

**CONTRACT #26**  
**RFS # 331.11-00415**  
**Edison # 44036**

**Department of Education**

**VENDOR:**  
**SAS, Inc.**



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

**BILL HASLAM**  
GOVERNOR

**KEVIN HUFFMAN**  
COMMISSIONER

TO: Lucian Geise, Executive Director, Fiscal Review Committee

FROM: Kevin Huffman, Commissioner 

DATE: November 26, 2014

RE: Request to appear before fiscal review committee regarding non-competitive contract request  
RFS # 33111- 00415

Please consider the enclosed request to enter into a new contract with SAS, Inc. The current contract with SAS, Inc. ends December 31, 2014. The services procured through this contract would be for data analysis, research and reporting of assessment results from the Tennessee Comprehensive Assessment Program (TCAP). These services are required to meet Federal reporting requirements of the No Child Left Behind (NCLB) Act as well as Tennessee law. Tennessee law specifies that the model for determining and reporting growth in student achievement as well as teacher and school effectiveness is to be the Tennessee Value Added Assessment System (TVAAS) which is based on the statistical model developed by Dr. William Sanders and is also referred to as the Sanders Model.

The TVAAS, also known as the Sanders Model, is proprietary to SAS, Inc. While this procurement is technically "non-competitive", based on the requirement in Tennessee law that the TVAAS be used to determine student academic growth and used to implement the state's accountability system approved by the United States Department of Education, as required by the federal No Child Left Behind Act, I respectfully request that the fiscal review committee approve the Tennessee Department of Education's request to enter into a new contract with SAS, Inc.

KH: dms

cc: Deborah Malone Sauberer, Executive Director, Assessment Logistics

## Supplemental Documentation Required for Fiscal Review Committee

*Contact Name:	Deb Malone Sauberer	*Contact Phone:	Office: 741-0720 Cell: 415-6988		
*Presenter's name(s):	Christy Ballard, Deb Malone Sauberer				
Edison Contract Number: <i>(if applicable)</i>	44036	RFS Number: <i>(if applicable)</i>	33111-00415		
*Original or Proposed Contract Begin Date:	January 26, 2015	*Current or Proposed End Date:	December 31, 2019		
Current Request Amendment Number: <i>(if applicable)</i>		N/A			
Proposed Amendment Effective Date: <i>(if applicable)</i>		N/A			
*Department Submitting:		Education			
*Division:		Assessment Logistics			
*Date Submitted:		11/26/14			
*Submitted Within Sixty (60) days:		yes			
<i>If not, explain:</i>		n/a			
*Contract Vendor Name:		SAS, Inc.			
*Current or Proposed Maximum Liability:		\$11,855,100.00			
*Estimated Total Spend for Commodities:		N/A			
*Current or Proposed Contract Allocation by Fiscal Year: <b><i>(as Shown on Most Current Fully Executed Contract Summary Sheet)</i></b>					
<b>FY:2015</b>	<b>FY:2016</b>	<b>FY:2017</b>	<b>FY:2018</b>	<b>FY2019</b>	<b>FY2020</b>
\$119,250.00	\$2,701,970.00	\$2,301,970.00	\$2,301,970.00	\$2,301,970.00	\$2,127,970.00
*Current Total Expenditures by Fiscal Year of Contract: <b><i>(attach backup documentation from Edison)</i></b>					
IF Contract Allocation has been greater than Contract Expenditures, please give the reasons and explain where surplus funds were spent:			Request for new contract		
IF surplus funds have been carried forward, please give the reasons and provide the authority for the carry forward provision:			N/A		
IF Contract Expenditures exceeded Contract Allocation, please give the reasons and explain how funding was acquired to pay the overage:			N/A		
*Contract Funding Source/Amount:					
State:		<b>10,681,515.00</b>	Federal:		<b>1,173,585.00</b>
<i>Interdepartmental:</i>		\$0.00	<i>Other:</i>		\$0.00
If "other" please define:					
If "interdepartmental" please define:					
Dates of All Previous Amendments or Revisions: <i>(if applicable)</i>			Brief Description of Actions in Previous Amendments or Revisions: <i>(if applicable)</i>		

Supplemental Documentation Required for  
Fiscal Review Committee

Method of Original Award: <i>(if applicable)</i>	N/A
*What were the projected costs of the service for the entire term of the contract prior to contract award? How was this cost determined?	\$14M, based upon contract maximum of contract ending 12/31/14. Department negotiated pricing and absorbed services previously provided by SAS
*List number of other potential vendors who could provide this good or service; efforts to identify other competitive procurement alternatives; and the reason(s) a sole-source contract is in the best interest of the State.	N/A

# Special Contract Request

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

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

Route a completed request, as one file in PDF format, via e-mail attachment sent to: agsprs.agsprs@tn.gov.

<b>APPROVED</b>	<b>APPROVED</b>
CHIEF PROCUREMENT OFFICER	COMPTROLLER OF THE TREASURY
DATE	DATE

<b>Request Tracking #</b>	<b>33111-00415</b>
<b>1. Contracting Agency</b>	<b>Department of Education</b>
<b>2. Type of Contract or Procurement Method</b>	<input type="checkbox"/> No Cost <input type="checkbox"/> Revenue <input checked="" type="checkbox"/> Sole Source <input type="checkbox"/> Proprietary <input type="checkbox"/> Competitive Negotiation <input type="checkbox"/> Other _____
<b>3. Requestor Contact Information</b>	<b>Deb Malone-Sauberer</b>
<b>4. Brief Goods or Services Caption</b>	<b>Assessment data research and analysis</b>
<b>5. Description of the Goods or Services to be Acquired</b>	Provide analysis, reporting and research services related to State Assessment data required under the Title I requirements of the Elementary and Secondary Education Act of 1965 (ESEA), the Individuals with Disabilities Education Act (IDEA), the No Child Left Behind Act of 2001 (NCLB); Tennessee Code Annotated; and State Board.
<b>6. Proposed Contractor</b>	<b>SAS Institute Inc.</b>
<b>7. Name &amp; Address of the Contractor's principal owner(s)</b> – NOT required for a TN state education institution	<b>SAS Institute Inc., SAS Campus Drive, Cary, NC 27513</b>
<b>8. Proposed Contract Period</b> – with ALL options to extend exercised <i>The proposed contract start date shall follow the approval date of this request.</i>	<b>60 months</b>

<b>Request Tracking #</b>	<b>33111-00415</b>
<b>9. Office for Information Resources Pre-Approval Endorsement Request</b> – <i>information technology (N/A to THDA)</i>	<input checked="" type="checkbox"/> <b>Not Applicable</b> <input type="checkbox"/> <b>Attached</b>
<b>10. eHealth Pre-Approval Endorsement Request</b> – <i>health-related professional, pharmaceutical, laboratory, or imaging</i>	<input checked="" type="checkbox"/> <b>Not Applicable</b> <input type="checkbox"/> <b>Attached</b>
<b>11. Human Resources Pre-Approval Endorsement Request</b> – <i>state employee training</i>	<input checked="" type="checkbox"/> <b>Not Applicable</b> <input type="checkbox"/> <b>Attached</b>
<b>12. Are these goods or services currently available on a statewide contract? If YES, please explain why the current statewide contract is not being used for this procurement.</b>	<input checked="" type="checkbox"/> <b>NO</b> <input type="checkbox"/> <b>YES,</b>
<b>13. Maximum Contract Cost – with ALL options to extend exercised</b>	<b>\$ 11,855,100.00</b>
<b>14. Was there an initial government estimate? If so, what amount?</b>	<input type="checkbox"/> <b>NO</b> <input checked="" type="checkbox"/> <b>YES, \$12,214,850</b>
<b>15. Cost Determination Used-</b> How did agency arrive at the estimate of expected costs?	The agency utilized the contract from the 2009-2014 to ensure similar or slightly increased pricing.
<b>16. Explanation of Fair and Reasonable Price-</b> Explain how agency determined that price is fair and reasonable	The state has confirmed that the cost of analysis to Tennessee is significantly lower than similar work being done by this vendor in other states. The state pays a flat fee for each of the Value Added Deliverables. In other states, SAS charges \$2.50 per student and \$25.00 per teacher for the same and/or similar services.
<b>17. Documentation of Discussions with Contractor-</b> How did agency document discussions with Contractor? Attach documentation to this request as applicable.	Phone conferences and emails, copies of emails can be provided if needed.
<b>18. Explanation of Need for or requirement placed on the State to acquire the goods or services</b>	See item 20 Justification below.
<b>19. Proposed contract impact on current State operations</b>	Without this contract the department would not be able to provide the statutorily required teacher-effect and TVAAS calculations; as well as teacher and principal evaluations, school and district accountability; finally, teachers, schools and districts rely on the data provided in the reports to guide instruction.

<b>Request Tracking #</b>	<b>33111-00415</b>
<b>20. Justification</b> – Specifically explain why the goods or services should be acquired through the procurement method or contract type selected.	The services procured through this contract would be for data analysis, research and reporting of assessment results from the Tennessee Comprehensive Assessment Program (TCAP). These services are required to meet Federal reporting requirements of the No Child Left Behind (NCLB) Act as well as Tennessee law. Tennessee law specifies that the model for determining and reporting growth in student achievement as well as teacher and school effectiveness is to be the Tennessee Value Added Assessment System (TVAAS) which is based on the statistical model developed by Dr. William Sanders and is also referred to as the Sanders Model. The Sanders model as referenced and the Value Added assessment system are proprietary to SAS, Inc.
<b>For No Cost and Revenue Contracts Only</b>	
<b>21. What costs will the State incur as a result of this contract? If any, please explain.</b>	
<b>22. What is the total estimated revenue that the State would receive as a result of this contract?</b>	
<b>23. Could the State also contract with other parties interested in entering substantially the same agreement? Please explain.</b>	<input type="checkbox"/> NO <input type="checkbox"/> YES
<b>24. Summary of State responsibilities under proposed contract</b>	
<b>For Sole Source and Proprietary Procurements Only</b>	
<b>25. Explanation of Need for or requirement placed on the State to acquire the goods or services</b>	<b>See item 20 justification above</b>
<b>26. Evidence of Contractor's experience &amp; length of experience providing the goods or services to be procured.</b>	The Department of Education has utilized the services of SAS since 1991-1992, when Tennessee Value Added Assessment System (TVAAS) became required by State law.
<b>27. Has the contracting agency procured the subject goods or services before? If yes, provide the method used to purchase the goods or services and the name and address of the contractor.</b>	<input type="checkbox"/> NO <input checked="" type="checkbox"/> YES, <b>Method: Non-Competitive Contract</b> <b>Name/Address: SAS (same as above)</b>
<b>28. Contractor selection process and efforts to identify reasonable, competitive, procurement alternatives</b>	TDOE has not attempted to find another vendor for this service; TVAAS is based upon a statistical methodology that is owned by SAS.
<b>Signature Required for all Special Contract Requests</b>	

I certify that I have reviewed and approve the proposed contract.

A handwritten signature in black ink, appearing to be 'A. K. ...'.

11/25/14

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Commissioner Signature and Date



*The Power to Know.*

September 23, 2014

Deborah Sauberer  
Executive Director, Assessment Logistics  
Division of Data and Research  
710 James Robertson Parkway, 10th Floor, Andrew Johnson Tower  
Nashville, TN 37243

Re: Sole Source /Purchase of Software & Services from SAS Institute Inc.

To Whom It May Concern:

Pursuant to your request, this letter will confirm that SAS Institute Inc. ("SAS") is the sole source for EVAAS® services in the United States.

EVAAS methodology was developed by Dr. William L. Sanders and his colleagues at the University of Tennessee to provide the state mandated TVAAS reporting. SAS acquired the property rights to the TVAAS software in 2000.

The Educational Value-Added Assessment Services ("EVAAS") provide Reports showing analyses of student achievement data based on longitudinal merging and warehousing of data provided by Customers. Subject to the terms of its EVAAS Service Agreement, SAS performs multivariate, longitudinal analyses using data for students and, if applicable, teachers for Customer's assessment purposes. EVAAS technology and methodology is proprietary and owned by SAS, therefore SAS is the sole entity that has the expertise, information, and staff to provide these services.

\_\_\_\_\_  
Authorized Signature

Karyn Long  
\_\_\_\_\_  
Name (type or print)

Business Operations Manager  
\_\_\_\_\_  
Title

September 23, 2014  
\_\_\_\_\_  
Date



SAS Campus Drive  
 Cary, NC 27513  
 tel (919) 531 1075  
 fax (919) 677 4444  
[june.rivers@sas.com](mailto:june.rivers@sas.com)

## SERVICES SPECIFICATION FORM

For EVAAS® Service Agreement No. \_\_\_\_\_

*(Customer should complete all applicable items in Part 1 for the Services desired.)*

<b>Part 1.A. Services Requested</b> <i>(Customer to check applicable boxes)</i>		<b>Part 1.B. Customization/On-Site Consulting/Presentation Details</b> <i>(Customer to complete)</i>
<input type="checkbox"/>	District/School Reports	Dates Needed:
<input type="checkbox"/>	Teacher Reports	Description:
<input type="checkbox"/>	Password-protected Web Reports	
<input type="checkbox"/>	Customized Analysis Reports	Contact for Technical Questions <i>(name, phone, email)</i> :
<input type="checkbox"/>	On-Site Consulting/Presentation	
<input type="checkbox"/>	Purchase Order No.	
		<i>(optional)</i>

<b>Part 2.A. Rates for Services</b> <i>(Consultant to complete)</i>		<b>Part 2.B. Estimated Completion Dates for Services</b> <i>(Consultant to complete)</i>
\$	District/School Reports per student @\$1.00 per student	
\$	Teacher Reports per teacher @\$25.00 per teacher	
\$	Password-protected Web Reports @\$1.50 per student	
\$	Customized Analyses @\$2,000 per day per staff requirement	
\$	On-Site Consulting/Presentation per day @\$2,500 per day	
\$	On-Site Consulting/Presentation Travel and Living Expenses (Estimated)	

### Part 3. Rates Accepted *(Customer to sign after Consultant completes Part 2 above):*

Customer: \_\_\_\_\_

By \_\_\_\_\_

Authorized signature

\_\_\_\_\_  
 Name (type or print)

\_\_\_\_\_  
 Title

On \_\_\_\_\_

Date

# Rule Exception Request

Route completed request, as one file in PDF format, via e-mail attachment sent to: [Agsprrs.Agsprsr@tn.gov](mailto:Agsprrs.Agsprsr@tn.gov)

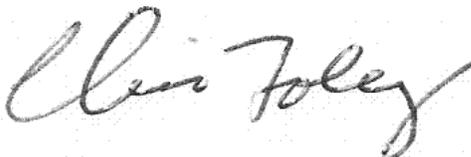
<b>APPROVED</b>
<hr/> <b>CHIEF PROCUREMENT OFFICER</b> (Required for all Rule Exception Requests)

<b>APPROVED</b>
<hr/> <b>COMPTROLLER OF THE TREASURY</b> (ONLY for applicable statutorily required approvals e.g., records, annual report and audit, or monitoring provisions)

<b>Request Tracking #</b>	33111-00415
<b>1. Contract #</b>	44036
<b>2. Goods or Services Caption</b>	Research and reporting services related to data analysis of state assessments.
<b>3. Contractor</b>	SAS Institute Inc.
<b>4. Contract Period (with ALL options to extend exercised)</b>	60 months
<b>5. Contract Maximum Liability (with ALL options to extend exercised)</b>	\$ 11,855,100.00
<b>6. Rule(s) (for which the exception is requested)</b>  Please include citation and written explanation of Rule(s) to be excepted.	Tenn. Comp. R. & Regs., ch. 0690-03-01.17(1)
<b>7. Explanation of Rule Exception Requested</b>	Inclusion of four E Clauses to require FERPA compliance, the Tennessee Data Accessibility, Transparency and Accountability Act, damages related to unauthorized discloser of data and software development.
<b>8. Justification</b>	The first three clauses are all related and are due to the nature of this contract which provides data analysis and calculations involving individual student demographic data as well as teacher data related to teacher-effect reporting requires sensitivity to the security of handling the personal information to which the contractor has access. The fourth clause is included to protect the state ownership of data and to ensure that state data is not used for research or other purposes since the contractor is a research facility.
<b>Agency Head Signature and Date (contracting agency head or authorized signatory)</b>	
 <span style="margin-left: 200px;">11/25/14</span>	

**CONTRACT**

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

<b>Begin Date</b> January 26, 2014	<b>End Date</b> December 31, 2019	<b>Agency Tracking #</b> 33111-00415	<b>Edison Record ID</b> 44036		
<b>Contractor Legal Entity Name</b> SAS Institute Inc.			<b>Edison Vendor ID</b> 0000000751		
<b>Goods or Services Caption</b> (one line only) Research and reporting services related to data analysis of state assessments.					
<b>Subrecipient or Contractor</b> <input type="checkbox"/> Subrecipient <input checked="" type="checkbox"/> Contractor		<b>CFDA #</b> 84.027			
<b>Funding —</b>					
<b>FY</b>	<b>State</b>	<b>Federal</b>	<b>Interdepartmental</b>	<b>Other</b>	<b>TOTAL Contract Amount</b>
2015	119,250	0.00			\$119,250.00
2016	2,431,773	270,197			\$2,701,970.00
2017	2,071,773	230,197			\$2,301,970.00
2018	2,071,773	230,197			\$2,301,970.00
2019	2,071,773	230,197			\$2,301,970.00
2020	1,915,173	212,797			\$2,127,970.00
<b>TOTAL:</b>	<b>10,681,515.00</b>	<b>1,173,585.00</b>			<b>11,855,100.00</b>
<b>Contractor Ownership Characteristics:</b>					
<input type="checkbox"/> Minority Business Enterprise (MBE): African American, Asian American, Hispanic American, Native American					
<input type="checkbox"/> Woman Business Enterprise (WBE)					
<input type="checkbox"/> Tennessee Service Disabled Veteran Enterprise (SDVBE)					
<input type="checkbox"/> Tennessee Small Business Enterprise (SBE): \$10,000,000.00 averaged over a three (3) year period or employs no more than ninety-nine (99) employees.					
<input type="checkbox"/> Other:					
<b>Selection Method &amp; Process Summary</b> (mark the correct response to confirm the associated summary)					
<input type="checkbox"/> Competitive Selection					
<input checked="" type="checkbox"/> Other Non-Competitive Negotiation					
<b>Budget Officer Confirmation:</b> There is a balance in the appropriation from which obligations hereunder are required to be paid that is not already encumbered to pay other obligations.				 11/24/2014	
<b>Speed Chart</b> (optional) various		<b>Account Code</b> (optional) various			

**S U P P L E M E N T A L   S U M M A R Y   S H E E T**

<b>RFS Number</b>		33111-00415						
<b>Edison ID</b>		44036						
<b>Fiscal Year</b>	<b>Department ID</b>	<b>Speedchart Number</b>	<b>Program Code</b>	<b>Account Code</b>	<b>Fund</b>	<b>Project/Grant Code</b>	<b>CFDA #</b>	<b>Amount</b>
2015	3311101000	ED00000449	873100	70899000	25000	N/A	N/A	119,250
2016	3311101000	ED00000449	873100	70899000	25000	N/A	N/A	2,431,773
2016	3313600000	ED00000039	644000	70803000	25000	ED00000L L9ACX16	84.027	25,000
2016	3313600000	ED00000039	644000	70899000	25000	ED00000L L9ACX16	84.027	245,197
2017	3311101000	ED00000449	873100	70899000	25000	N/A	N/A	2,071,773
2017	3313600000	ED00000039	644000	70803000	25000	ED00000L L9ACX17	84.027	25,000
2017	3313600000	ED00000039	644000	70899000	25000	ED00000L L9ACX17	84.027	205,197
2018	3311101000	ED00000449	873100	70899000	25000	N/A	N/A	2,071,773
2018	3313600000	ED00000039	644000	70803000	25000	ED00000L L9ACX18	84.027	25,000
2018	3313600000	ED00000039	644000	70899000	25000	ED00000L L9ACX18	84.027	205,197
2019	3311101000	ED00000449	873100	70899000	25000	N/A	N/A	2,071,773
2019	3313600000	ED00000039	644000	70803000	25000	ED00000L L9ACX19	84.027	25,000
2019	3313600000	ED00000039	644000	70899000	25000	ED00000L L9ACX19	84.027	205,197
2020	3311101000	ED00000449	873100	70899000	25000	N/A	N/A	1,915,173
2020	3313600000	ED00000039	644000	70803000	25000	ED00000L L9ACX20	84.027	25,000
2020	3313600000	ED00000039	644000	70899000	25000	ED00000L L9ACX20	84.027	187,797
<b>TOTAL</b>								<b>11,855,100</b>

**CONTRACT  
BETWEEN THE STATE OF TENNESSEE,  
DEPARTMENT OF EDUCATION  
AND  
SAS INSTITUTE INC.**

This Contract, by and between the State of Tennessee, Department of Education ("State") and SAS Institute Inc. ("Contractor"), is for the provision of research and reporting services related to data analysis of state assessments, as further defined in the "SCOPE." State and Contractor may be referred to individually as a "Party" or collectively as the "Parties" to this Contract.

The Contractor is a For-Profit Corporation.

Contractor Place of Incorporation or Organization: SAS Campus Drive, Cary, NC 27513

Contractor Edison Registration ID # 0000000751

**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. The Contractor shall work with the State to provide analysis, reporting and research services related to State assessment data. The State's assessment programs are designed to be psychometrically valid and accessible for use by the widest possible range of students, including but not limited to students with disabilities and students with limited English proficiency. The Contractor shall provide research and data analysis for assessments required under the Title I requirements of the Elementary and Secondary Education Act of 1965 (ESEA), the Individuals with Disabilities Education Act (IDEA), the No Child Left Behind Act of 2001 (NCLB); Tennessee Code Annotated; and State Board Rule and Policy as specified in Section A.5.a. All deliverables shall be reviewed and/or revised annually or by administration as needed to meet federal and state law, rules, policy and guidelines. Unless otherwise indicated, all requirements of this Contract shall apply to all assessments.
- A.3 **Definitions**
- a. Adequate Yearly Progress (AYP) – Projections used to ensure students meet a high standard of proficiency in reading/language arts and math as required by NCLB.
  - b. Analytical Services – Services provided by the Contractor to ensure the technical soundness of assessments. Such services may include, but are not limited to, the selection of representative samples of Tennessee students, conducting pilot studies, scaling of items and test forms, scale/item parameter drift studies, item bias/differential item functioning (DIF) analysis, setting of performance standards, and demonstration of test reliability and validity.
  - c. Assessment – An evaluation of student achievement related to knowledge and skills in a specific content area.
  - d. State-Mandated Assessment – An assessment that local education agencies (LEAs) and schools are required to administer in accordance with state or federal law and/or policy.
  - e. State-Supported Assessment – An assessment whose administration is supported by the State in which participation is optional at the school or district level.
  - f. Calibration – Placing items on a common scale so that items measuring the same underlying content represent a position on the scale that is also represented by other items of comparable difficulty.
  - g. Comparability and Equating – Statistical evidence that the Assessment is similar in content and psychometric characteristics to the current assessment.
  - h. Criterion-Referenced Test (CRT) – An assessment aligned to pre-defined content standards and designed to measure student achievement relative to those standards.
  - i. Fiscal Year (FY) - The State accounting period of July 1 through June 30.

- j. Local Education Agency (LEA) – A school district or school system that is the financial and administrative agency for school(s) in a certain region of the State.
- k. N-Counts – Total number of students.
- l. Online Applications – Web-based products as defined in section A.7 and A.7.d
- m. No Child Left Behind Act (NCLB) – Federal Legislation related to Education, provides for mandated CRT assessments.
- n. Scientific validity and empirical standards –the assessment shall meet the criteria for test development, administration, and use described in the *Standards for Educational and Psychological Testing* (1999) adopted by the American Educational Research Association (AERA), the American Psychological Association (APA), and the National Council on Measurement in Education (NCME).  
[www.apa.org/science/standards.html](http://www.apa.org/science/standards.html)  
[www.apa.org/science/testing.html](http://www.apa.org/science/testing.html)
- o. Standards and Assessment Peer Review by the Office of Student Achievement and School Accountability of the U.S. Department of Education – Specific federal compliance requirements for the appropriateness of assessments used by states.  
<http://www.ed.gov/admins/lead/account/saa.html#peerreview>
- p. State Assigned Student ID Number – Student identification number randomly generated from the statewide student management system.
- q. State Special Schools – A school that is managed by the State. Summary data for State Special Schools is included with public schools. Current schools include but are not limited to: Alvin C. York Institute, Tennessee Governor’s Academy, Tennessee School for the Blind, Tennessee School for the Deaf, West Tennessee School for the Deaf, and Department of Children’s Services.
- r. Student Identification System (SSID) – A secure system for providing individual student identification numbers as required by TCA 49-6-5105.
- s. TCA – Tennessee Code Annotated.
- t. TCAP – Tennessee Comprehensive Assessment Program.
- u. TCAP/ACH - Achievement Assessment mandatory for grades 3-8 and optional for grades K-2.
- v. TCAP / Alt-PA – Alternative Portfolio Assessment.
- w. TCAP Assessments – Used to identify all State assessments as a group.
- x. TCAP / CRA – Constructed Response Assessment, administered in grades 3-11.
- y. TCAP / EOC – End of Course Assessments.
- z. TCAP / GW – Gateway Assessments.
- aa. TCAP / WA - Writing Assessment, administered in grades 3-11.
- bb. Teacher Advancement Program (TAP) – comprehensive, systemic reform model designed to address the challenges of K-12 education which includes strategies to attract, retain, develop and motivate talented people to the teaching profession.
- cc. Tennessee Value-Added Assessment System (TVAAS) - One component of the State accountability program that utilizes a statistical methodology to measure student achievement gains.
- dd. Test Year (TY) - The test administration period from July 1 through June 30. Final reporting for the test year may extend into the following test year.
- ee. Validity and Reliability Requirements – Statistical and psychometrical evidence that the Assessment consistently measures the standards and determines level of proficiency.

- ff. Web-Based – Delivered via the Internet/World Wide Web.

#### A.4. **Schedule**

The State shall approve all materials and/or deliverables developed under this Contract. The Contractor shall not disseminate any written information, materials, or deliverables to the LEAs, public, or any other third party without the State's written approval. The Contractor shall allow the State a minimum of five (5) days to review materials and/or deliverables. If necessary, the Contractor shall make modifications as directed by the State and provide additional time of not less than three (3) days for the State to review and sign-off on the revised submission. The Contractor is responsible for any costs associated with making modifications to materials and deliverables necessary to obtain the State's approval at no cost to the State.

The Contractor shall provide the deliverables under this Contract in accordance with the delivery schedule stated below:

- a. Annual Work Plan – To include all activities related to each test administration. Final due 30 days after the Contract is executed and May 1 thereafter. The initial Annual Work Plan shall cover the period from the execution of the Contract through May, 2015. Each subsequent Annual Work Plan shall be due to the State by May 1 or following business day, each year and shall cover the period June 1 through May 31 for that test year. The last Annual Work Plan (due May 1, 2019) shall cover the period from June 1, 2019 through the end of the Contract December 31, 2019.
- b. Value-Added Reporting – Teacher-effect information as detailed in A.7.a and other value-added reporting deliverables shall be delivered in increments determined in collaboration with the state as established in the annual work plan.
- c. Accountability Reporting – Accountability data for federal and state reporting shall be delivered to the State in increments determined through the annual work plan.
- d. Research and Development – Studies shall be conducted as requested by the State on timelines determined through the annual work plan.
- e. Training – Webinars created in collaboration with the State shall be conducted on timelines determined through the annual work plan.
- f. Virtual Learning Modules – Learning modules created in collaboration with the State shall be conducted on timelines determined through the annual work plan.
- g. Training Consultation – Consultation shall be provided to the State as needed throughout the contract year.

#### A.5. **General Scope of Assessment Services**

- a. The Contractor shall work with the State to provide data analysis and support of the TVAAS system in accordance with Tennessee law, including Tennessee Code Annotated §§ 49-1-211, 49-1-302, 49-1-601, 49-1-602, 49-1-604, 49-1-607, 49-1-613, 49-2-303, and 49-6-3050.
- b. The Contractor shall work with the State to adhere to any changes in Federal or State Law, Administrative Regulation or Policy. Such work shall include but not be limited to any documents, papers, or records requested by the State or the United States Department of Education for review and audit purposes.
- c. The Contractor shall provide analysis and research to ensure that all mandated assessments meet the requirements of current federal law, administrative regulations or policy including but not limited to ESEA, IDEA, and NCLB as specified in A.2.
- d. The Contractor shall provide analysis and research to ensure that all mandated assessments meet the requirements of Tennessee Law, and State Board of Education Rules and Policies.

- e. Maintaining test validity, reliability, and equivalent forms across years is a fundamental priority of the program. The Contractor is required to provide human resources and technology needed to review TCAP, including but not limited to TCAP Achievement, TCAP Writing, TCAP Portfolio, TCAP EOC and TCAP CRA according to State standards.

A.6. **Administration Activities:**

The Contractor shall provide data analysis services for all public and state special schools beginning in 2014-2015 (TY15).

- a. **Annual Work Plan** - The Contractor shall prepare, for State approval, a detailed Work Plan for each test year that incorporates the development schedules for the activities of this contract. The initial Work Plan shall be submitted within thirty (30) days after executing the contract. The Work Plan shall include the steps for all project work tasks and deliverables including initiation and completion dates, and task responsibilities to avoid any disruption of services, requirements or deliverables to the students, teachers, schools, LEAs, and State.

The Annual Work Plan will outline by task and due date each activity to be performed under this contract following the deliverable timelines established in A.4. It is understood that all deliverables for research and analysis are contingent upon the delivery of clean data from the State and/or assessment vendors. Dates are subject to review and change based upon the delivery of clean data, changes in State and/or Federal reporting deadlines, and changes in State Education Policies. The Annual Work Plan must describe all activities related to the support services, research, analysis, and online reporting, including each stage of production. It shall provide due dates for each activity and indicate areas of responsibility for the Contractor and the State. The Annual Work Plan will serve as a monitoring document to be used by the State to assure timely completion of tasks as scheduled. The Annual Work Plan shall be updated annually with State approval for the duration of the contract.

The Contractor shall establish secure sharepoint or file transfer protocol (FTP) websites for use in maintaining the Annual Work Plan and other communications, including but not limited to posting file layouts, research data, and analysis documentation for review, with the State for contract management. Materials shall be considered delivered and final after written notification is given to the Contractor via email or other electronic methods by the State contact in E.2 or their official designee. The Annual Work Plan shall be delivered in Microsoft Project or mutually agreeable format. The Annual Work Plan shall be maintained as a fluid, ongoing project document for each test year. The Contractor shall maintain, edit, and update the Annual Work Plan as needed. All changes to timelines and deliverables in the Annual Work Plan must be approved by the State; the Contractor shall provide an updated version of the plan in the agreed upon format to the State within two business days of any agreed upon change.

The Contractor shall provide each year the facility, transportation, food, and lodging for an Annual Work Plan review between the representatives of the State and the Contractor for planning, research projects, and report approval, as needed. State representatives in consultation with the Contractor shall make selection of the meeting site and dates. Meeting participants shall include the key project staff including project coordinators and their supervisors from both organizations.

- b. **Security Procedures** – The Contractor shall provide detailed, standardized security procedures for review and approval by the State. Approved security procedures shall be included in the annual work plan. The procedures must:
  - (1) Comply with State of Tennessee Test Security Law, T.C.A. 49-1-607.
  - (2) Include test security procedures in the production, distribution, and collection of all test data.
  - (3) Provide a secure architecture to protect data analysis and reporting environments from network-based attacks.
  - (4) Provide security procedures and safeguards to ensure that electronic files and data are developed, used, and maintained in a secure manner to protect the confidentiality of all

students tested, including all student and teacher records, reports, and files.

- (5) Include test security procedures for all student demographic data during analysis and reporting.
- (6) Utilize encryption to ensure security of the data and all student/teacher/school/LEA information entered through all online programs.
- (7) Provide and pay for any experts needed should these matters be litigated.
- (8) The Contractor must not make contact with the press or LEAs in regard to data analysis, reports, results, or procedures. Any contact with the press and LEAs shall be handled through the State.

c. **Error Correction** - The Contractor is responsible for correcting any errors in work products at the Contractor's expense, arising from activities that are the responsibility of the Contractor including but not limited to print errors and program functions. Such corrections may involve activities that include but are not limited to the following:

- (1) Conduct analyses to identify the cause and extent of errors.
- (2) Edit, revise, and/or reprogram online applications.
- (3) Reprint and/or reproduce products or other materials.
- (4) Provide additional training to Contractor support staff, State staff and LEA personnel as needed via training materials, webinars, and or regional meetings.
- (5) Replace and/or correct data files.
- (6) Reproduce reports.
- (7) Ship replacement products or reports to the State or LEAs using expedited shipping services.
- (8) Purchase of additional equipment (i.e., servers and/or dedicated data circuits).

#### A.7. **Data and Research Activities:**

##### a. Value-Added Reporting

- (1) The Contractor shall maintain a comprehensive document that outlines all business rules used in generating teacher, school, and district effects, evaluation composites, and student projections. The business rules shall be updated by the Contractor as necessary to reflect changes proposed by the Contractor and approved by the State. The business rules shall be revised as necessary to accommodate any changes in state or federal law as well as changes made to assessments. The Contractor shall use version control when making revisions to the business rules and maintain the most recent version on a secure website or SFTP.
- (2) The Contractor shall analyze raw test scores as necessary to ensure equated forms from previous years. The Contractor shall notify the State regarding results of analyses each year with any recommendations for any adjustment to scales for maintenance of consistency in equating test forms with previous years.
- (3) The Contractor shall maintain existing software to accommodate the State's delivery of student-teacher linkages.
- (4) The Contractor shall process student-teacher linkages received from the State each year to complete the analyses as set forth in this Contract. The Contractor shall report any issues relating to the data received from the State solely to the extent it becomes aware of any issues and shall assist the State with its efforts to send updated data as necessary.
- (5) The Contractor shall estimate teacher, school, and district effects based upon the data generated by state-mandated and state-supported optional test administrations.

- Reporting of this data shall include estimates, standard errors, index scores, and levels.
- (6) The Contractor shall provide evaluation composite indices and levels at the teacher, school, and district level as requested by the State according to the timeline established in the annual work plan. The composites shall include multiple grades/subjects according to business rules approved by the State and maintained by the Contractor each year.
  - (7) The Contractor shall calculate student-level projections for state-mandated and state-supported tests using students' prior testing histories when sufficient data is available. Projections shall be completed to the specifications outlined in the business rules document.
  - (8) The Contractor shall provide the State with files including TVAAS results at the teacher, school, or district level, files outlining the distribution of particular results, and files containing student projections as outlined in the annual work plan or at the request of the State.
  - (9) The Contractor shall provide teacher, school, and district level reporting including estimates, evaluation composites, and diagnostic reporting for the most recent three years and the most recent student projections on the TVAAS restricted site. Account access shall be administered in accordance with state and federal law. The restricted site shall be updated on the timeline established in the annual work plan. The Contractor shall maintain and host this site. Any reports on the restricted site shall be printable and able to be saved in .pdf file format.
  - (10) The Contractor shall provide school and district level reporting including estimates and evaluation composites on the TVAAS public site on the timeline established in the annual work plan. Contractor shall maintain and host this site.
  - (11) The Contractor shall integrate student demographic and enrollment data provided by the State to allow for student queries on the restricted TVAAS sites. The Contractor shall update the data on a schedule established through the annual work plan or as requested by the State.
  - (12) The Contractor shall maintain help files for each report on the public and restricted site explaining the data presented in the report and how it should be interpreted. These files shall be linked on each report on the restricted and public TVAAS sites. Help files shall be updated to reflect new data elements and changes to existing reports.
  - (13) The Contractor shall provide answers to questions submitted through the TVAAS public site, the TVAAS restricted site, via email, or through the State pertaining to topics including the business rules for the calculation of TVAAS scores, student projections, technical issues related to the public and restricted TVAAS sites, access to the TVAAS sites, navigating the website, and accessing or interpreting reports.
  - (14) The Contractor shall maintain a comprehensive document that details the quality assurance processes used during data analysis and generating teacher, school, and district estimates or student projections. The quality assurance document shall be revised as necessary to accommodate any changes in state or federal law as well as changes made to assessments. The Contractor shall use version control when making revisions to the quality assurance documentation and maintain the most recent version on a secure website or SFTP.
  - (15) The Contractor shall provide files including value-added and achievement data at the school, district, and state level for the State Report Card as requested by the State or on the timeline established in the annual work plan.
  - (16) The Contractor shall allow for the export of student projections and district, school, and teacher level value-added estimates in mutually agreeable multiple file formats to include but not be limited to .html, .csv, .txt and .xlsx through a function on the

restricted site. Permissions to export data on the restricted site shall be in accordance with the permissions to view data granted to the user on the restricted site. District and school level information will be made available through the public site in a mutually agreeable format.

- (17) The Contractor shall provide website usage statistics to the State every three months. The usage statistics shall include the number of logins to the restricted site by month, the number of times the public site has been accessed each month and other available usage statistics as requested by the State.
- (18) The Contractor shall provide additional teacher-level composite scores as requested by LEAs implementing strategic compensation models.
- (19) The Contractor shall review training materials and resources developed by the State that reference estimates, projections, or reporting produced by the Contractor to provide feedback on accuracy and to suggest any revisions that would make the resources more accurate.
- (20) The Contractor shall maintain an updated demonstration site with no identifiable information and simulated data for the most recent reporting available on the restricted site. The demonstration site shall be made available after any reporting on the restricted site is released.
- (21) The Contractor shall provide additional teacher-level value-added estimates as requested by Tennessee Higher Education Commission for implementing the annual higher education report card.

#### b. Accountability

- (1) The Contractor shall maintain updated accountability protocol documentation produced in collaboration with the State that comprehensively outlines the business rules and procedures necessary to implement the accountability systems approved or required by the United States Department of Education under the Elementary and Secondary Education Act (ESEA) or related waivers.
- (2) The Contractor shall produce the required accountability files as outlined in the protocol using assessment data provided by the State and any other data provided by the State that is necessary to carry out the accountability protocol. The files shall be provided to the State as established in the annual work plan.
- (3) The Contractor shall analyze assessment data received from the State prior to executing the accountability protocol and report the results of these checks including any unexpected values to the State.
- (4) The Contractor shall incorporate data derived from alternate assessments for students with disabilities in the processing of data in accordance with the accountability protocol, TCA, and federal regulations.
- (5) The Contractor shall re-run analyses and update files as necessary to accommodate the appeals process which allows LEAs an opportunity to review the data before final reporting is made public. The updated analysis shall correct any errors identified in the files by LEAs using updated data provided by the State as necessary.

#### c. Research and Development

- (1) The Contractor shall conduct research studies at the request of the State each year. The studies shall provide rigorous statistical analyses for research questions defined by the State which will aid in the determination of effective policies and practices.
- (2) The Contractor shall provide the State with estimates of the number of days required to complete each research request, an estimate of the completion date, and a

description of the deliverable(s) prior to beginning work. The Contractor will also maintain an updated list of the studies conducted and the days used in the current year and will provide this list to the State each month.

d. Training

- (1) The Contractor shall design and conduct webinars as requested by the State on specific topics related to understanding the calculation of scores and/or using the data on the public and/or restricted sites to strategically improve instruction. The Contractor shall be responsible for providing the platform necessary to deliver the webinars to a maximum of 200 participants. Upon completion of each webinar, the Contractor shall provide the State with a recording of the webinar (which may be an internet link) and any slides or other materials referenced in the webinar to be posted by the State on state webpages and by the Contractor to the TVAAS login page maintained by the Contractor. The Contractor shall maintain control of material that is posted on the TVAAS login page.
- (2) The Contractor shall collaborate with the State in the content and design of each webinar. The State shall give written approval for each webinar.

e. Virtual Learning Modules

- (1) The Contractor shall collaborate with the State to produce virtual learning modules that explain the data on specific reports on the restricted and/or public sites and how the reports could be used to adjust instruction or identify instructional strengths or weaknesses. Upon completion of virtual learning modules, the Contractor shall post them on the public and/or restricted site as requested by the State and shall provide the State with a multimedia file of the full learning module. The Contractor shall be permitted to publish such learning modules once such learning modules are determined ready for release by the State and the Contractor.
- (2) The State shall give written approval for each virtual learning module and the contractor shall provide the State with an outline of the scope of each virtual learning module prior to this approval.

f. Training Consultation

The Contractor shall, at the request of the State, provide consultation via phone about the content of state-developed training and resources. This consultation shall be focused on suggestions from the contractor for improving the quality of the state-developed training and resources such as giving examples of how the Contractor has presented similar content in their own training or resources.

**A.8. Operations Management**

- a. Project Team – The Contractor shall assign a single point of contact for this program to manage all inquiries related to materials, training, and technical assistance.
  - (1) Team members must have at a minimum technical experience, knowledge, and operational experience including but not limited to the following areas where relevant to their role in the project, as determined by the Contractor at its sole discretion:
    - i. Managing or coordinating the analysis and reporting of large scale assessment data,
    - ii. Communicating effectively orally and in writing,

- iii. Providing technical skills in the analysis of a large scale testing program and having a working knowledge of professional testing standards and practices,
    - (2) The Contractor shall provide a personnel roster and resumes of key people who shall be assigned to perform duties or services under this Contract.
    - (3) The Contractor shall provide qualified replacements in the event that key personnel become unavailable to provide services due to resignation, illness or other factors. The Contractor shall provide the State with written notice immediately upon departure or reassignment of any key personnel. The Contractor shall provide the State with written notification and the resume or vitae of all key personnel proposed for the project team.
  - b. Continuity of Contracts – The Contractor shall:
    - (1) Participate in joint meetings with other State appointed Contractors, the Technical Advisory Committee (TAC), and System Testing Coordinators as needed.
    - (2) Upon termination of this Contract, make reasonable efforts to cooperate with the State in providing a transition between contracts to avoid any disruption of services, requirements or deliverables to students, teachers, schools, systems or the State.
  - c. Management Meetings – The Contractor shall:
    - (1) Unless mutually cancelled by the parties, provide for a minimum of one weekly management meeting between the Project Manager designated by the Contractor and necessary State staff. These management meetings shall include review of the key dates and provide an opportunity to discuss task implementation and status.
    - (2) Produce summary documentation with relevant tasks and activities from the Annual Work Plan and progress noted for each, as discussed in regularly scheduled meetings with the Contractor and the State staff. Unanticipated issues or problems shall be reported and addressed by both parties as applicable as they occur. All progress reports shall be submitted in Microsoft Word or mutually agreeable format via email.
  - d. Records and Minutes – The Contractor shall take minutes and record lists of participants, including institutional affiliation and contact information, for all meetings. All minutes, records and lists of participants shall be provided by the Contractor to the State for review within two working days after each meeting. All records and minutes should be provided in a mutually agreed upon style and format in Microsoft Word or other mutually agreeable format via email or other electronic media. The Contractor shall review contact information for each meeting and update contact information if changed.
  - e. Technical Support Services – As outlined in Section A.7.a. (13) the Contractor shall provide answers to questions submitted through the TVAAS public site, the TVAAS restricted site, via email, or through the State pertaining to topics including the business rules for the calculation of TVAAS scores, student projections, technical issues related to the public and restricted TVAAS sites, access to the TVAAS sites, navigating the website, and accessing or interpreting reports.
- A.9. Warranty. Contractor represents and warrants that throughout the Term of this Contract (“Warranty Period”), the goods or services provided under this Contract shall conform to the terms and conditions of this Contract. 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 all goods or services provided under this Contract shall be provided in a timely and professional manner, by qualified and skilled individuals, 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.

- A.10. 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 January 26, 2015 ("Effective Date") and extend for a period of sixty (60) 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.

**C. PAYMENT TERMS AND CONDITIONS:**

- C.1. Maximum Liability. In no event shall the maximum liability of the State under this Contract exceed eleven million eight hundred fifty-five thousand one hundred dollars and zero cents (\$11,855,100.00) ("Maximum Liability"). This Contract does not grant the Contractor any exclusive rights. The State does not guarantee that it will buy any minimum quantity of goods or services under this Contract. Subject to the terms and conditions of this Contract, the Contractor will only be paid for goods or services provided under this Contract after a purchase order is issued to Contractor by the State or as otherwise specified by this Contract.

- C.2. Compensation Firm. The payment methodology in Section C.3. of this Contract shall constitute the entire compensation due the Contractor for all goods or services provided under this Contract regardless of the difficulty, materials or equipment required. The payment methodology includes all applicable taxes, fees, overhead, and all other direct and indirect costs incurred or to be incurred by the Contractor.

- C.3. Payment Methodology. The Contractor shall be compensated based on the payment methodology for goods or services authorized by the State in a total amount as set forth in Section C.1.

a. The Contractor's compensation shall be contingent upon the satisfactory provision of goods or services as set forth in Section A.

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

<b>Goods or Services Description</b>	<b>Amount</b> (per compensable increment)
<b>A.7.a Value-Added Reporting &amp; Export</b>	<b>Per year</b>
FY 2015	\$2,008,720.00
FY 2016	\$2,008,720.00
FY 2017	\$2,008,720.00
FY 2018	\$2,008,720.00
FY 2019	\$2,008,720.00
FY 2020	\$2,008,720.00

<b>Goods or Services Description</b>	<b>Amount (per compensable increment)</b>
<b>A.7. b Accountability</b>	<b>Per year</b>
FY 2015	\$0.00
FY 2016	\$400,000.00
FY 2017	\$400,000.00
FY 2018	\$400,000.00
FY 2019	\$400,000.00
FY 2020	\$400,000.00
<b>A.7.c Research and Development</b>	<b>Per day</b>
FY 2015	\$1,825.00
FY 2016	\$1,825.00
FY 2017	\$1,825.00
FY 2018	\$1,825.00
FY 2019	\$1,825.00
FY 2020	\$1,825.00
<b>A.7.d Webinar training</b>	<b>Per Webinar</b>
FY 2015	\$2,000.00
FY 2016	\$2,000.00
FY 2017	\$2,000.00
FY 2018	\$2,000.00
FY 2019	\$2,000.00
FY 2020	\$2,000.00
<b>A.7.e Virtual Learning Modules</b>	<b>Per Module</b>
FY 2015	\$12,500.00
FY 2016	\$12,500.00
FY 2017	\$12,500.00
FY 2018	\$12,500.00
FY 2019	\$12,500.00
FY 2020	\$12,500.00
<b>A.7.f Training Consultation via Phone</b>	<b>Per Hour</b>
FY 2015	\$250.00
FY 2016	\$250.00
FY 2017	\$250.00
FY 2018	\$250.00
FY 2019	\$250.00
FY 2020	\$250.00

- c. A "day" shall be defined as a minimum of eight (8) hours of service. If the Contractor provides fewer than eight hours of service in a standard twenty-four hour day, the Contractor shall bill *pro rata* for only those portions of the day in which service was actually delivered. The Contractor shall not bill more than the daily rate even if the Contractor works more than eight hours in a day.

- 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:
- Deborah Sauberer, Executive Director  
Tennessee Department of Education  
Office of Assessment Logistics  
10<sup>th</sup> Floor, Andrew Johnson Tower  
741 James Robertson Parkway  
Nashville, TN 37210  
deb.malone-sauberer@tn.gov  
Telephone # 615-741-0720  
FAX # 615-532-7860
- 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: Department of Education, Office of Assessment Logistics;
  - (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 an "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, all payments to the Contractor, under this or any other contract the Contractor has with the State of Tennessee, shall be made by automated clearing house.
  - b. The Contractor shall complete, sign, and present to the State a "Substitute W-9 Form" provided by the State. The taxpayer identification number in the Substitute W-9 Form must be the same as the Contractor's Federal Employer Identification Number or Tennessee Edison Registration ID.

**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:

Deborah Sauberer, Executive Director  
 Tennessee Department of Education  
 Office of Assessment Logistics  
 10<sup>th</sup> Floor, Andrew Johnson Tower  
 741 James Robertson Parkway  
 Nashville, TN 37210  
 deb.malone-sauberer@tn.gov  
 Telephone # 615-741-0720  
 FAX # 615-532-7860

The Contractor:

Lindia Harbaugh, Director of Business Operations  
 SAS Institute, Inc.  
 100 SAS Campus Drive  
 Cary, NC 27513  
 Lindia.Harbaugh@sas.com  
 Telephone # 919-531-5972  
 FAX # 919-531-5972

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 for 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, money, 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 intentional torts, criminal acts, fraudulent conduct, or omissions that result in personal injuries or death.
- 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 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. §§ 6-6-601 – 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 or disqualified.

- 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 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 applicable state and federal laws and regulations in the 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. 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 - 407.
- D.27. Entire Agreement. This Contract is complete and contains the entire understanding between the Parties relating to its subject matter, including all the terms and conditions of the Parties' agreement. This Contract supersedes any and all prior understandings, representations, negotiations, and agreements between the Parties, whether written or oral.
- D.28. Severability. If any terms and conditions of this Contract are held to be invalid or unenforceable as a matter of law, the other terms and conditions of this Contract shall not be affected and shall remain in full force and effect. The terms and conditions of this Contract are severable.
- D.29. Headings. Section headings of this Contract are for reference purposes only and shall not be construed as part of this Contract.

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

- a. any amendment to this Contract, with the latter in time controlling over any earlier amendments;
- b. this Contract with any attachments or exhibits (excluding the items listed at subsections c. through f., below);
- c. any clarifications of or addenda to the Contractor's proposal seeking this Contract;
- d. the State solicitation, as may be amended, requesting responses in competition for this Contract;
- e. any technical specifications provided to proposers during the procurement process to award this Contract; and,
- f. the Contractor's response seeking this Contract.

**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.

E2. Insurance. The Contractor shall carry adequate liability and other appropriate forms of insurance.

- a. The Contractor shall maintain, at minimum, the following insurance coverage:
  - (1) Workers' Compensation/ Employers' Liability (including all states coverage) with a limit not less than the relevant statutory amount or one million dollars (\$1,000,000) per occurrence for employers' liability whichever is greater.
  - (2) Comprehensive Commercial General Liability (including personal injury & property damage, premises/operations, independent contractor, contractual liability and completed operations/products) with a bodily injury/property damage combined single limit not less than one million dollars (\$1,000,000) per occurrence and two million dollars (\$2,000,000) aggregate.
  - (3) Automobile Coverage (including owned, leased, hired, and non-owned vehicles) with a bodily injury/property damage combined single limit not less than one million dollars (\$1,000,000) per occurrence.
  - (4) Errors and Omission Coverage with a limit of not less than one million dollars (\$1,000,000) per claim and two million dollars (\$2,000,000) aggregate.
- b. The Contractor shall provide a valid Certificate of Insurance naming the State as an additional insured and detailing Coverage Description; Insurance Company & Policy Number; Exceptions and Exclusions; Policy Effective Date; Policy Expiration Date; Limit(s) of Liability; and Name and Address of Insured. Contractor shall obtain from Contractor's insurance carrier(s) and will deliver to the State waivers of the subrogation rights under the respective policies. Failure to provide required evidence of insurance coverage shall be a material breach of this Contract.

E.3. 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.4. Printing Authorization. The Contractor agrees that no publication coming within the jurisdiction of Tenn. Code Ann. §§ 12-7-101, *et. seq.*, shall be printed pursuant to this Contract unless a printing authorization number has been obtained and affixed as required by Tenn. Code Ann. § 12-7-103 (d).

E.5. Ownership of Software and Work Products.

a. Definitions.

- (1) "Contractor-Owned Software," shall mean commercially available software the rights to which are owned by Contractor, including but not limited to commercial "off-the-shelf" software which is not developed using State's money or resources.
- (2) "Custom-Developed Application Software," shall mean customized application software developed by Contractor solely for State.
- (3) "Rights Transfer Application Software," shall mean any pre-existing application software owned by Contractor or a third party, provided to State and to which Contractor will grant and assign, or will facilitate the granting and assignment of, all rights, including the source code, to State.
- (4) "Third-Party Software," shall mean software not owned by the State or the Contractor.
- (5) "Work Product," shall mean all deliverables exclusive of hardware, such as software, software source code, documentation, planning, etc., that are created, designed, developed, or documented by the Contractor exclusively for the State during the course of the project using State's money or resources, including Custom-Developed Application Software. If the deliverables under this Contract include Rights Transfer Application Software, the definition of Work Product shall also include such software. Work Product shall not include Contractor-Owned Software or Third-Party Software.

b. Rights and Title to the Software

- (1) All right, title and interest in and to the Contractor-Owned Software shall at all times remain with Contractor, subject to any license granted under this Contract.
- (2) All right, title and interest in and to the Work Product, and to modifications thereof made by State, including without limitation all copyrights, patents, trade secrets and other intellectual property and other proprietary rights embodied by and arising out of the Work Product, shall belong to State. To the extent such rights do not automatically belong to State, Contractor hereby assigns, transfers, and conveys all right, title and interest in and to the Work Product, including without limitation the copyrights, patents, trade secrets, and other intellectual property rights arising out of or embodied by the Work Product. Contractor and its employees, agents, contractors or representatives shall execute any other documents that State or its counsel deem necessary or desirable to document this transfer or allow State to register its claims and rights to such intellectual property rights or enforce them against third parties.
- (3) All right, title and interest in and to the Third-Party Software shall at all times remain with the third party, subject to any license granted under this Contract.

- c. The Contractor may use for its own purposes the general knowledge, skills, experience, ideas, concepts, know-how, and techniques obtained and used during the course of performing under this Contract. The Contractor may develop for itself, or for others, materials which are similar to or competitive with those that are produced under this Contract.
- E.6. 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.7. 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.8. 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.9. Intellectual Property. 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 and full right and opportunity to conduct the Contractor's own defense thereof, 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.10. Liquidated Damages. If a failure to meet deadlines as determined in the Annual Work Plan, inaccurate calculations resulting from errors on the part of the Contractor, or failure or partial performance of any term or provision of the Contract occurs, ("Liquidated Damages Event"), the State may assess damages on Contractor ("Liquidated Damages"). The State shall notify the Contractor of amounts to be assessed as Liquidated Damages. The Parties agree that due to the complicated nature of the Contractor's obligations under this Contract it would be difficult to specifically designate a monetary amount for Contractor's failure to fulfill its obligations regarding the Liquidated Damages Event as these amounts are likely to be uncertain and not easily proven. Contractor has carefully reviewed the Liquidated Damages contained in Attachment B and agrees that these amounts represent a reasonable relationship between the amount and what might reasonably be expected in the event of a Liquidated Damages Event, and are a reasonable estimate of the damages that would occur from a Liquidated Damages Event. The Parties agree that the Liquidated Damages represent solely the damages and injuries sustained by the State in losing the benefit of the bargain with Contractor and do not include any injury or damage sustained by a third party. The Contractor agrees that the Liquidated Damages are in addition to any amounts Contractor may owe the State pursuant to the indemnity provision or any other sections of this Contract.

The State is not obligated to assess Liquidated Damages before availing itself of any other remedy. The State may choose to discontinue Liquidated Damages and avail itself of any other remedy available under this Contract or at law or equity.

- E.11. Partial Takeover of Contract. The State may, at its convenience and without cause, exercise a partial takeover of any service that the Contractor is obligated to perform under this Contract, including any service which is the subject of a subcontract between Contractor and a third party (a "Partial Takeover"). A Partial Takeover of this Contract by the State shall not be deemed a breach of contract. The Contractor shall be given at least thirty (30) days prior written notice of a Partial Takeover. The notice shall specify the areas of service the State will assume and the date the State will be assuming. The State's exercise of a Partial Takeover shall not alter the Contractor's other duties and responsibilities under this Contract. The State reserves the right to withhold from the Contractor any amounts the Contractor would have been paid but for the State's exercise of a Partial Takeover. The amounts shall be withheld effective as of the date the State exercises its right to a Partial Takeover. The State's exercise of its right to a Partial Takeover of this Contract shall not entitle the Contractor to any actual, general, special, incidental, consequential, or any other damages irrespective of any description or amount.
- E.12. Unencumbered Personnel. The Contractor shall not restrict its employees, agents, subcontractors or principals who perform services for the State under this Contract from performing the same or similar services for the State after the termination of this Contract, either as a State employee, an independent contractor, or an employee, agent, subcontractor or principal of another contractor with the State.
- E13 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 and/or procure 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.

- E.14. 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. Security and Exchange Commission total compensation filings at <http://www.sec.gov/answers/excomp.htm>.)

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

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

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

- E.15 Survival. The terms, provisions, representations, and warranties contained in this Contract which by their sense and context are intended to survive the performance and termination of this Contract, shall so survive the completion of performance and termination of this Contract.
- E.16. FERPA Compliance. The State and Contractor shall comply with the Family Education Rights and Privacy Act of 1974 (20 U.S.C. § 1232g) (FERPA) and its accompanying regulations (34 C.F.R. 99). Contractor warrants that it is familiar with requirements of FERPA and its accompanying regulations and that it will comply with all applicable FERPA requirements in the performance of its duties in this contract. Contractor agrees to cooperate with the State as required by FERPA and its regulations in the performance of its duties in this contract. Contractor agrees to maintain the confidentiality of all education records and student information and use such records and information for the exclusive purpose of performing its duties in this contract. The Contractor shall reaffirm this attestation, in writing, by submitting to the State a completed and signed copy of the Authorization and Acknowledgement of Compliance document at Attachment C.
- E.17. Tennessee Data Accessibility, Transparency and Accountability Act (the "Act"). The State and Contractor shall comply with Tennessee Law Title 49, Chapter 1, Part 7, known as the Data Accessibility, Transparency and Accountability Act, and any accompanying administrative rules or regulations. Contractor agrees to maintain the confidentiality of all records containing student

and de-identified data in any databases, to which the State has granted Contractor access, and to only use such data for the exclusive purpose of performing its duties in this Contract.

- E.18. Any instances of unauthorized disclosure of data containing personally identifiable information in violation of the laws cited above in sections E.16 and E.17 that come to the attention of the Contractor shall be reported to the State within twenty-four (24) hours. In addition to any damages required to be paid by Contractor pursuant to Attachment B, Contractor shall indemnify and hold harmless State as well as its employees, agents and representatives from and against any and all claims, liabilities, losses, and causes of action which may arise, accrue, or result to any person or entity which may be injured or damaged as a result of Contractor's failure to comply with sections E.16 or E.17.
- E.19. Software Development. It is expressly understood that the contracted services will not require the development of new software or modification of existing software and that the only work products under this contract are reports. Contractor and agrees that all data supplied by the State pursuant to this Contract remains the property of the State in all forms. Contractor shall obtain written permission of the Commissioner of Education prior to the use of such data other than the fulfillment of Contractor's obligations under this Contract.

**IN WITNESS WHEREOF,**

**SAS Institute Inc.:**

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**CONTRACTOR SIGNATURE**

**DATE**

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

**Tennessee Department of Education:**

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**Kevin Huffman, Commissioner**

**DATE**

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

<b>SUBJECT CONTRACT NUMBER:</b>	44036
<b>CONTRACTOR LEGAL ENTITY NAME:</b>	SAS Institute Inc.
<b>FEDERAL EMPLOYER IDENTIFICATION NUMBER:</b> (or Social Security Number)	

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

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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**

**ATTACHMENT B  
LIQUIDATED DAMAGES**

<b>Service Description</b>	<b>Amount (per compensable increment)</b>
A.7.a Value-Added Reporting & Export	\$200,872.00 Per year
A.7. b Accountability	\$20,000.00 Per year
A.7.d Research and Development	\$100.00 Per day
A.7.e Webinar training	\$200.00 Per Webinar
A.7.f Virtual Learning Modules	\$1,250.00 Per Module
A.7.e Training Consultation via Phone	\$50.00 Per Hour

**ATTACHMENT C**

**AUTHORIZATION AND ACKNOWLEDGEMENT OF FERPA COMPLIANCE**

**Whereas**, State has contracted with **SAS Institute Inc.** on **January 26, 2015** through **December 31, 2019 (Agency Tracking # 33111-00415)**, for **assessment reporting and data analysis services**, and

**Whereas**, The above referenced contract may require the disclosure by the State to **SAS Institute Inc.** of certain personally identifiable student information that is confidential under the Family Educational Rights and Privacy Act (FERPA), and

**Whereas**, 34 C.F.R. 99.31, authorizes an educational agency or institution to disclose personally identifiable information from an education record of a student without the consent required by Sec. 99.30 to a contractor, consultant, volunteer, or other party to whom an agency or institution has outsourced institutional services.

Therefore, the State and **SAS Institute Inc.** hereby agree as follows:

1. **SAS Institute Inc.** is authorized to maintain certain student information for the sole purpose of compliance with the requirements of the above referenced contract. This student information may include: name, social security number, achievement data, address, phone number, and parent/guardian name.
2. **SAS Institute Inc.** agrees to comply fully with FERPA by maintaining the confidentiality of all student information and to use the information solely to fulfill its obligations under the above referenced contract with the state.
3. **SAS Institute Inc.** agrees to destroy all confidential student information when it is no longer needed for purposes of fulfilling its obligations under the above referenced contract.

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**SAS Institute Inc.**

**DATE**

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**TENNESSEE DEPARTMENT OF EDUCATION**

**DATE**

