

**CONTRACT #12**  
**RFS # 305.04-01513**  
**Edison # 35655**

**Secretary of State**  
**Tennessee State Library and**  
**Archives**

**VENDOR:**  
**Learning Express, LLC**

**TO:** Ms. Leni Chick, Contract and Audit Coordinator, Fiscal Review Committee

**FROM:** Chris Romaine, Central Procurement Office – Department of General Services

**DATE:** September 24, 2015

**SUBJECT:** Request for Approval of Contract Amendment One

The Department of General Services respectfully requests approval of the attached Amendment One to contract # 7320 with Learning Express LLC. This amendment is strictly a name change from Learning Express LLC. to EBSCO.

On April 15, 2015 EBSCO acquired Learning Express LLC. Learning Express contracts as of the acquisition date will remain unchanged through the paid subscription period. This amendment will not change the max liability, begin date, or end date of the contract.

Please contact me at (615) 253-5613 with any questions or concerns. We appreciate your consideration of this matter.

**Attachments:**

- Attachment A: Supplemental Document
- Attachment B: Contract Amendment Request
- Attachment C: OIR Approval
- Attachment D: Contract Amendment
- Attachment E: Original Contract
- Attachment F: RFP
- Attachment G: RFP Amendments
- Attachment H: Baseline Spend Query

*Contact Name:	Macey Ray	*Contact Phone:	615-741-2683		
*Presenter's name(s):	Chuck Sherrill, Erin Loree				
Edison Contract Number: <i>(if applicable)</i>	35655	RFS Number: <i>(if applicable)</i>			
*Original or Proposed Contract Begin Date:	5/01/2013	*Current or Proposed End Date:	4/30/2018		
Current Request Amendment Number: <i>(if applicable)</i>	1				
Proposed Amendment Effective Date: <i>(if applicable)</i>	12/15/2015				
*Department Submitting:	Secretary of State				
*Division:	Tennessee State Library and Archives				
*Date Submitted:	9/24/2015				
*Submitted Within Sixty (60) days:	Yes				
<i>If not, explain:</i>					
*Contract Vendor Name:	Learning Express LLC				
*Current or Proposed Maximum Liability:	\$768,135.00				
*Estimated Total Spend for Commodities:	\$345,660.75				
<b>*Current or Proposed Contract Allocation by Fiscal Year: (as Shown on Most Current Fully Executed Contract Summary Sheet)</b>					
FY: 2014	FY:2015	FY:2016	FY:2017	FY2018	FY
\$153,627	\$153,627	\$153,627	\$153,627	\$153,627	\$
<b>*Current Total Expenditures by Fiscal Year of Contract: (attach backup documentation from Edison)</b>					
FY:2014	FY:2015	FY:2016	FY:	FY	FY
\$115,220.25	\$192,033.75	\$0	\$	\$	\$
<b>IF</b> Contract Allocation has been greater than Contract Expenditures, please give the reasons and explain where surplus funds were spent:					
<b>IF</b> surplus funds have been carried forward, please give the reasons and provide the authority for the carry forward provision:					
<b>IF</b> Contract Expenditures exceeded Contract Allocation, please give the reasons and explain how funding was acquired to pay the overage:					
<b>*Contract Funding Source/Amount:</b>					
State:	\$768,135	Federal:			

<i>Interdepartmental:</i>		<i>Other:</i>	
If “ <i>other</i> ” please define:			
If “ <i>interdepartmental</i> ” please define:			
Dates of All Previous Amendments or Revisions: <i>(if applicable)</i>		Brief Description of Actions in Previous Amendments or Revisions: <i>(if applicable)</i>	
N/A		N/A	
Method of Original Award: <i>(if applicable)</i>		RFP	
<p>*What were the projected costs of the service for the entire term of the contract prior to contract award? How was this cost determined?</p>		<p>There were no prior contract costs associated with the term of the contract prior to contract award.</p> <p>Agency determined budget by competitively procuring with RFP and the lowest cost proposed combined with highest technical.</p>	
<p>*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.</p>		<p>This was competitively bid and only the current vendor was deemed responsive.</p>	

Baseline rebuild v. 8

Payment Date	Payment Number	Paid Amount (total per Pay ID)	Invoice Date	Voucher ID	Vendor Name	Voucher Ln Short Descr	Unit Price	Quantity Vouchered	Unit Price * Qty Vouchered	Merchandise Amt	PO Unit on Voucher	PO ID on Voucher
8/30/2013	0000906037	\$ 38,406.75	7/31/2013	00060558	Learning Express LLC	TO PROVIDE ONLINE ACCESS TO PR	\$ 38,406.75	1.0000	\$ 38,406.75	38,406.75	38406.750 30501	0000006475
11/19/2013	0003154892	\$ 38,406.75	10/15/2013	00064114	Learning Express LLC	TO PROVIDE ONLINE ACCESS TO PR	\$ 38,406.75	1.0000	\$ 38,406.75	38,406.75	38406.750 30501	0000006960
2/11/2014	0003287161	\$ 38,406.75	1/15/2014	00068311	Learning Express LLC	TO PROVIDE ONLINE ACCESS TO PR	\$ 38,406.75	1.0000	\$ 38,406.75	38,406.75	38406.750 30501	0000007348
7/30/2014	0003569580	\$ 38,406.75	4/15/2014	00076290	Learning Express LLC	TO PROVIDE ONLINE ACCESS TO PR	\$ 38,406.75	1.0000	\$ 38,406.75	38,406.75	38406.750 30501	0000008291
8/26/2014	0003609239	\$ 38,406.75	7/31/2014	00076899	Learning Express LLC	TO PROVIDE ONLINE ACCESS TO PR	\$ 38,406.75	1.0000	\$ 38,406.75	38,406.75	38406.750 30501	0000008354
12/29/2014	0003802042	\$ 38,406.75	11/30/2014	00081748	Learning Express LLC	TO PROVIDE ONLINE ACCESS TO PR	\$ 38,406.75	1.0000	\$ 38,406.75	38,406.75	38406.750 30501	0000008778
3/31/2015	0001798125	\$ 38,406.75	2/28/2015	00085953	Learning Express LLC	TO PROVIDE ONLINE ACCESS TO PR	\$ 38,406.75	1.0000	\$ 38,406.75	38,406.75	38406.750 30501	0000009194
6/30/2015	0001965767	\$ 38,406.75	5/31/2015	00091337	Learning Express LLC	TO PROVIDE ONLINE ACCESS TO PR	\$ 38,406.75	1.0000	\$ 38,406.75	38,406.75	38406.750 30501	0000009828
								FY 2014	\$	115,220.25		
								FY 2015	\$	192,033.75		

# Amendment Request

This request form is not required for amendments to grant contracts. Route a completed request, as one file in PDF format, via e-mail attachment sent to: [Agsprs.Agsprs@tn.gov](mailto:Agsprs.Agsprs@tn.gov)

<b>APPROVED</b>	
<b>CHIEF PROCUREMENT OFFICER</b>	<b>DATE</b>

<b>Agency request tracking #</b>	30504-01513	
<b>1. Procuring Agency</b>	Secretary of State	
<b>2. Contractor</b>	EBSCO Industries Inc.	
<b>3. Edison contract ID #</b>	35655	
<b>4. Proposed amendment #</b>	1	
<b>5. Contract's Effective Date</b>	5/01/2013	
<b>6. Current end date</b>	4/30/2018	
<b>7. Proposed end date</b>	4/30/2018	
<b>8. Current Maximum Liability or Estimated Liability</b>	\$ 768,135.00	
<b>9. Proposed Maximum Liability or Estimated Liability</b>	\$ 768,135.00	
<b>10. Office for Information Resources Pre-Approval Endorsement Request</b> <i>– information technology service (N/A to THDA)</i>	<input type="checkbox"/> Not Applicable <input checked="" type="checkbox"/> Attached	
<b>11. eHealth Pre-Approval Endorsement Request</b> <i>– health-related professional, pharmaceutical, laboratory, or imaging</i>	<input checked="" type="checkbox"/> Not Applicable <input type="checkbox"/> Attached	
<b>12. Human Resources Pre-Approval Endorsement Request</b> <i>– state employee training service</i>	<input checked="" type="checkbox"/> Not Applicable <input type="checkbox"/> Attached	
<b>13. Explain why the proposed amendment is needed</b>	<p style="text-align: center;">This amendment is needed to change the vendor name from LearningExpress LLC to EBSCO Industries Inc. and add two terms and conditions.</p>	
<b>14. If the amendment involves a change in Scope, describe efforts to identify reasonable, competitive, procurement alternatives to amending the contract.</b>	N/A	

<b>Agency request tracking #</b>	<b>30504-01513</b>
<b>Signature of Agency head or authorized designee, title of signatory, and date</b> (the authorized designee may sign his or her own name if indicated on the Signature Certification and Authorization document)	



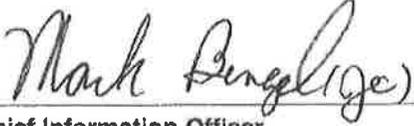
## OIR Pre-Approval Endorsement Request E-Mail Transmittal

**TO :** Jane Chittenden, OIR Procurement & Contract Management Director  
Department of Finance & Administration  
E-mail : [Jane.Chittenden@tn.gov](mailto:Jane.Chittenden@tn.gov)

**FROM :** Wendy Cornelisen  
E-mail : [wendy.cornelisen@tn.gov](mailto:wendy.cornelisen@tn.gov)

**DATE :** 9-18-2012

**RE :** Request for OIR Pre-Approval Endorsement

<b>Applicable RFS #</b> 30504-01513
<b>OIR Endorsement Signature &amp; Date:</b>
 <span style="float: right; margin-right: 100px;">9/19/12</span>
Chief Information Officer
<i>NOTE: Proposed contract/grant support is applicable to the subject IT service technical merit.</i>

Office for Information Resources (OIR) pre-approval endorsement appears to be required pursuant to professional service contracting regulations pertaining to procurements with information technology as a component of the scope of service. This request seeks to ensure that OIR is aware of and has an opportunity to review the procurement detailed below and in the attached documents.

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

<b>Contracting Agency</b>	Tennessee State Library & Archives
<b>Agency Contact</b> (name, phone, e-mail)	Wendy Cornelisen, 615-532-4627, <a href="mailto:wendy.cornelisen@tn.gov">wendy.cornelisen@tn.gov</a>
<b>Subject Procurement Document</b> (mark one)	
<input checked="" type="checkbox"/> RFP	<input type="checkbox"/> Contract
<input type="checkbox"/> Competitive Negotiation Request	<input type="checkbox"/> Contract Amendment
<input type="checkbox"/> Alternative Procurement Method Request	<input type="checkbox"/> Grant
<input type="checkbox"/> Non-Competitive Contract Request	<input type="checkbox"/> Grant Amendment
<input type="checkbox"/> Non-Competitive Amendment Request	
<b>Information Systems Plan (ISP) Project Applicability</b>	
<input checked="" type="checkbox"/> Not Applicable to this Request	
<input type="checkbox"/> Applicable- ISP Project#	
<b>Response Confirmed by IT Director/Staff</b> (name):	

**Applicable RFS # 30504-01513**

**Required Attachments** (as applicable – copies without signatures acceptable)

- RFP, Competitive Negotiation Request, Alternative Procurement Method Request, Non-Competitive Contract Request, Non-Competitive Amendment Request
- Original Contract/Grant or Amendment
- Proposed Contract/Grant or Amendment

**Subject Information Technology Service Description**

(Brief summary of information technology services involved. Clearly identify included technologies such as system development/maintenance, security, networking, etc. As applicable, identify the contract & solicitation sections related to the IT services.)

Internet access is involved, as the impact on information technology services will be for a state-wide vendor-hosted test preparation product for public use.



## CONTRACT AMENDMENT COVER SHEET

<b>Agency Tracking #</b> 30504-01513	<b>Edison ID</b> 35655	<b>Contract #</b> 35655	<b>Amendment #</b> 1		
<b>Contractor Legal Entity Name</b> EBSCO Industries Inc.			<b>Edison Vendor ID</b> 94294		
<b>Amendment Purpose &amp; Effect(s)</b> This amendment is needed to change the vendor name from LearningExpress LLC to EBSCO Industries Inc and add two terms and conditions.					
<b>Amendment Changes Contract End Date:</b> <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO		<b>End Date:</b> 4/30/2018			
<b>TOTAL Contract Amount INCREASE or DECREASE per this Amendment</b> (zero if N/A):			<b>\$ 0</b>		
<b>Funding —</b>					
<b>FY</b>	<b>State</b>	<b>Federal</b>	<b>Interdepartmental</b>	<b>Other</b>	<b>TOTAL Contract Amount</b>
2014	\$153,627.00				\$153,627.00
2015	\$153,627.00				\$153,627.00
2016	\$153,627.00				\$153,627.00
2017	\$153,627.00				\$153,627.00
2018	\$153,627.00				\$153,627.00
<b>TOTAL:</b>	<b>\$768,135.00</b>				<b>\$768,135.00</b>
<b>American Recovery and Reinvestment Act (ARRA) Funding:</b> <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO					
<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.			<i>CPO USE</i>		
<b>Speed Chart</b> (optional)		<b>Account Code</b> (optional)			

**AMENDMENT ONE  
OF CONTRACT 35655**

This Amendment is made and entered by and between the State of Tennessee, Secretary of State, hereinafter referred to as the "State" and EBSCO Industries Inc. as amended herein, to the "Contractor." For good and valuable consideration, the sufficiency of which is hereby acknowledged, it is mutually understood and agreed by and between said, undersigned contracting parties that the subject contract is hereby amended as follows:

1. This amendment is needed to change the vendor name from LearningExpress LLC to EBSCO Industries Inc.
2. The following is added as Contract section D22.  
  
D.22. Tennessee Department of Revenue Registration. The Contractor shall comply with all applicable registration requirements contained in Tenn. Code Ann. §§ 67-6-601 – 608. Compliance with applicable registration requirements is a material requirement of this Contract.
3. The following is added as Contract section D23  
  
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.

Required Approvals. The State is not bound by this Amendment 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).

Amendment Effective Date. The revisions set forth herein shall be effective December 15, 2015. All other terms and conditions of this Contract not expressly amended herein shall remain in full force and effect.

IN WITNESS WHEREOF,

EBSCO INDUSTRIES INC.:

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SIGNATURE

DATE

---

PRINTED NAME AND TITLE OF SIGNATORY (above)

SECRETARY OF STATE:

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TRE HARGETT, SECRETARY OF STATE

DATE



# CONTRACT

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

<b>Begin Date</b> 05/01/2013	<b>End Date</b> 04/30/2018	<b>Agency Tracking #</b> 30504-01513	<b>Edison Record ID</b> 35655
<b>Contractor Legal Entity Name</b> LearningExpress, LLC			<b>Edison Vendor ID</b> 0000007320

**Service Caption (one line only)**  
To provide online access to practice tests and test preparation resources.

<b>Subrecipient or Vendor</b> <input type="checkbox"/> Subrecipient <input checked="" type="checkbox"/> Vendor	<b>CFDA #</b>
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Funding —					
FY	State	Federal	Interdepartmental	Other	TOTAL Contract Amount
2014	153,627.00				153,627.00
2015	153,627.00				153,627.00
2016	153,627.00				153,627.00
2017	153,627.00				153,627.00
2018	153,627.00				153,627.00
<b>TOTAL:</b>	<b>768,135.00</b>				<b>768,135.00</b>

**American Recovery and Reinvestment Act (ARRA) Funding:**  YES  NO

**Ownership/Control**

African American   
 Asian   
 Hispanic   
 Native American   
 Female  
 Person w/Disability   
 Small Business   
 Government   
 NOT Minority/Disadvantaged  
 Other:

**Selection Method & Process Summary (mark the correct response to confirm the associated summary)**

RFP    The procurement process was completed in accordance with the approved RFP document and associated regulations.  
 Competitive Negotiation    The predefined, competitive, impartial, negotiation process was completed in accordance with the associated, approved procedures and evaluation criteria.  
 Alternative Competitive Method    The predefined, competitive, impartial, procurement process was completed in accordance with the associated, approved procedures and evaluation criteria.  
 Non-Competitive Negotiation    The non-competitive contractor selection was completed as approved, and the procurement process included a negotiation of best possible terms & price.  
 Other    The contractor selection was directed by law, court order, settlement agreement, or resulted from the state making the same agreement with all interested parties or all 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.

*Ophe Case*

OCR USE - FA

<b>Speed Chart (optional)</b> SS00000092	<b>Account Code (optional)</b> 72203000	<b>Contract #</b>
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WUC  
RC1



**CONTRACT  
BETWEEN THE STATE OF TENNESSEE,  
OFFICE OF THE SECRETARY OF STATE,  
TENNESSEE STATE LIBRARY AND ARCHIVES  
AND  
LEARNINGEXPRESS, LLC**

This Contract, by and between the State of Tennessee, Office of the Secretary of State, Tennessee State Library and Archives, hereinafter referred to as the "State" and LearningExpress, LLC, hereinafter referred to as the "Contractor," is for the provision of online access to practice tests and test preparation resources, as further defined in the "SCOPE OF SERVICES."

The Contractor is a For-Profit Corporation.  
Contractor Place of Incorporation or Organization: NY  
Contractor Edison Registration ID # 0000007320

**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. The Tennessee Electronic Library (TEL) seeks to acquire online access to practice tests and test preparation resources with a minimum of 30 (thirty) practice tests included.
- A.3. Resources should include practice tests with scores and test preparation resources with e-book access on a variety of academic, professional and licensing exams, references and other resources as needed.
- A.4. Access to the services must be available twenty-four (24) hours a day, seven (7) days a week with notice given to the State if scheduled downtime is to occur. Scheduled downtime must be minimal.
- A.5. Access will be provided to those with internet access in Tennessee, including students, faculty, and staff of K-12 public and private schools; students, faculty, staff and patrons of public and private academic institutions; patrons and staff of public libraries; and clientele and staff of not-for profit special libraries. This will translate into a variety of access options from remote access for academic and school students through a campus network to dial-up access through commercial internet service providers (ISPs) for home access.
- A.6. Participating institutions use a variety of protocols to access electronic materials, but the World Wide Web (HTTP protocol) is the preferred method of access.
- A.7. The State contracts with a third-party vendor for geo-location authentication services. The Contractor will be required to participate in this authentication mechanism.
- A.8. The Contractor will be provided a list of TEL libraries and the Contractor will provide any technical expertise necessary to establish any additional authentication mechanisms. To see a list of the current TEL access points, please see [www.tntel.tnsos.org](http://www.tntel.tnsos.org). After the initial authentication process, the Contractor will authenticate additional libraries within five (5) days of notification by the State that the library or library system is eligible.
- A.9. The Contractor must provide a client interface for individual libraries to access reports and modify settings such as those for proxy server access and user preferences. There must be web-based, end-user documentation and context sensitive help throughout the interface.



- A.10. The Contractor must provide routine statistical reports as well as the capability to run reports on an as-needed basis. These reports must be configurable to run on consortium or individual library levels.
- A.11. Requested services should include unlimited remote and on-site access for all eligible libraries, networks and systems. All of the databases must be housed on secure servers owned, operated, and maintained (maintenance to include daily backups that can be used if system failure occurs to prevent any downtime to patrons) by the vendor.
- A.12. The Contractor must provide in-person and online training opportunities.
- A.13. The Contractor is expected to partner with the State to promote and inform the public on services available.

**B. CONTRACT PERIOD:**

This Contract shall be effective for the period beginning May 1, 2013, and ending on April 30, 2018. 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.

**C. PAYMENT TERMS AND CONDITIONS:**

- C.1. Maximum Liability. In no event shall the maximum liability of the State under this Contract exceed Seven Hundred Sixty-Eight Thousand One Hundred Thirty-Five Dollars (\$768,135.00). 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 May 1, 2013-April 30, 2018
QUARTERLY FLAT FEE FOR ALL PROPOSED SERVICES AS ENUMERATED IN SECTION A	\$ 38,406.75/PER QUARTER



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:

Wendy Cornelisen  
Special Projects Coordinator  
Tennessee State Library & Archives  
403 7<sup>th</sup> Ave North  
Nashville, TN 37243

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 State Library & Archives, TEL
- (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 One, 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:

Wendy Cornelisen  
Tennessee State Library and Archives  
403 Seventh Avenue North  
Nashville, TN 37423  
wendy.cornelisen@tn.gov  
Telephone # 615-532-4627  
FAX # 615-532-9904

The Contractor:

Kheil McIntyre, Chief Operating Officer and CFO  
LearningExpress, LLC  
80 Broad Street, Suite 400  
New York, NY 10004  
kmcintyre@learningexpressllc.com  
Telephone # 800-295-9556

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. 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. This Contract document with any attachments or exhibits (excluding the items listed at subsections b. through e., below);
- b. Any clarifications of or addenda to the Contractor's proposal seeking this Contract;
- c. The State solicitation, as may be amended, requesting proposals in competition for this Contract;
- d. Any technical specifications provided to proposers during the procurement process to award this Contract;
- e. The Contractor's proposal seeking this Contract.

E.6. 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.7. Contractor Commitment to Diversity. The Contractor shall comply with and make reasonable business efforts to exceed the commitment to diversity represented by the Contractor's proposal responding to RFP-30504-01513 (Attachment 6.2. B.15.) and resulting in this Contract.

The Contractor shall assist the State in monitoring the Contractor's performance of this commitment by providing, as requested, a quarterly report of participation in the performance of this Contract by small business enterprises and businesses owned by minorities, women, and persons with a disability. Such reports shall be provided to the state of Tennessee Governor's Office of Diversity Business Enterprise in form and substance as required by said office.

IN WITNESS WHEREOF,

LEARNINGEXPRESS, LLC:

*[Handwritten Signature]*

*2/19/13*

CONTRACTOR SIGNATURE

DATE

*Keil McIntyre, Chief Operating Officer & CFO*

PRINTED NAME AND TITLE OF CONTRACTOR SIGNATORY (above)

TENNESSEE STATE LIBRARY AND ARCHIVES:

*[Handwritten Signature]*

*2/20/13*

CHARLES A. SHERRILL, STATE LIBRARIAN AND ARCHIVIST

DATE

DEPARTMENT OF STATE, OFFICE OF THE SECRETARY OF STATE:

*[Handwritten Signature]*

*2/11/13*

TRE HARGETT, SECRETARY OF STATE

DATE

*NC*

**ATTESTATION RE PERSONNEL USED IN CONTRACT PERFORMANCE**

<b>SUBJECT CONTRACT NUMBER:</b>	30504-01513
<b>CONTRACTOR LEGAL ENTITY NAME:</b>	LearningExpress, LLC
<b>FEDERAL EMPLOYER IDENTIFICATION NUMBER: (or Social Security Number)</b>	13-3831435

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.

Kheil McIntyre, Chief Operating Officer & CFO

**PRINTED NAME AND TITLE OF SIGNATORY**

2/19/13

**DATE OF ATTESTATION**