interests, or claims of entitlement in any applicant. The department reserves the right to reject any response. All contract award decisions are final. **All contracts are subject to the availability of funds and approval by state procurement offices.**

## Schedule

Event	Time (central time zone)	Date
RFA released		March 5, 2021
Deadline for written questions to be submitted to TDOE	2:00pm	March 10, 2021
TDOE releases responses to written questions		March 12, 2021
Deadline to submit notice of intent to bid (optional but encouraged)	2:00pm	March 16, 2021
Application deadline	2:00pm	March 25, 2021
TDOE notification of intent to award		March 29, 2021
Contracts signed by all parties		March 31, 2021
Contract fully approved and executed		April 2, 2021

# Application Procedures

The application must be completed and submitted via email to [Education.Procurement@tn.gov](mailto:Education.Procurement@tn.gov) by **2:00pm Central time on March 25, 2021**. Paper copies of this application will not be accepted.

## Steps to submitting an application:

1. *As soon as possible but by March 16, 2021 at 2:00pm Central time, email [Education.Procurement@tn.gov](mailto:Education.Procurement@tn.gov) to express your intent to bid. A notice of intent to bid is not mandatory for applicants, but it is strongly encouraged.*
2. *By March 25, 2021 at 2:00pm Central time, combine all application components into a compressed file and email it as an attachment to [Education.Procurement@tn.gov](mailto:Education.Procurement@tn.gov). If it is too large to email, place the application components in a secure shared drive or site and email [Education.Procurement@tn.gov](mailto:Education.Procurement@tn.gov) with information on how to access them.*

# Attachment A

## Application Components

### 1. Primary Contact

- a. *Provide the name, e-mail address, mailing address, and telephone number of the person the State should contact regarding the response.*

### 2. Qualifications and Capacity

- a. *Provide a brief, descriptive statement detailing evidence of the Respondent's ability to deliver the goods or services sought under this RFA (e.g., prior experience, training, certifications, resources, program and quality management systems, etc.).*
- b. *Provide a narrative description of the proposed project team, its members, and organizational structure along with an organizational chart identifying the key people who will be assigned to deliver the goods or services required by this RFA.*
- c. *Provide a personnel roster listing the names of key people who the Respondent will assign to meet the Respondent's requirements under this RFA along with the estimated number of hours that each individual will devote to that performance. Follow the personnel roster with a resume for each of the people listed. The resumes must detail the individual's title, education, current position with the Respondent, and employment history.*
- d. *Provide a statement of whether the Respondent intends to use subcontractors to meet the Respondent's requirements of any contract awarded pursuant to this RFA, and if so, provide: (a) the names of the subcontractors along with the contact person, mailing address, telephone number, and e-mail address for each; (b) a description of the scope and portions of the goods each subcontractor involved in the delivery of goods or performance of the services each subcontractor will perform; and (c) a statement specifying that each proposed subcontractor has expressly assented to being proposed as a subcontractor in the Respondent's response to this RFA.*

- e. *Provide a proposed draft plan for managing content development and delivery that aligns fully to the State's timeline and requirements.*
- f. *Describe the research and best practices for learning remediation and acceleration in ELA and math that would inform the Respondent's approach to developing the materials called for in the pro forma contract's scope.*

### 3. *Proposal for Meeting Pro Forma Scope Deliverables*

- a. *Provide a sample scope and sequence for a sample week of ELA and math content for grade 1 summer school programming with two hours of ELA and two hours of math each day. Include descriptions of proposed pre- and post-tests as well as RTI<sup>2</sup> content, and provide annotations or narrative making clear how each scope and sequence aligns to Tennessee Academic Content Standards and the requirements of the pro forma contract, including developing and deepening content mastery and allowing sufficient time for practice (for math) and using Evidence-Based approaches to Foundational Skills instruction and/or the Tennessee Comprehensive Literacy Tenets for Knowledge Building Curriculum (for ELA).*
- b. *Provide a sample scope and sequence for a sample week of ELA and math content for grade 5 summer school programming with two hours of ELA and two hours of math each day. Include descriptions of proposed pre- and post-tests as well as RTI content, and provide annotations or narrative making clear how each scope and sequence aligns to Tennessee Academic Content Standards and the requirements of the pro forma contract, including developing and deepening content mastery and allowing sufficient time for practice (for math) and using Evidence-Based approaches to Foundational Skills instruction and the Tennessee Comprehensive Literacy Tenets for Knowledge Building Curriculum (for ELA)*
- c. *Provide a sample lesson plan for an engaging 45-minute tutoring session focused on comparing and contrasting the point of view from two different stories and two different narrators. (Tennessee grade 4 ELA standard 4.RL.CS.6). Include a tutor script, information on common student misconceptions, a FERPA-compliant student work exemplar with all identifying information removed, recommendations for tutor preparation, easily implemented access points and scaffolds for students with varied needs, and an end-of-session check for understanding.*

- d. *Provide a sample lesson plan for an engaging 45-minute tutoring session focused on the following Tennessee standard (4.NF.A.2): "Compare two fractions with different numerators and different denominators by creating common denominators or common numerators or by comparing to a benchmark fraction such as  $\frac{1}{2}$ . Recognize that comparisons are valid only when the two fractions refer to the same whole. Use the symbols  $>$ ,  $=$ , or  $<$  to show the relationship and justify the conclusions." Include a tutor script, information on common student misconceptions, a FERPA-compliant student work exemplar with all identifying information removed, recommendations for tutor preparation, easily implemented access points and scaffolds for students with varied needs, and an end-of-session check for understanding.*
- e. *Provide a sample lesson plan for an engaging 45-minute tutoring session focused on the following Tennessee standard (4.NF.A.2): "Compare two fractions with different numerators and different denominators by creating common denominators or common numerators or by comparing to a benchmark fraction such as  $\frac{1}{2}$ . Recognize that comparisons are valid only when the two fractions refer to the same whole. Use the symbols  $>$ ,  $=$ , or  $<$  to show the relationship and justify the conclusions." Include a tutor script, information on common student misconceptions, a FERPA-compliant student work exemplar with all identifying information removed, recommendations for tutor preparation, easily implemented access points and scaffolds for students with varied needs, and an end-of-session check for understanding.*
- f. *Provide a sample outline and description for the asynchronous tutor training Module Three as described in the pro forma contract's scope. Include multisensory engagement opportunities, auto-graded in-module checks for understanding, and an auto-graded end-of-module performance task.*
- g. *Describe a proposed Learning Collaboration System that includes data tracking and sharing, a feedback mechanism, support for tutor performance reviews, and privacy and information security protections. The State must be able to continue using the system after the conclusion of the Contract; therefore, the proposal must describe how this will be achieved, either ownership or perpetual licensing.*
- h. *Provide assurance that all deliverables are compliant with state and federal requirements relating to accessibility, including ADA and the Rehabilitation Act of 1973, compatible with the State's learning management system (Open edX), and the property of the State in perpetuity.*

# Attachment B: Cost Proposal & Scoring Guide

**NOTICE: THIS COST PROPOSAL MUST BE COMPLETED EXACTLY AS REQUIRED**

**COST PROPOSAL SCHEDULE—** The Cost Proposal, detailed below, shall indicate the proposed price for goods or services defined in the Scope of Services in the *Pro Forma* Contract and for the entire contract period. All monetary amounts shall be in U.S. currency and limited to two (2) places to the right of the decimal point.

The Evaluation Factor associated with each cost item is for evaluation purposes only. The evaluation factors do NOT and should NOT be construed as any type of volume guarantee or minimum purchase quantity. The evaluation factors shall NOT create rights, interests, or claims of entitlement in the Respondent.

## A. Evaluated Cost Items

Cost Item Description	Proposed Cost	State Use Only	
		Evaluation Factor	Evaluation Cost (cost x factor)
<b>Summer School Instructional Materials</b>  Sections A.4, A.5, A.6, A.7	\$  / Each	120	
<b>STREAM Mini-Camp Instructional Materials</b>  Sections A.4, A.8	\$  / Each	15	
<b>Tutoring Instructional Materials</b>  Sections A.4, A.9	\$  / Each	220	
<b>Tutor Training, Certification, and Scoring Materials</b>  Sections A.4, A.10	\$  / Each	220	
<b>Learning Collaboration System</b>  Sections A.4, A.11	\$  / Each	100	
<b>EVALUATION COST AMOUNT</b> (sum of evaluation costs above):			



Cost Item Description	Proposed Cost	State Use Only		
		Evaluation Factor	Evaluation Cost (cost x factor)	
The Solicitation Coordinator will use this sum and the formula below to calculate the Cost Proposal Score. Numbers rounded to two (2) places to the right of the decimal point will be standard for calculations.				
<div style="display: flex; justify-content: space-between; align-items: center;"> <div> <b>lowest evaluation cost amount from <u>all</u> proposals</b>  <hr style="width: 40%; margin: 5px 0;"/> <b>evaluation cost amount being evaluated</b> </div> <div style="text-align: center;"> <b>X 20</b>            (maximum section score)         </div> <div> <b>=</b>  <b>SCORE:</b> </div> </div>				
State Use – Solicitation Coordinator Signature, Printed Name & Date:				

### B. Non-evaluated support work

#### This section is not evaluated

Use the chart below to provide proposed cost items for any suggested ongoing support work that will strengthen the program. The State, at its sole discretion, may add additional services to the contract(s) awarded as result of this solicitation.

For example:

- I. videotaping Tutor lessons in the first and second years as examples,
- II. ongoing Tutor professional development,
- III. supports to connect Tutor experiences Tutor experience with educator Preparation, or
- IV. any other content or supports that may shall strengthen programming

Suggested ongoing support work	Proposed Unit of Measure	Proposed Cost

\* Respondents may add lines as needed to the non-evaluated support work section only.

## Attachment C: Scoring Rubric

	Maximum Points	Assigned Points	Evaluation Criteria
1. Qualifications and Capacity	20		<ul style="list-style-type: none"> <li>• Instructional expertise</li> <li>• Alignment to TDOE priorities</li> <li>• Content development capacity</li> <li>• Project management capacity</li> </ul>
2. Proposal for Meeting Pro Forma Scope Deliverables	20		<ul style="list-style-type: none"> <li>• Alignment to <i>Pro Forma</i> contract requirements, including quality of proposed instructional supports</li> <li>• Application materials are professional and user-friendly with no errors</li> </ul>
3. Costs	20		<ul style="list-style-type: none"> <li>• Per cost evaluation model in Attachment B.</li> </ul>
<b>SCORE (maximum possible score = 60)</b>			
<b>Evaluator Identification:</b>			

## Attachment D: Pro Forma Contract

The *Pro Forma* Contract details the State's requirements:

- Scope of Services and Deliverables (Section A);
- Contract Period (Section B);
- Payment Terms (Section C);
- Standard Terms and Conditions (Section D); and,
- Special Terms and Conditions (Section E).

The *pro forma* contract substantially represents the document that the successful agency must sign.

**See sample *Pro Forma* Contract below.**

**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 tutoring and summer learning loss programming, 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. Asynchronous refers to learning that occurs virtually online and through prepared resources, without real-time instructor-led interaction.
  - b. After-School Learning Mini-Camp refers to an after-school educational program, part of the Learning Loss remediation and student acceleration program, that is designed to remediate student Learning Loss and support student academic needs using an educational approach to learning that uses science, technology, reading, engineering, the arts, and mathematics (STREAM) as access points for guiding student inquiry, dialogue, and critical thinking.
  - c. Assessment refers to any tool used to determine students' skills and knowledge in the targeted or desired area.
  - d. Best for All Central (BFAC) is the digital, one-stop learning portal hosted by the Tennessee Department of Education with a variety of resources and digital tools for educators, parents, students and community members.
  - e. Daily Achievement Rubrics refers to mastery guides that show how a student is progressing towards mastering key skills and content included in the daily lesson.
  - f. Dyslexia refers to a specific learning disability that is neurological in origin and is characterized by difficulties with accurate and fluent word recognition and by poor spelling and decoding abilities.
  - g. End of Course Certification ("Certification") refers to the Tutoring candidate's successful completion of all module Performance Tasks demonstrating readiness to Tutor.
  - h. English Learner ("EL") refers to a student with a non-English language background who qualifies for English as a Second Language services via a State approved English Language Proficiency screener.
  - i. Evidence-Based refers to practices or programs that have been evaluated using the scientific method with rigorous data analyses and that have been accepted through general or majority consensus by independent experts through objective and scientific peer review.
  - j. Foundational Reading Skills ("Foundational Skills") refers to the continuum of skills that research has demonstrated are required to systematically teach reading, including phonological awareness, phonemic awareness, fluency, decoding, and vocabulary development.
  - k. Guides for Matching: A support guide to help with match Tutors and students shall be produced to support the matching of Tutor strengths and student needs.
  - l. Guides for Content Matching ("Content Matching Guides"): There shall be clear guides and a differentiation framework produced to clarify which Tutoring grades and content (or lesson sessions) provided to each student. The Content Matching Guide shall provide the best strategies

for matching students and content, as well as provide solutions for how to know when to accelerate through content, pick the best lessons for necessary extensive remediation, and how to identify when the student is ready to move to a new grade level.

- m. High-Dosage Low-Ratio Tutoring refers to a model of Tutoring where students receive significantly more minutes of instruction from teachers or trained Tutors, in the lowest possible ratio, and as a part of or continuation of the regular school day.
- n. High-Quality Instructional Materials ("HQIM") refers to a complex set of resources that build conceptually through the scope and sequence as well as through grade levels that includes comprehensive tools that allow teachers to plan instructional experiences for all learners.
- o. Individual Education Plan ("IEP") refers to a written statement for each child with a disability that is developed, reviewed, and revised in a meeting in accordance with 34 C.F.R. §§300.320 through 300.324.
- p. Intervention refers to instruction focused on the remediation of standards-based learning gaps or skill-based practice that accelerates learning for students.
- q. Knowledge Building Curriculum refers to the curricular materials that support the development of knowledge from reading as aligned with the Tennessee ELA standards.
- r. Knowledge Development is the process of supporting educators' and Tutors' conceptual development of key aspects of the project/initiative.
- s. Learning Collaboration System refers to a tracking, sharing, and communication system to be used by Tutors and classroom teachers of record (see Section A.11.).
- t. Learning Loss refers to the loss of academic knowledge or skills previously acquired or a pause in academic advancement, most commonly due to extended time away from school or in-person instruction.
- u. Lesson Preparation ("Preparation") refers to supporting unit and lesson planning grounded in High-Quality Instructional Materials and understanding the daily lesson components of the materials and how to use those components to deliver lessons and sequence lessons.
- v. Performance Data refers to demonstrations of skills and knowledge (e.g., on a test or task)
- w. Performance Task refers to a demonstration of learning for purposes of Assessment that requires learners to apply knowledge, understanding, and skill in authentic ways.
- x. Response to Instruction and Intervention ("RTI<sup>2</sup>") refers to a multi-tier approach to the early identification and support of students with learning and behavior needs. The tiers are:
  - 1) Tier I: All students receive research-based, high-quality, general education instruction. In general, 80-85 percent of students will have their needs met by Tier I instruction.
  - 2) Tier II: In addition to Tier I, extra help is provided to students who have been identified as "at risk" in basic math and reading skills. In general 10-15 percent of students will receive Tier II interventions.
  - 3) 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 in basic math and reading skills. Tier III interventions are more explicit and more intensive than Tier II interventions.
- y. Section 504 Plans ("504 Plans") refers to a written document developed by a 504 team that states the nature of a student's disability, the specific modifications, and the related support services to be provided to an eligible student, defined as a child who has a physical or mental impairment which substantially limits one or more major life activities.
- z. STREAM refers to science, technology, reading, engineering and mathematics. STREAM is an educational discipline that aims to spark an interest and lifelong love of the arts and sciences in children from an early age.
- aa. Student Engagement ("Engagement") refers to a lesson that has a high level of student interaction and active thinking through oral questioning, discussion, and written responses.
- bb. Student Work Exemplars ("Student Work") refers to model student responses that demonstrate how a student would show their complete mastery of a skill, concept or standard.
- cc. Summer School refers to out-of-school learning that occurs after the required yearlong school calendar.
- dd. Tennessee Comprehensive Literacy Tenets refers to the principles that K-12 (English Language Arts ("ELA")) instruction should be grounded in regular practice with complex text and its academic vocabulary; reading and writing grounded in evidence from literary and informational text; and building knowledge through content-rich literary and informational text.

- ee. Tennessee Foundational Skills Curriculum Supplement ("TNFSCS") refers to an open-source suite of instructional materials and aligned supports for teachers, designed to support the teaching of Foundational Skills. The TNFSCS instructional materials consist of daily lessons grouped into several units at each grade level. Most lessons include, along with other material, 15-minute "sounds-first activities" that are labeled as such.
- ff. Tennessee Academic Content Standards ("Tennessee Standards") refers to the Tennessee State Board of Education approved content that provides Tennessee educators with a common set of expectations of what students will know and are delineated by grade and subject area.
- gg. Tennessee Learning Loss Remediation and Student Acceleration Act ("Act") refers to Public Chapter 1 of the First Extraordinary Session of the 112th General Assembly, which ensures the provision of summer programming and tutoring designed to accelerate student learning (<https://publications.tnsosfiles.com/acts/112/extra/pc0001EOS.pdf>).
- hh. Tutor ("Tutor" or "Tutoring") refers to someone who has been hired to teach the lessons provided through the ALL Corps, but who is not or was not a certified or licensed teacher in Tennessee.

### A.3. Scope of Services

The Contractor shall provide:

- a. A Tutor training and Certification series to be completed Asynchronously.
- b. Content development for Summer School programming for first through eighth grades.
- c. Content development for year-long Tutoring for kindergarten through tenth grades;
- d. Tutor training videos for use throughout the year.
- e. A Learning Collaboration System, including licensing and/or code: defined as a tracking, sharing, and communication system to be used by Tutors and classroom teachers of record (see Section A.11).
- f. A full suite of Tutor training and Certification which shall include an online, Asynchronous Tutor training module with Performance Task gates, an End-Of-Course Certification, and a method of automatic scoring and reporting.
- g. Content for Summer School programming to cover the full suite of programmatic options that a school may elect to cover. All content must be explicitly aligned to Tennessee Standards.
- h. Content for After-School Learning Mini Camps to include limited programming and options for program operational structures.
- i. Explicit lessons (see A.5. for specific deliverables) for year-long Tutoring using the High-Dose, Low-Ratio model. This content shall include Tutor Lesson Preparation, lesson content, Student Work Exemplars, and Daily Achievement Rubrics with guidance to determine student progress.
- j. Tennessee Standards-aligned pre- and post-tests must be used for measuring growth and progress during Summer School with monthly progress checks for students throughout the Tutoring program.
- k. All instructional materials with the appropriate and necessary supports, access points, and accommodations for students with IEPs or Section 504 Plans, English Learners, and students with Dyslexia.
- l. An online Learning Collaboration System by which each Tutor and classroom teacher of record shall be able to share feedback and comments on student needs and progress.
- m. All work shall reflect Tennessee Academic Content Standards for all content areas.

### A.4. Grades 1-2 Summer School Programming and Content

The requirements of this section include the content below. All lessons and materials shall include instructional implementation guides for staff, including but not limited to materials, standards, student activity and mastery rubric, and questioning. The Contractor shall, for each grade 1-2, develop 29 days of content to include:

- a. Two (2) hours of ELA and two (2) hours of math content per day. This content shall:
  - i. Reflect Tennessee Standards.

- ii. Focus on the foundational knowledge and skills that must be mastered within the grade level, as identified by the State.
  - iii. For all ELA content, be developed from the Tennessee Foundational Skills Curriculum Supplement, the Tennessee Comprehensive Literacy Tenets, and other content required that supports Evidence-Based and Knowledge-Building content.
  - iv. For all math content, develop and deepen content mastery and allow sufficient time for practice.
  - v. Include significant Engagement and focus on student ownership of learning through the production of answers and student-led discussion in all lessons.
  - vi. Include a daily end-of-day check for understanding that requires students to demonstrate skills learned.
- b. A pre- and post-test to measure growth on the content covered during the summer.
  - c. Thirty (30) minutes of RTI2 Tier II and Tier III content for both ELA and math, for each grade, each day. This shall include up to five (5) additional reinforcement days when students have additional practice to reinforce standards and/or skills before moving forward.

All lessons for Summer School shall include Student Work Exemplars, and examples outlining proficiency at each level.

A.5. Grades 3-8 Summer School Programming and Content

The requirements of this section include the content below. All lessons and materials shall include instructional implementation guides for staff, including but not limited to materials, standards, student activity and mastery rubric, and questioning. The Contractor shall:

- a. For each grade 3-8, develop 29 days of content to include:
  - i. Two (2) hours of ELA and two (2) hours of math content per day. This content shall:
    - 1) Reflect Tennessee Standards.
    - 2) Focus on the foundational knowledge and skills that must be mastered within the grade level, as identified by the State.
    - 3) For all ELA content, be developed from an ELA HQIM material, the Tennessee Foundational Skills Curriculum Supplement, the Tennessee Comprehensive Literacy Tenets, and other content required that supports Evidence-Based and Knowledge Building content.
    - 4) For all math content, develop and deepen content mastery and allow sufficient practice time to ensure mastery.
    - 5) Include significant Engagement and focus on student ownership of learning through the production of answers and student-led discussion in all lessons.
    - 6) Include a daily end-of-day check for understanding that requires students to demonstrate skills learned.
  - ii. A pre- and post-test aligned to Tennessee Standards to measure growth on the content covered during the summer.
  - iii. Thirty (30) minutes of RTI2 Tier II and Tier III content for both ELA and math, for each grade, each day. This shall include up to five (5) additional reinforcement days when students have additional practice to reinforce standards and/or skills before moving forward.

For ELA, only content reflecting best practices in High-Quality Instructional Materials, which include Knowledge Building Curriculum and/or best practices and Foundational Skills (where applicable).



- b. For each grade including third, fourth, fifth, sixth, and seventh grades, develop ten (10) additional days of content to include:
- iv. Two (2) hours of ELA and two (2) hours of math content per day. This content shall:
- 1) Reflect Tennessee Standards.
  - 2) Focus on the knowledge and skills that must be mastered within the grade level, as identified by the State.
  - 3) For each content block, provide for 90 minutes of effective independent and small group work and 30 minutes of targeted, small group or 1:1 support (to support four rotations over the course of two hours)
  - 4) For all math content, develop and deepen content mastery and allow for sufficient practice time to ensure mastery.
  - 5) Include significant Engagement and focus on student ownership and production of answers and discussion in all lessons.
  - 6) Include a daily end-of-day check for understanding that requires students to demonstrate skills learned.
- v. Thirty minutes of RTI<sup>2</sup> Tier II and Tier III content for both ELA and math, for each grade, each day.

This content shall be designed to extend the learning sequence beyond the first six (6) weeks.

All lessons for Summer School shall include Student Work Exemplars, and examples outlining proficiency at each level.

The Contractor shall assume that all students in 3<sup>rd</sup> – 8<sup>th</sup> grades will have literacy achievement data or take a universal screener to determine basic literacy skills knowledge. For children not able to decode, accurately read words, or read texts fluently, Foundational Skills literacy development shall be prioritized. This shall require differentiation of Tennessee Foundational Skills Curriculum Supplement content in the younger grades to meet the needs of older, non-proficient readers. Similarly, vocabulary development and Knowledge Development shall be a point of emphasis throughout ELA content.

#### A.6. Summer School Programming and Content Breakdown

In total, the Contractor shall develop 604 lesson sessions, 604 RTI<sup>2</sup> mini-lessons, and 8 pre- and post-tests.

<b>Grade(s) Covered</b>	<b>Number of 2-hour ELA blocks to be developed</b>	<b>Number of 2-hour math blocks to be developed</b>	<b>Number of 2-hour ELA small-group rotations to be developed</b>	<b>Number of 2-hour math small-group rotations to be developed</b>	<b>Number of pre- and post-tests to be developed</b>	<b>Number of 30-minute RTI<sup>2</sup> lessons to be developed</b>
For each grade 1 <sup>st</sup> and 2 <sup>nd</sup>	29	29	10	10	1	78
For each grade 3 <sup>rd</sup> , 4 <sup>th</sup> , 5 <sup>th</sup> , 6 <sup>th</sup> , and 7 <sup>th</sup>	29	29	10	10	1	78

For 8 <sup>th</sup> grade	29	29	0	0	1	58
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A.7. After-School Mini-Camp Structure and Content

The requirements of this section include the content below. All lessons and materials shall include instructional implementation guides for staff, including but not limited to materials, standards, student activity and mastery rubric, and questioning. The Contractor shall for each of the two grade spans K – 2<sup>nd</sup> grades and 3<sup>rd</sup> – 5<sup>th</sup> grades develop thirty-nine (39) days of after-school mini-camp content, with each day to include:

- a. Two (2), 30-minute activity-based lessons focused on STREAM (for a total of 78 lessons for each grade span K – 2<sup>nd</sup> and 3<sup>rd</sup> – 5<sup>th</sup>).
- b. Activities shall be active (hands-on) and include opportunities for practice.
- c. Activities shall be clearly differentiated for grades within the identified grade band, to provide guidance on what the instructor should assume students know or ensure they understand, what they should explicitly teach, and what they should narrate.
- d. Lesson activities shall include a guide to be used by instructional staff to provide information on lesson purpose, set-up, best practices, materials, and other important components.
- e. Lesson activities shall include an equal balance of science, math, technology, engineering and the arts, with at least three (3) of each incorporated into the activity.

In total, the Contractor shall develop 156 lesson sessions with complete components (lesson, mastery activity, lesson tutorial, and supplemental resources).

A.8. Tutoring

The requirements of this section outline what is needed for the content and support for Tutoring. Each of these shall be completed for both ELA and math.

The State shall identify the 100 pieces of knowledge or skill per grade level and Tennessee Academic Content Standards in ELA and math that students must master, including how those skills and standards should be sequenced for comprehensive mastery of content, and the State will provide that to the Contractor.

The Contractor shall develop 100 Tutoring sessions for each grade level (kindergarten through tenth grades) in ELA and 100 Tutoring sessions in math.

The Contractor shall produce Tutoring sessions that will be delivered sequentially and focus on one (1) content area at a time. Sequences may be adjusted to match those of locally adopted materials so that students are getting content aligned to current learning. The Contractor shall also develop content that builds upon prior year academic Tennessee standards and is in alignment with current year standards, to allow for “just in time” review and alignment to grade-level instruction.

- a. Each session shall:
  - i. Be planned to run 45 minutes in length.
  - ii. Support small groups of no more than four (4) students at one time. Prioritize individual student support and mastery.
  - iii. Include a 5-minute warm-up for each Tutoring lesson that reviews content and skill from the prior session and allows the student to practice/demonstrate independently.
  - iv. Include a Tutoring lesson with a grain size that allows for student mastery of the content and/or skill within that lesson, and must prioritize student individualized Engagement, practice and demonstration of mastery.

- v. Produce Student Work Exemplar, either verbally, online or on paper to be completed during the session and completed with the support of the Tutor as needed.
  - vi. Include an end of session, brief 5-minute check for understanding. It is preferred that this be taken online and be auto graded in grades three through ten.
  - vii. Assume Tutors with limited instructional experience and deep instructional knowledge.
- b. Session lessons shall include:
- i. scripted lesson plans,
  - ii. identified typical misconceptions and the best way to diagnose and correct student's understanding within the session,
  - iii. Student Work Exemplar expectations and exemplars to support the accurate identification of mastery level,
  - iv. recommended Tutor prep and additional student practice activities to build mastery in the future; and,
  - v. Easily implemented access points, scaffolds and guidance to accommodate for the needs of students with disabilities, English Learners, students with Section 504 Plans, and students with Dyslexia.
- c. Each session shall include supplemental resources, including at-home activities for students to complete, as well as a 10-minute review activity, to be used as supplemental support.
- d. Each session shall include a 10 to 15 minute online video tutorial that will be viewed by each Tutor as Preparation for the Tutoring session. Each video shall include:
- i. an overview of that session's lesson content,
  - ii. Student Work Exemplar expectations and mastery,
  - iii. expected challenges with student mastery, including common mistakes,
  - iv. models to scaffold and reinforce accurate understanding; and,
  - v. best practices for student practice and gradual release mastery of the skill/content.
- e. Each grade level and content area shall have a formal check for understanding built into the process as one of the lessons. This check for understanding shall be tied directly to the "piece of content" for the daily Tutoring session and shall take no more than 30 minutes and provide actionable and immediate feedback to the Tutor. Ideally the formal check shall be able to be completed in written form online for grades three through ten. There should be at least four (4) of these built into the Tutoring session schedule.
- f. All kindergarten through 3rd grade Tutor sessions that are focused on Foundational Skills may build off the TNFSCS instructional materials and may require checks for understanding that show oral demonstration of fluency within a decodable reader.

The Contractor shall develop 2,200 lesson sessions with complete components (lesson, mastery activity, lesson tutorial, and supplemental resources).

**Tutoring content breakdown:**

<b>Grade and Content Covered</b>	<b>Scripted Lesson/Session</b>	<b>Online Lesson Mastery Activity</b>	<b>Lesson Prep Video Tutorial</b>	<b>Supplemental Lesson Resources</b>
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K ELA	100	100	100	100
K Math	100	100	100	100
1 <sup>st</sup> ELA	100	100	100	100
1 <sup>st</sup> Math	100	100	100	100
2 <sup>nd</sup> ELA	100	100	100	100
2 <sup>nd</sup> Math	100	100	100	100
3 <sup>rd</sup> ELA	100	100	100	100
3 <sup>rd</sup> Math	100	100	100	100
4 <sup>th</sup> ELA	100	100	100	100
4 <sup>th</sup> Mat	100	100	100	100
5 <sup>th</sup> ELA	100	100	100	100
5 <sup>th</sup> Math	100	100	100	100
6 <sup>th</sup> ELA	100	100	100	100
6 <sup>th</sup> Math	100	100	100	100
7 <sup>th</sup> ELA	100	100	100	100
7 <sup>th</sup> Math	100	100	100	100
8 <sup>th</sup> ELA	100	100	100	100
8 <sup>th</sup> Math	100	100	100	100
9 <sup>th</sup> ELA	100	100	100	100
9 <sup>th</sup> Math	100	100	100	100
10 <sup>th</sup> ELA	100	100	100	100
10 <sup>th</sup> Math	100	100	100	100

Additional materials to support Tutoring shall include:

- g. Lesson Preparation protocol: A Lesson Preparation protocol for the Tutor to use. This protocol shall walk Tutors through effective Lesson Preparation and shall include, at minimum:
  - 1. a template organizer,
  - 2. requirement to watch the Lesson Preparation video,
  - 3. requirement to read and annotate the lesson in advance,
  - 4. space to identify specific points to target with individual students based on Performance Data and the prior day's content,
  - 5. requirement to take the Performance Task in advance of delivering content, and
  - 6. any other Lesson Preparation activities that will help to support effective internalization of content.

The Preparation protocol shall be included in the Tutor orientation content, listed below, and shall be used as a check-in activity requirement by schools. Preparation protocols shall also include opportunities to scaffold and gradual release within lessons. These opportunities shall be called out in both the organizer and the Lesson Preparation video.

- h. District and School Site Implementation Guides: A Tutor Preparation guide shall be developed to be used by school-site leadership to identify expectations, best practices for organizing and working with Tutors, accountability, substitute protocol, and any other items that will strengthen the relationship and effectiveness of programming. This shall also include how to provide observations and regular feedback to Tutors and the best systems for running Tutoring programs in schools.
- i. Guides for Matching: A support guide to help with match Tutors and students shall be produced to support the matching of Tutor strengths and student needs.
- j. Guides for Content Matching: There shall be clear guides and a differentiation framework produced to clarify which Tutoring grades and content (or lesson

sessions) provided to each student. For example, a student may not be best matched with the grade level they were in during the prior school year and may need Tutoring content from earlier grades. The Content Matching Guide shall provide the best strategies for matching students and content, as well as provide solutions for how to know when to accelerate through content, pick the best lessons for necessary extensive remediation, and how to identify when the student is ready to move to a new grade level.

#### A.9. Tutor Training, Certification and Scoring

The requirements of this section include:

##### a. Tutor Training

- i. The Contractor shall develop an online, Asynchronous Tutor training suite of modules.
- ii. Modules shall cover the following topics, at minimum:
  - 1) Module 1: introduction to High-Dosage Low-Ratio Tutoring, which shall cover basic principles of Tutoring and an overview of best practices in what makes a successful Tutor. Content shall include setting routines and expectations, building strong relationships, and basic instructional principles.
  - 2) Module 2: instructional practices for effective Tutoring, which shall focus on the best way to implement the instructional materials provided, including how to understand them, use them, and self-evaluate effectiveness.
  - 3) Module 3: Engagement strategies for small groups, which shall include how to effectively engage students individually, in groups of 2 or 3, and in groups of 4 or 5. Content shall include active vs. passive Engagement, practices for effective questioning so students demonstrate mastery, and positive framing and affirmation.
  - 4) Module 4: addressing the differentiated needs of learners and age bands, which shall include content specific to grade bands (grades K-2, 3-5, 6-8 and high school) as well as the specific supports provided to students with disabilities, students with Section 504 Plans, English Learners, students with Dyslexia, and students who are in Tier II and Tier III of RTI<sup>2</sup>. Content shall include how to use access points and scaffolds providing in daily Tutoring lessons.
  - 5) Module 5: checking for understanding and student mastery, which shall include how to use the end of lesson Assessments, during-lesson checks for understanding, how to re-direct misconceptions, how to reinforce knowledge and skill development, and identifying levels of mastery in student work within different content areas.
- iii. Each module shall include during-lesson checks and be engaging for the participants. Modules shall not be limited to written material to review, but shall include multi-sensory Engagement opportunities that shall include in-module checks for understanding. These checks must be rigorous and have the ability to be auto-graded. Failed mini-checks shall require the participant to re-start that section.

##### b. Tutor Certification and Scoring

- i. Performance Tasks shall be included at the end of each module. Performance Tasks shall require more evaluation of the candidate's ability to apply concepts and less about knowledge memorization or repetition.

- ii. Performance Data on modules shall be collected for each Tutor. Their scores for each module and respective subsections shall be included, as well as the number of attempts before passing. These files shall be sent automatically in a single file to the State on a weekly basis.
- iii. All modules and Performance Tasks shall be auto-graded, with feedback provided directly to the applicant.

c. Tutor Orientation

- i. The Contractor shall create a welcome orientation for new tutors online and on-demand.
- ii. Orientation shall be no more than two (2) hours and available to be chunked into 30-minute sections.
- iii. Orientation shall cover
  - 1) Tutor expectations,
  - 2) an overview of the materials and content,
  - 3) how to prep for lessons and related expectations, and
  - 4) best practices in communication with teachers, instructional leaders, and families, including positive framing in how to speak about students in general.
- iv. An orientation shall also be developed for district and school-site personnel that walks through the full Tutoring program including:
  - 1) content,
  - 2) operational best practices for implementation,
  - 3) Tutor supports,
  - 4) recruitment and training best practices,
  - 5) cohesion with High-Quality Instructional Materials, and
  - 6) effective communication, performance management, and use of supplemental activities and family-based resources.

A.10. Learning Collaboration System

At no additional cost to the State, the Contractor shall provide a Learning Collaboration System that serves as a place to allow for clear communication between the Tutor and the teacher. This could be an operational process that is easy to implement and streamlined, or it could be an online tool that is easy to use without significant administrative overhead. The Learning Collaboration System shall:

- a. Allow for the Tutor to track and note the level of mastery of each student.
- b. Allow for the teacher to receive immediate access to that information.
- c. Store the tracker information as well as automatically store the performance of students on mastery tasks completed online.
- d. Allow for the teacher to provide notes or feedback to the Tutor to support ongoing effectiveness and targeted assistance.
- e. Allow for a cumulative and data-driven review of Tutor performance and impact.
- f. Allow for student privacy and information security.
- g. Allow for an easy-to-implement connection between the student and future performance on state standardized Assessments.
- h. Allow for the option to store examples of Student Work Exemplar.
- i. Allow for the State to use and host in the State's cloud environment the Learning Collaboration System, following the expiration of the Contract. This requirement may be met through an ownership model or perpetual licensing model. In the case of an ownership model, all development work product, source code, documentation, and

scripts shall be the property of the State (Refer to Section E Special Terms and Conditions.)

#### A.11. **Technological Requirements**

- a. All content must be designed with interactive components (using HTML5-Package (H5P) framework) and be able to be loaded by the State with all features into the State's BFAC or Open edX learning management system.
- b. The Contractor shall provide a system according to the State's specifications, user experience, and standards. The Contractor shall assure alignment to the State's architectural standards working with the State's Information Technology team.
- c. The Contractor shall, prior to go-live, conduct and provide the result to a system load test of the Learning Collaboration System.
- d. All data, information and metadata collected by the State, furnished by the State to the Contractor, or collected by the Contractor in the course of the performance of work under this Contract shall be and remain the property of the State, and the Contractor shall neither have nor acquire any rights, title, interest or licenses therein by virtue of this Contract, excepting only a limited license to use the data for purposes reasonably required for the performance of duties under this Contract and subject to confidentiality requirements with respect to the data.
- e. To the extent applicable, the Contractor shall comply with the State's Acceptable Use Policy, Network Access Rights and Obligations, found here:  
[https://www.tn.gov/content/dam/tn/finance/documents/fa\\_policies/Acceptable%20Use%20Policy.pdf](https://www.tn.gov/content/dam/tn/finance/documents/fa_policies/Acceptable%20Use%20Policy.pdf).

#### A.12. **Accessibility Requirements**

The Contractor shall ensure that all services provided under this Contract are compliant with state and federal requirements relating to accessibility, including the Americans with Disabilities Act and Section 504 of the Rehabilitation Act of 1973

- A.13. The Contractor shall be solely responsible for ensuring full compliance with all state and federal privacy laws (e.g. FERPA) related to student information and Student Work Exemplars, including securing any necessary parent/guardian consents.
- A.14. All work products developed or provided by the Contractor under this Contract shall constitute "works made for hire" or have similar status under relevant intellectual property law. This includes all content, materials, and the Learning Collaboration System. The State shall have full, final, and perpetual ownership rights to all work products provided by the Contractor for the State under this Contract (for the Learning Collaboration System, the Contractor may meet this requirement through a no cost perpetual license approach). At no cost to the State, the Contractor shall assign and transfer to the State all intellectual property rights in all work product(s) developed, produced or delivered under this Contract.
- A.15. 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.16. Inspection and Acceptance. The State shall have the right to inspect all goods or services provided by Contractor under this Contract. If, upon inspection, the State determines that the goods or services are Defective, the State shall notify Contractor, and Contractor shall re-deliver the goods or provide the services at no additional cost to the State. If after a period of thirty (30) days following delivery of goods or performance of services the State does not provide a notice of any Defects, the goods or services shall be deemed to have been accepted by the State.

**B. TERM OF CONTRACT:**

This Contract shall be effective on **DATE** ("Effective Date") and extend for a period of twelve (12) **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.1. Renewal Options. This Contract may be renewed upon satisfactory completion of the Term. The State reserves the right to execute up to **two (2)** renewal options under the same terms and conditions for a period not to exceed twelve (12) months each by the State, at the State's sole option. In no event, however, shall the maximum Term, including all renewals or extensions, exceed a total of sixty (60) months.
- B.2. Term Extension. The State may extend the Term an additional period of time, not to exceed one hundred-eighty (180) days beyond the expiration date of this Contract, under the same terms and conditions, at the State's sole option. In no event, however, shall the maximum Term, including all renewals or extensions, exceed a total of sixty (60) months.

**C. PAYMENT TERMS AND CONDITIONS:**

- C.1. Maximum Liability. In no event shall the maximum liability of the State under this Contract exceed **Written Dollar Amount (\$Number)** ("Maximum Liability"). This Contract does not grant the Contractor any exclusive rights. The State does not guarantee that it will buy any minimum quantity of goods or services under this Contract. Subject to the terms and conditions of this Contract, the Contractor will only be paid for goods or services provided under this Contract after a purchase order is issued to Contractor by the State or as otherwise specified by this Contract.
- C.2. Compensation Firm. The payment methodology in Section C.3. of this Contract shall constitute the entire compensation due the Contractor for all goods or services provided under this Contract regardless of the difficulty, materials or equipment required. The payment methodology includes all applicable taxes, fees, overhead, and all other direct and indirect costs incurred or to be incurred by the Contractor.
- C.3. Payment Methodology. The Contractor shall be compensated based on the payment methodology for goods or services authorized by the State in a total amount as set forth in Section C.1.
- a. The Contractor's compensation shall be contingent upon the satisfactory provision of goods or services as set forth in Section A.

- b. The Contractor shall be compensated based upon the following payment methodology:

<b>Goods or Services Description</b>	<b>Amount</b> (per compensable increment)
<b>Summer School Instructional Materials</b> Sections A.3, A.4, A.5, A.6	\$ Number/each
<b>STREAM Mini-Camp Instructional Materials</b> Sections A.3, A.7	\$ Number/each
<b>Tutoring Instructional Materials</b> Sections A.3, A.8	\$ Number/each
<b>Tutor Training, Certification, and Scoring Materials</b> Sections A.3, A.9	\$ Number/each
<b>Learning Collaboration System</b> Sections A.3, A.10	\$ Number/each

- 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:

Pam Kimbrough  
Tennessee Department of Education  
Office of Academics  
710 James Robertson Parkway  
Andrew Johnson Tower  
11th Floor  
Nashville, TN 37243  
(629) 255-5462 pam.kimbrough@tn.gov

- 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: Office of Academics;
  - (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:

Yvette Blue, Senior Director of Learning Acceleration  
Tennessee Department of Education  
710 James Robertson Parkway  
Andrew Johnson Tower, 11th Floor  
Nashville, TN 37243  
Yvette.Blue@tn.gov

FAX # (615) 532-4989 ATTN: Yvette Blue

The Contractor:

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

Contractor's sole responsibility. The Contractor agrees that the insurance requirements specified in this Section do not reduce any liability the Contractor has assumed under this Contract including any indemnification or hold harmless requirements.

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

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

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

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

a. Commercial General Liability ("CGL") Insurance

- 1) The Contractor shall maintain CGL, which shall be written on an ISO Form CG 00 01 occurrence form (or a substitute form providing equivalent coverage) and

shall cover liability arising from property damage, premises and operations products and completed operations, bodily injury, personal and advertising injury, and liability assumed under an insured contract (including the tort liability of another assumed in a business contract).

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

b. Workers' Compensation and Employer Liability Insurance

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

c. Automobile Liability Insurance

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

d. 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.

e. 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.
- 2) 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.

f. Sexual Abuse and Molestation Insurance

- i. The Contractor shall maintain sexual abuse and molestation insurance written on either an occurrence or a claims-made basis. 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.
- ii. Any sexual abuse and molestation insurance policy shall have a limit not less than one million dollars (\$1,000,000) per occurrence and two million dollars (\$2,000,000) in the aggregate.

In lieu of this coverage requirement, the Contractor may provide an Educator's Legal Liability (ELL) insurance policy endorsed to provide equivalent coverages as indicated in this provision.

- 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 Ownership of Goods. The State shall have ownership, right, title, and interest in all goods provided by Contractor under this Contract including full rights to use the goods and transfer title in the goods to any third parties.
- 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: 24 hours

- ii. Recovery Time Objective ("RTO"). The RTO is defined as the targeted duration of time and a service level within which a business process must be restored after a disaster (or disruption) in order to avoid unacceptable consequences associated with a break in business continuity: 18 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. 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.10. Prohibited Advertising or Marketing. The Contractor shall not suggest or imply in advertising or marketing materials that Contractor's goods or services are endorsed by the State. The restrictions on Contractor advertising or marketing materials under this Section shall survive the termination of this Contract.
- E.11. Public Accountability. If the Contractor is subject to Tenn. Code Ann. §§ 8-4-401, *et seq.*, or if this Contract involves the provision of services to citizens by the Contractor on behalf of the



State, the Contractor agrees to establish a system through which recipients of services may present grievances about Contractor's operation of the service program. The Contractor shall also display in a prominent place, located near the passageway through which the public enters in order to receive contract-supported services, a sign at least eleven inches (11") in height and seventeen inches (17") in width stating the following:

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

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

- E.12. Environmental Tobacco Smoke. Pursuant to the provisions of the federal "Pro-Children Act of 1994" and the Tennessee "Children's Act for Clean Indoor Air of 1995," the Contractor shall prohibit smoking of tobacco products within any indoor premises in which services are provided pursuant to this Contract to individuals under the age of eighteen (18) years. The Contractor shall post "no smoking" signs in appropriate, permanent sites within such premises. This prohibition shall be applicable during all hours, not just the hours in which children are present. Violators of the prohibition may be subject to civil penalties and fines. This prohibition shall apply to and be made part of any subcontract related to this Contract.
- E.13. 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.14. Clean Air Act and Federal Water Pollution Control Act. As a condition for receipt of federal awards, the Contractor agrees to comply with the Clean Air Act, 42 U.S.C. § 7401 *et seq.* and the Federal Water Pollution Control Act, 33 U.S.C § 1251 *et seq.*, as those sections are amended from time to time during the term. Violations must be reported to the U.S. Department of Education and the Region 4 Office of the Environmental Protection Agency.
- E.15. Personally Identifiable Information. While performing its obligations under this Contract, Contractor may have access to Personally Identifiable Information held by the State ("PII"). For the purposes of this Contract, "PII" includes "Nonpublic Personal Information" as that term is

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

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

- E.15. 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.

**IN WITNESS WHEREOF,**

**CONTRACTOR LEGAL ENTITY NAME:**

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**CONTRACTOR SIGNATURE**

**DATE**

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

**TN DEPARTMENT OF EDUCATION:**

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**PENNY SCHWINN, COMMISSIONER**

**DATE**

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

<b>If the attestation applies to more than one contract, modify this row accordingly.</b>  <b>SUBJECT CONTRACT NUMBER:</b>	
<b>CONTRACTOR LEGAL ENTITY NAME:</b>	
<b>EDISON VENDOR IDENTIFICATION NUMBER:</b>	

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

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

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**CONTRACTOR SIGNATURE**

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

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**PRINTED NAME AND TITLE OF SIGNATORY**

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**DATE OF ATTESTATION**

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