

CONTRACT #16
RFS # 331.11-00513
FA # 13-1801
Edison # 35269

Education

VENDOR:
MetaMetrics, Inc.



BILL HASLAM
GOVERNOR

STATE OF TENNESSEE
DEPARTMENT OF EDUCATION
6th FLOOR, ANDREW JOHNSON TOWER
710 JAMES ROBERTSON PARKWAY
NASHVILLE, TN 37243-0375

KEVIN HUFFMAN
COMMISSIONER

SUBMITTED VIA ELECTRONIC MAIL

TO: Lucien Guise, Fiscal Review Committee
FROM: Kevin Huffman, Commissioner *KH*
DATE: January 25, 2013
RE: Request to appear before fiscal review committee regarding non-competitive contract request
RFS # 33111-00513

Please consider the enclosed request for a non-competitive contract with MetaMetrics, Inc. The contract will provide Lexile reader measures for reading in grades 3-8 and English II. The reader measure describes a student's reading comprehension ability. The Lexile score will be provided to students on their individual profile reports. These scores may be used by teachers and parents to work with students on reading comprehension. This contract will allow for the following:

- (1) Lease of the Lexile mapping to the scale scores of our current grade 3-8 and English II assessments.
- (2) Extensive customized support to Tennessee educators aimed at increasing student reading comprehension levels.
- (3) Access to research, technical advisory committees, and other committees at the national level working on Common Core Standards.

The department worked closely with MetaMetrics, Inc. to establish the pricing structure, to align the Lexile reading measures to Tennessee assessments and to establish the mapping tables in 2010-2011. The pricing of this contract is lower than the 2011 pricing structure and is guaranteed for an additional three years. MetaMetrics, Inc. is also working with the PARCC consortia in development of Lexile measures to align with the Common Core Assessments currently being developed. Tennessee will have access to this research at no additional cost. School systems are familiar with the use of Lexile measures and have made numerous requests that we provide this valuable data.

Thank you for your consideration.

KH: km

cc: Kristen McKeever, Director of Contracts
Deborah Malone Sauberer, Executive Director of Assessment Logistics

Supplemental Documentation Required for
Fiscal Review Committee

*Contact Name:	Deb Malone		*Contact Phone:	(615) 532-6298	
*Original Contract Number:	N/A		*Original RFS Number:	33111-00513	
Edison Contract Number: <i>(if applicable)</i>	35269		Edison RFS Number: <i>(if applicable)</i>	33111-00513	
*Original Contract Begin Date:	April 1, 2013		*Current End Date:	June 30, 2014	
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:			January 25, 2013		
*Submitted Within Sixty (60) days:			Yes		
<i>If not, explain:</i>			N/A		
*Contract Vendor Name:			MetaMetrics		
*Current Maximum Liability:			\$720,000.00		
*Current Contract Allocation by Fiscal Year: <i>(as Shown on Most Current Fully Executed Contract Summary Sheet)</i>					
FY2013	FY2014				
\$480,000.00	\$240,000.00				
*Current Total Expenditures by Fiscal Year of Contract: <i>(attach backup documentation from STARS or FDAS report)</i>					
IF Contract Allocation has been greater than Contract Expenditures, please give the reasons and explain where surplus funds were spent:			N/A		
IF surplus funds have been carried forward, please give the reasons and provide the authority for the carry forward provision:			N/A		
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:	\$720,000.00	Federal:	\$0.00	
Interdepartmental:		\$0.00	Other:	\$0.00	
If "other" please define:			N/A		
Dates of All Previous Amendments or Revisions: <i>(if applicable)</i>			Brief Description of Actions in Previous Amendments or Revisions: <i>(if applicable)</i>		
N/A			N/A		
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?			\$720,000.00		

Supplemental Documentation Required for Fiscal Review Committee

For all new non-competitive contracts and any contract amendment that changes Sections A or C.3. of the original or previously amended contract document, provide estimates based on information provided the Department by the vendor for determination of contract maximum liability. Add rows as necessary to provide all information requested.

If it is determined that the question is not applicable to your contract document attach detailed explanation as to why that determination was made.

Planned expenditures by fiscal year by deliverable. Add rows as necessary to indicate all estimated contract expenditures.

Deliverable description:	FY: 2013	FY: 2014	FY:	FY:	FY:
Lexile License	\$480,000	\$240,000			

Proposed savings to be realized per fiscal year by entering into this contract. If amendment to an existing contract, please indicate the proposed savings to be realized by the amendment. Add rows as necessary to define all potential savings per deliverable.

Deliverable description:	FY:	FY:	FY:	FY:	FY:

Comparison of cost per fiscal year of obtaining this service through the proposed contract or amendment vs. other options. List other options available (including other vendors), cost of other options, and source of information for comparison of other options (e.g. catalog, Web site). Add rows as necessary to indicate price differentials between contract deliverables.

MetaMetrics, Inc. is the only vendor that provides this specific service.

Proposed Vendor Cost: (name of vendor)	FY:	FY:	FY:	FY:	FY:
Other Vendor Cost: (name of vendor)	FY:	FY:	FY:	FY:	FY:
Other Vendor Cost: (name of vendor)	FY:	FY:	FY:	FY:	FY:

Non-Competitive Contract Request

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@state.tn.us

APPROVED



CENTRAL PROCURMENT OFFICER

Request Tracking #	33111-00513		
1. Contracting Agency	Education (TDOE)		
2. Proposed Contractor	MetaMetrics, Inc.		
3. Proposed Contract Period – with ALL options to extend exercised <i>The proposed contract start date shall follow the approval date of this request.</i>	15 months		
4. Maximum Contract Cost – with ALL options to extend exercised	\$720,000.00		
5. Office for Information Resources Endorsement – information technology (N/A to THDA)	<input checked="" type="checkbox"/> Not Applicable <input type="checkbox"/> Attached		
6. eHealth Initiative Support – health-related professional, pharmaceutical, laboratory, or imaging	<input checked="" type="checkbox"/> Not Applicable <input type="checkbox"/> Attached		
7. Human Resources Support – state employee training	<input checked="" type="checkbox"/> Not Applicable <input type="checkbox"/> Attached		
8. Has the contracting agency bought the subject service before?			
<input type="checkbox"/> NO <input checked="" type="checkbox"/> YES, it was procured by... <div style="margin-left: 150px;"> <input type="checkbox"/> RFP <input type="checkbox"/> Another Competitive Method <input checked="" type="checkbox"/> Non-Competitive Negotiation </div>			
9. Service Description – brief <u>summary</u> only – do NOT restate the proposed scope of service			
<p>Provision of Lexile scores for reading in grades 3-8 and English I, II, and III. The reader measure is the specific number that describes a student's reading comprehension ability. A student receives their Lexile measure through formal methods such as a linking study where the reporting scale of a norm-referenced or criterion-referenced assessment is linked with the Lexile scale.</p>			
10. Explanation of Need for or Requirement Placed on the State to Acquire the Service			
<p>Reading affects the ability of all students to achieve. If a student lacks reading ability, then all other curricular content areas are affected negatively. Reading is seen as a serious problem in Tennessee. A Lexile measure is the most widely adopted reading metric, measuring both reader ability and text difficulty on the same scale. Lexile measures are powerful tools for linking assessment with instruction across the curriculum, at home and in the library, by taking the guesswork out of selecting materials that can help to improve student reading ability. The use of Lexile in grades 3-8 and 10 will add impact to improving teacher instruction and student achievement. By using the Lexile Framework for Reading, the same metric is applied to the books students read, the tests students take, and the results that are reported. By linking the Tennessee Comprehensive</p>			

Request Tracking #	33111-00513
<p>Assessment Program with the Lexile Framework, educators and parents will be better able to use the results from the tests to improve instruction and develop each student's level of reading comprehension. Additionally, the use of the Lexile Framework for Reading will affect reading in all of the curricular content areas in elementary and high school. The Lexile Framework for Reading will impact general education, Title I, English Learners (EL), migrant, special education, low economic, career and technical, and racially designated students.</p>	
<p>11. Name & Address of the Contractor's Principal Owner(s) – NOT required for a TN state education institution</p> <p>Malbert Smith, President Alfred J Stenner IV, CEO MetaMetrics, Inc. 1000 Park Forty Plaza Dr, Suite 120 Durham, NC 27713</p>	
<p>12. Evidence Contractor's Experience & Length Of Experience Providing the Service</p> <p>Founded in 1984, MetaMetrics, Inc. is focused on improving education for learners of all ages. They develop scientific measures of academic achievement and complementary technologies that link assessment results with real-world instruction.</p>	
<p>13. Efforts to Identify Reasonable, Competitive, Procurement Alternatives</p> <p>TDOE studied several alternative contractors. TDOE has considered <i>Fountas & Pennell Benchmark Assessment</i> and found it far too limited in providing the information Tennessee needs to improve student reading scores. It only provides book levels, not assessment levels. Additionally, it is for kindergarten through eighth grade only, not high school. When looking at contractors that provide readability levels, there is not a student level or assessment level measure provided. There are only levels given for specific books or a formula to assess books. There is not one company that meets our requirements other than MetaMetrics, Inc. whose focus is reading comprehension. Because of the wide adoption of the Lexile Framework for Reading, students with Lexile measures have access to over 100,000 books, 80 million magazine articles, and 200,000 websites with Lexile measures. Other states that have adopted the Lexile Framework for their high stakes assessments have found that many of their interim assessments also report in Lexiles. This common scale across multiple instruments ties the day-to-day classroom activities to the year-to-year summations of progress.</p>	
<p>14. Justification – specifically explain why non-competitive negotiation is in the best interest of the state</p> <p>The Lexile score rubric is owned by MetaMetrics, Inc. This methodology is the most widely accepted rubric in education today for providing students with reading level information and support for instruction to elevate reading levels. TDOE entered into a contract with MetaMetrics, Inc. for the analysis of our Tennessee Comprehensive Assessment Program (TCAP) achievement program and delivery of Lexile reader measures from February 1, 2010 through June 30, 2011. Due to transitions within TDOE in 2011 the contract was allowed to lapse. This new contract provides the lease of the Lexile score rubric for use on student reports at a lower cost than the 2011 cost.</p> <p>Teachers and parents in Tennessee are familiar with Lexile scores and TDOE has received numerous requests for the provision of these scores in connection with student TCAP scores. After the No Child Left Behind Act was instituted, Tennessee moved from a norm-referenced test which gave comparative score information for students against other students in the country to a criterion-referenced test which provides student performance against our curriculum standards. Parents and educators want the Lexile score to give them a comparative point of reference for student performance against other students. In addition, reading ability is a primary indicator of success both academically and for future career. The Lexile measure provides solid insight into a student's ability to read.</p>	

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Agency Head Signature and Date – <i>MUST be signed by the ACTUAL agency head as detailed on the current Signature Certification. Signature by an authorized signatory is acceptable only in documented exigent circumstances</i>	
 1/22/13	

X ~~Jessica Stephens~~, Jessica Stephens - Sourcing Analyst 2/4/13

**CONTRACT**

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

Begin Date April 1, 2013	End Date June 30, 2014	Agency Tracking # 33111-00513	Edison Record ID 35269		
Contractor Legal Entity Name MetaMetrics, Inc.			Edison Vendor ID 0000115746		
Service Caption (one line only) Lexile Framework for Reading					
Subrecipient or Vendor <input type="checkbox"/> Subrecipient <input checked="" type="checkbox"/> Vendor		CFDA # N/A			
Funding —					
FY	State	Federal	Interdepartmental	Other	TOTAL Contract Amount
2013	\$480,000.00	\$0.00	\$0.00	\$0.00	\$480,000.00
2014	\$240,000.00	\$0.00	\$0.00	\$0.00	\$240,000.00
TOTAL:	\$720,000.00	\$0.00	\$0.00	\$0.00	\$720,000.00
American Recovery and Reinvestment Act (ARRA) Funding: <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO					
Ownership/Control					
<input type="checkbox"/> African American <input type="checkbox"/> Asian <input type="checkbox"/> Hispanic <input type="checkbox"/> Native American <input type="checkbox"/> Female <input type="checkbox"/> Person w/Disability <input type="checkbox"/> Small Business <input type="checkbox"/> Government <input checked="" type="checkbox"/> NOT Minority/Disadvantaged <input type="checkbox"/> Other:					
Selection Method & Process Summary (mark the correct response to confirm the associated summary)					
<input type="checkbox"/> RFP		The procurement process was completed in accordance with the approved RFP document and associated regulations.			
<input type="checkbox"/> Competitive Negotiation		The predefined, competitive, impartial, negotiation process was completed in accordance with the associated, approved procedures and evaluation criteria.			
<input type="checkbox"/> Alternative Competitive Method		The predefined, competitive, impartial, procurement process was completed in accordance with the associated, approved procedures and evaluation criteria.			
<input checked="" type="checkbox"/> Non-Competitive Negotiation		The non-competitive contractor selection was completed as approved, and the procurement process included a negotiation of best possible terms & price.			
<input type="checkbox"/> Other		The contractor selection was directed by law, court order, settlement agreement, or resulted from the state making the same agreement with <u>all</u> interested parties or <u>all</u> parties in a predetermined "class."			
Budget Officer Confirmation: There is a balance in the appropriation from which obligations hereunder are required to be paid that is not already encumbered to pay other obligations.					
Speed Chart (optional) ED0000085		Account Code (optional) 70803000			

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

RFS Number

33111-00513

Edison ID

35269

Fiscal Year	Department ID	Speedchart Number	Program Code	Account Code	Fund	Project/Grant Code	CFDA #	Amount
2013	3311101000	ED0000450	873300	70899000	25000	n/a	n/a	\$311,000.00
2013	3311101000	ED0000450	873300	70803000	25000	n/a	n/a	\$25,000.00
2013	3311101000	ED0000452	873800	70899000	25000	n/a	n/a	\$144,000.00
2014	3311101000	ED0000450	873300	70899000	25000	n/a	n/a	\$143,000.00
2014	3311101000	ED0000450	873300	70803000	25000	n/a	n/a	\$25,000.00
2014	3311101000	ED0000452	873800	70899000	25000	n/a	n/a	\$72,000.00
TOTAL								\$720,000.00

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

This Contract, by and between the State of Tennessee, Department of Education, hereinafter referred to as the "State" and MetaMetrics, Inc., hereinafter referred to as the "Contractor," is for the provision of the Lexile Framework for Reading, as further defined in the "SCOPE OF SERVICES."

The Contractor is a Non-Profit Corporation.

Contractor Place of Incorporation or Organization: North Carolina

Contractor Edison Registration ID # 0000115746

A. SCOPE OF SERVICES:

A.1. The Contractor shall provide all service and deliverables as required, described, and detailed herein and shall meet all service and delivery timelines as specified by this Contract.

A.2. Definitions:

- a. **Conversion table** – Tables developed to convert the TCAP Achievement and English II EOC scale scores to the Lexile metric for the reporting of student Lexile reader measures.
- b. **Lexile Framework for Reading** – A system that can help determine the reading level of any written material—from a book to a test item. The Lexile Framework can also be used to assess a readers' reading comprehension level. After test results are converted into Lexile measures, readers can be matched to reading materials on their own level and comprehension rates of readers can be forecasted to determine how well a reader will comprehend thousands of texts that have been measured in the Lexile metric.
- c. **Lexile Map** – The Lexile Map provides a common sense context for understanding Lexile as well as reading test results. It is representative of the Lexile Book Database. The map contains representative books and educational levels at all points on the Lexile scale. The educational levels provide a classroom context for Lexile measures. The levels are expressed as ranges because within every classroom there are a range of readers and a range of reading materials. For example, in a fifth-grade classroom students will likely be reading from the third-grade level to the eighth-grade level. Conversely, in a fifth-grade classroom there will be reading materials ranging from the third-grade level to the eighth-grade level.
- d. **Lexile reader measure** - The specific number that describes a student's reading comprehension ability. A student receives his or her Lexile measure through formal methods such as a linking study where the reporting scale of a norm-referenced or criterion-referenced assessment is linked with the Lexile scale, or through informal methods such as listening to a student read a book with a known Lexile measure.
- e. **Tennessee Comprehensive Assessment Program (TCAP)** - A set of statewide assessments given in Tennessee measure students' skills and progress.
- f. **TCAP Achievement Assessment (ACH)** - Mandatory assessment for grades 3-8 and optional for grades K-2.
- g. **TCAP Assessments** – Used to identify all State assessments as a group.
- h. **TCAP End of Course Assessments (EOC)** - End of course assessments given in specific secondary courses.
- i. **TCAP Modified Academic Achievement Standards Assessment (MAAS)** – Assessment for students with disabilities for the purpose of providing a more appropriate

means of measuring the skills of a student whose disability interferes with performance on large scale assessments.

- A.3. The Contractor shall provide the State with the conversion table for providing Lexile reader measures for all students in grades 3 through 8 and ten who take the ACH or EOC English II tests.
- A.4. The Contractor shall provide the State with a license for the use of Lexile reader measures for each student in grades 3 through 8 and for students in EOC English II for the 2011-2012, 2012-2013 and 2013-2014 academic years.
- A.5. The Contractor shall deliver conversion tables for each student in grades 3 through 8 and for students in EOC English II to the State and the State's assessment vendor by April 8, 2013.
- A.6. The Contractor shall provide the following deliverables and services at a date mutually-agreed upon by the parties. Upon contract signing, a conference call will be held to define the schedule of deliverables. The Contractor shall submit a written plan within 10 business days of the conference call with the mutually agreed upon schedule of deliverables.
 - a. Customize Lexile map based on the Common Core State Standards (CCSS)
 - b. Customize Lexile content for the State to be posted on the State's website
 - c. Work with the State assessment vendor(s) to provide support in customizing individual student reports and report brochures to include Lexile reader measures for parents and schools
 - d. Assist the State's Office of Curriculum and Instruction in developing, launching, and sustaining a customized Tennessee summer reading program
 - e. A series of professional development webinars or two face-to-face meetings for State leaders on the power and use of Lexile measures in supporting student learning
 - f. Membership on the MetaMetrics Text Complexity Technical Advisory Committee
 - g. Thirty hours of customized psychometric support on integrating assessment with instruction as it relates to text complexity
 - h. Priority access to MetaMetrics Roundtable Discussions
 - i. Quarterly State leader newsletter highlighting MetaMetrics latest research, resources aligned to the CCSS, and partner updates
 - j. Ongoing engagement as thought partners with State leadership team, as requested by the Commissioner of Education
 - k. Two presentations on the power and uses of Lexile measures for mutually agreed upon statewide education stakeholder groups (i.e., business community, statewide association of school administrators, school librarians, teachers of English language arts, school guidance counselors or parents)
 - l. Two State leader project management calls to monitor contract progress and set mid-course corrections, where needed
 - m. Assistance in state level outreach to publishers of textbooks and other instructional materials to request Lexile measures

B. CONTRACT PERIOD:

- B.1. Contract. This Contract shall be effective for the period beginning April 1, 2013, and ending on June 30, 2014. The Contractor hereby acknowledges and affirms that the State shall have no obligation for services rendered by the Contractor which were not performed within this specified contract period.

- B.2. Term Extension. The State reserves the right to extend this Contract for an additional period or periods of time representing increments of no more than one year and a total contract term of no more than five (5) years, provided that such an extension of the contract term is effected prior to the current, contract expiration date by means of a contract amendment. If a term extension necessitates additional funding beyond that which was included in the original Contract, an increase of the State's maximum liability will also be effected through contract amendment, and shall be based upon payment rates provided in the original Contract.

C. PAYMENT TERMS AND CONDITIONS:

- C.1. Maximum Liability. In no event shall the maximum liability of the State under this Contract exceed seventy hundred twenty thousand dollars and no cents (\$720,000.00). The payment rates in section C.3 shall constitute the entire compensation due the Contractor for all service and Contractor obligations hereunder regardless of the difficulty, materials or equipment required. The payment rates include, but are not limited to, all applicable taxes, fees, overheads, and all other direct and indirect costs incurred or to be incurred by the Contractor.

The Contractor is not entitled to be paid the maximum liability for any period under the Contract or any extensions of the Contract for work not requested by the State. The maximum liability represents available funds for payment to the Contractor and does not guarantee payment of any such funds to the Contractor under this Contract unless the State requests work and the Contractor performs said work. In which case, the Contractor shall be paid in accordance with the payment rates detailed in section C.3. The State is under no obligation to request work from the Contractor in any specific dollar amounts or to request any work at all from the Contractor during any period of this Contract.

- C.2. Compensation Firm. The payment rates and the maximum liability of the State under this Contract are firm for the duration of the Contract and are not subject to escalation for any reason unless amended.
- C.3. Payment Methodology. The Contractor shall be compensated based on the payment rates herein for units of service authorized by the State in a total amount not to exceed the Contract Maximum Liability established in section C.1.
- a. The Contractor's compensation shall be contingent upon the satisfactory completion of units, milestones, or increments of service defined in section A.
 - b. The Contractor shall be compensated for said units, milestones, or increments of service based upon the following payment rates:

Service Description	Amount (per compensable increment)
Lexile license; A.4.	\$240,000.00/per academic year
Scope deliverables A.3, A.5, A.6	\$0.00

- c. **NOTICE:** The amount(s) per compensable increment detailed above shall be contingent upon the State's receipt of an invoice (as required by C.5., below) for said service(s) within thirty (30) days after the end of the calendar month in which the service(s) were rendered. At the sole discretion of the State, the amount per compensable increment of any service for which the State receives an invoice later than prescribed herein shall be subject to a reduction in amount of up to 100%. In the case of an untimely invoice, before any payment will be considered by the State, the Contractor must submit a written request regarding the untimely invoice, which shall detail the reason the invoice is untimely as well as the Contractor's plan for submitting all future invoices no later than prescribed herein, and it must be signed by an individual empowered to bind the Contractor to this contract.

- C.4. Travel Compensation. The Contractor shall not be compensated or reimbursed for travel, meals, or lodging.
- C.5. Invoice Requirements. The Contractor shall invoice the State only for completed increments of service and for the amount stipulated in section C.3, above, and present said invoices no more often than monthly, with all necessary supporting documentation, to:

Tony Plunkett, Director Assessment Design
 Tennessee Department of Education
 5th Floor, Andrew Johnson Tower
 710 James Robertson Parkway
 Nashville, TN 37243
 Telephone # 615-532-6298

- a. Each invoice shall clearly and accurately detail all of the following required information (calculations must be extended and totaled correctly).
- (1) Invoice Number (assigned by the Contractor)
 - (2) Invoice Date
 - (3) Contract Number (assigned by the State)
 - (4) Customer Account Name: Tennessee Department of Education, Office of Assessment Design
 - (5) Customer Account Number (assigned by the Contractor to the above-referenced Customer)
 - (6) Contractor Name
 - (7) Contractor Tennessee Edison Registration ID Number Referenced in Preamble of this Contract
 - (8) Contractor Contact for Invoice Questions (name, phone, and/or fax)
 - (9) Contractor Remittance Address
 - (10) Description of Delivered Service
 - (11) Complete Itemization of Charges, which shall detail the following:
 - i. Service or Milestone Description (including name & title as applicable) of each service invoiced
 - ii. Number of Completed Units, Increments, Hours, or Days as applicable, of each service invoiced
 - iii. Applicable Payment Rate (as stipulated in Section C.3.) of each service invoiced
 - iv. Amount Due by Service
 - v. Total Amount Due for the invoice period
- b. The Contractor understands and agrees that an invoice under this Contract shall:
- (1) include only charges for service described in Contract Section A and in accordance with payment terms and conditions set forth in Contract Section C;
 - (2) only be submitted for completed service and shall not include any charge for future work;
 - (3) not include sales tax or shipping charges; and
 - (4) initiate the timeframe for payment (and any discounts) only when the State is in receipt of the invoice, and the invoice 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 matter in relation thereto. A payment by the State shall not be construed as acceptance of any part of the work or service 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 theretofore made which are determined by the State, on the basis of audits conducted in accordance with the terms of this Contract, not to constitute proper remuneration for compensable services.
- 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, which 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 documentation properly completed.
- a. The Contractor shall complete, sign, and present to the State an "Authorization Agreement for Automatic Deposit (ACH Credits) Form" provided by the State. By doing so, the Contractor acknowledges and agrees that, once said 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 (ACH).
 - b. The Contractor shall complete, sign, and present to the State a "Substitute W-9 Form" provided by the State. The taxpayer identification number detailed by said form must agree with the Contractor's Federal Employer Identification Number or Tennessee Edison Registration ID referenced in this Contract.

D. STANDARD TERMS AND CONDITIONS:

- D.1. Required Approvals. The State is not bound by this Contract until it is signed by the contract parties and approved by appropriate officials in accordance with applicable Tennessee laws and regulations (depending upon the specifics of this contract, said officials may include, but are not limited to, the Commissioner of Finance and Administration, the Commissioner of Human Resources, and the Comptroller of the Treasury).
- D.2. Modification and Amendment. This Contract may be modified only by a written amendment signed by all parties hereto and approved by both the officials who approved the base contract and, depending upon the specifics of the contract as amended, any additional officials required by Tennessee laws and regulations (said officials may include, but are not limited to, the Commissioner of Finance and Administration, the Commissioner of Human Resources, and the Comptroller of the Treasury).
- D.3. Termination for Convenience. The State may terminate this Contract without cause for any reason. Said termination shall not be deemed a breach of contract by the State. The State shall give the Contractor at least thirty (30) days written notice before the effective termination date. The Contractor shall be entitled to compensation for satisfactory, authorized service completed as of the termination date, but in no event shall the State be liable to the Contractor for compensation for any service which has not been rendered. Upon such termination, the Contractor shall have no right to any actual general, special, incidental, consequential, or any other damages whatsoever of any description or amount.
- D.4. 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 violates any terms of this Contract, the State shall have the right to immediately terminate the Contract and withhold payments in excess of fair compensation for completed services. Notwithstanding the above, the Contractor shall not be relieved of liability to the State for damages sustained by virtue of any breach of this Contract by the Contractor.
- D.5. Subcontracting. The Contractor shall not assign this Contract or enter into a subcontract for any of the services performed under this Contract without obtaining the prior written approval of the State. If such subcontracts are approved by the State, each shall contain, at a minimum, sections of this Contract below pertaining to "Conflicts of Interest," "Nondiscrimination," and "Records" (as

identified by the section headings). Notwithstanding any use of approved subcontractors, the Contractor shall be the prime contractor and shall be responsible for all work performed.

- D.6. Conflicts of Interest. The Contractor warrants that no part of the total Contract Amount 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 relative to 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 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 months has been, an employee of the State of Tennessee.

- D.7. 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, color, religion, sex, national origin, or any other classification protected by Federal, Tennessee State constitutional, or statutory law. The Contractor shall, upon request, show proof of such nondiscrimination and shall post in conspicuous places, available to all employees and applicants, notices of nondiscrimination.

- D.8. Prohibition of Illegal Immigrants. The requirements of *Tennessee Code Annotated*, Section 12-4-124, *et seq.*, 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 hereby attests, certifies, warrants, and assures 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, hereto, semi-annually during the period of this Contract. Such 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 period of this Contract, 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 relative to this Contract and shall not knowingly utilize the services of any subcontractor who will utilize the services of an illegal immigrant to perform work relative to this Contract. Attestations obtained from such 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. Said 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 *Tennessee Code Annotated*, Section 12-4-124, *et seq.* for acts or omissions occurring after its effective date. This law requires the Commissioner of Finance and Administration to prohibit a contractor from contracting with, or submitting an offer, proposal, or bid to contract with the State of Tennessee to supply goods or services for a period of one year after a contractor is discovered to have knowingly used the services of illegal immigrants during the performance of this Contract.

- e. For purposes of this Contract, "illegal immigrant" shall be defined as any person who is not either a United States citizen, a Lawful Permanent Resident, or a person whose physical presence in the United States is authorized or allowed by the federal Department of Homeland Security and who, under federal immigration laws and/or regulations, is authorized to be employed in the U.S. or is otherwise authorized to provide services under the Contract.
- D.9. Records. The Contractor shall maintain documentation for all charges under this Contract. The books, records, and documents of the Contractor, insofar as they relate to work performed or money received under this Contract, shall be maintained for a period of three (3) full years from the date of the final payment and shall be subject to audit at any reasonable time and upon 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.10. Prevailing Wage Rates. All contracts for construction, erection, or demolition or to install goods or materials that involve the expenditure of any funds derived from the State require compliance with the prevailing wage laws as provided in *Tennessee Code Annotated*, Section 12-4-401, *et seq.*
- D.11. 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.12. Progress Reports. The Contractor shall submit brief, periodic, progress reports to the State as requested.
- D.13. Strict Performance. Failure by any party to this Contract to insist in any one or more cases upon 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 such 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 hereto.
- D.14. Independent Contractor. The parties hereto, in the performance of this Contract, shall not act as employees, partners, joint venturers, or associates of one another. It is expressly acknowledged by the parties hereto that such parties are independent contracting entities and that nothing in this Contract shall be construed to create an employer/employee relationship or to allow either 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 shall not be deemed or construed to be the employees or agents of the other party for any purpose whatsoever.
- The Contractor, being an independent contractor and not an employee of the State, agrees to carry adequate public liability and other appropriate forms of insurance, including adequate public liability and other appropriate forms of insurance on the Contractor's employees, and to pay all applicable taxes incident to this Contract.
- D.15. State Liability. The State shall have no liability except as specifically provided in this Contract.
- D.16. Force Majeure. The obligations of the parties to this Contract are subject to prevention by causes beyond the parties' control that could not be avoided by the exercise of due care including, but not limited to, natural disasters, riots, wars, epidemics, or any other similar cause.
- D.17. State and Federal Compliance. The Contractor shall comply with all applicable State and Federal laws and regulations in the performance of this Contract.
- D.18. Governing Law. This Contract shall be governed by and construed in accordance with the laws of the State of Tennessee. The Contractor agrees that it will be subject to the exclusive jurisdiction of the courts of the State of Tennessee in actions that may arise under this Contract. The Contractor acknowledges and agrees that any rights or claims against the State of

Tennessee or its employees hereunder, and any remedies arising therefrom, shall be subject to and limited to those rights and remedies, if any, available under *Tennessee Code Annotated*, Sections 9-8-101 through 9-8-407.

- D.19. Completeness. This Contract is complete and contains the entire understanding between the parties relating to the subject matter contained herein, 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 relating hereto, whether written or oral.
- D.20. 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 hereof shall not be affected thereby and shall remain in full force and effect. To this end, the terms and conditions of this Contract are declared severable.
- D.21. Headings. Section headings of this Contract are for reference purposes only and shall not be construed as part of this Contract.

E. SPECIAL TERMS AND CONDITIONS:

- E.1. Conflicting Terms and Conditions. Should any of these special terms and conditions conflict with any other terms and conditions of this Contract, these special terms and conditions shall control.
- E.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. Any such communications, regardless of method of transmission, shall be addressed to the respective party at the appropriate mailing address, facsimile number, or EMAIL address as set forth below or to that of such other party or address, as may be hereafter specified by written notice.

The State:

Deborah Malone Sauberer, Executive Director, Assessment Logistics
 Tennessee Department of Education
 7th Floor, Andrew Johnson Tower
 710 James Robertson Parkway
 Nashville, TN 37243
 deb.malone@tn.gov
 Telephone # (615) 532-6298
 FAX # (615) 532-7860

The Contractor:

Patricia M Carideo, Human Resource & Contracts Manager
 MetaMetrics, Inc.
 1000 Park Forty Plaza Dr, Suite 120
 Durham, NC 27713
 pcarideo@lexile.com
 Telephone # (919) 547-3458
 FAX # (919) 547-3459

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

- E.3. Subject to Funds Availability. The Contract is subject to the appropriation and availability of State and/or Federal funds. In the event that the funds are not appropriated or are otherwise

unavailable, the State reserves the right to terminate the Contract upon written notice to the Contractor. Said termination shall not be deemed a breach of Contract by the State. Upon receipt of the written notice, the Contractor shall cease all work associated with the Contract. Should such an event occur, the Contractor shall be entitled to compensation for all satisfactory and authorized services completed as of the termination date. Upon such termination, the Contractor shall have no right to recover from the State any actual, general, special, incidental, consequential, or any other damages whatsoever of any description or amount.

- E.4. Tennessee Consolidated Retirement System. The Contractor acknowledges and understands that, subject to statutory exceptions contained in *Tennessee Code Annotated*, Section 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 pursuant to *Tennessee Code Annotated*, Title 8, Chapter 35, Part 3 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 period of this Contract.
- E.5. 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) Professional Malpractice Liability with a limit of not less than one million dollars (\$1,000,000) per claim and two million dollars (\$2,000,000) aggregate.
- b. At any time State may require the Contractor to provide a valid Certificate of Insurance 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. Failure to provide required evidence of insurance coverage shall be a material breach of this Contract.
- E.6. 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 shall be regarded as confidential information in accordance with the provisions of applicable state and federal law, state and federal rules and regulations, departmental policy, and ethical standards. Such confidential information shall not be disclosed, and all necessary steps shall be taken by the Contractor to safeguard the confidentiality of such material or information in conformance with applicable state and federal law, state and federal rules and regulations, departmental policy, and ethical standards.

The Contractor's obligations under this section do not apply to information in the public domain;

entering the public domain but not from a breach by the Contractor of this Contract; previously possessed by the Contractor without written obligations to the State to protect it; acquired by the Contractor without written restrictions against disclosure from a third party which, to the Contractor's knowledge, is free to disclose the information; independently developed by the Contractor without the use of the State's information; or, disclosed by the State to others without restrictions against disclosure. Nothing in this paragraph shall permit Contractor to disclose any information that is confidential under federal or state law or regulations, 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.

It is expressly understood and agreed the obligations set forth in this section shall survive the termination of this Contract.

- E.7. Printing Authorization. The Contractor agrees that no publication coming within the jurisdiction of *Tennessee Code Annotated*, Section 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 *Tennessee Code Annotated*, Section 12-7-103 (d).
- E.8. 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.9. 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 undersigned, 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 this 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 section 1352, title 31, *U.S. Code*.

- E.10. 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 offence 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.

- E.11. Copyrights and Patents. 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 for infringement of any laws regarding patents or copyrights which may arise from the Contractor's performance of this Contract. In any such action brought against the State, the Contractor shall satisfy and indemnify the State for the amount of any final judgment for infringement. The Contractor further agrees it shall be liable for the reasonable fees of attorneys for the State in the event such service is necessitated to enforce the terms of this Contract or otherwise enforce the obligations of the Contractor to the State. The State shall give the Contractor written notice of any such claim or suit and full right and opportunity to conduct the Contractor's own defense thereof.
- E.12. Disclosure of Personal Identity Information. The Contractor shall report to the State any instances of unauthorized disclosure of confidential information that come to the attention of the Contractor. Any such report shall be made by the Contractor within twenty-four (24) hours after the instance has come to the attention of the Contractor. The Contractor, at the sole discretion of the State, shall provide no cost credit monitoring services for individuals that are deemed to be part of a potential disclosure. The Contractor shall bear the cost of notification to individuals having personal identity information involved in a potential disclosure event, including individual letters and/or public notice.
- E.13. 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 B.

IN WITNESS WHEREOF,

METAMETRICS, INC.:

CONTRACTOR SIGNATURE

DATE

PRINTED NAME AND TITLE OF CONTRACTOR SIGNATORY (above)

TENNESSEE DEPARTMENT OF EDUCATION:

KEVIN HUFFMAN, COMMISSIONER

DATE

ATTACHMENT A

ATTESTATION RE PERSONNEL USED IN CONTRACT PERFORMANCE

SUBJECT CONTRACT NUMBER:	
CONTRACTOR LEGAL ENTITY NAME:	MetaMetrics, Inc.
FEDERAL EMPLOYER IDENTIFICATION NUMBER: (or Social Security Number/Edison ID)	0000115746

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

CONTRACTOR SIGNATURE

NOTICE: This attestation MUST be signed by an individual empowered to contractually bind the Contractor. If said individual is not the chief executive or president, this document shall attach evidence showing the individual's authority to contractually bind the Contractor.

PRINTED NAME AND TITLE OF SIGNATORY

DATE OF ATTESTATION

ATTACHMENT B

AUTHORIZATION AND ACKNOWLEDGEMENT OF COMPLIANCE

Whereas, State has contracted with **MetaMetrics, Inc.** on **April 1, 2013** through **June 30, 2014** (**Agency Tracking # 33111-00513**), for **the Lexile Reading Framework**, and

Whereas, The above referenced contract may require the disclosure by the State to **MetaMetrics, 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(2), 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 **MetaMetrics, Inc.** hereby agree as follows:

1. **MetaMetrics, 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, etc.
2. **MetaMetrics, 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. **MetaMetrics, 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.

METAMETRICS, INC.

DATE

TENNESSEE DEPARTMENT OF EDUCATION

DATE