CONTRACT #8
RFS # 331.11-00314
Edison # 39619

Department of Education

VENDOR:
Follett School Solutions, Inc.

STATE OF TENNESSEE
DEPARTMENT OF EDUCATION

BILL HASLAM
GOVERNOR

9th FLOOR, ANDREW JOHNSON TOWER
710 JAMES ROBERTSON PARKWAY
NASHVILLE, TN 37243-0375

CANDICE MCQUEEN
COMMISSIONER

SUBMITTED VIA ELECTRONIC MAIL

TO: Fiscal Review Committee

FROM: Candice McQueen, Commissioner

DATE: June 22, 2016

RE: Request to appear before the fiscal review committee regarding non-competitive contract amendments for agency tracking #: 33111-00714, 33111-00614, 33111-00314, 33111-00414 and 33111-00514

Please consider the enclosed requests for non-competitive contract amendments with five student information vendors: Chalkable, Inc., Edupoint Educational Systems, Follett School Solutions, Inc., Severin Intermediate Holdings LLC dba PowerSchool Group LLC and Skyward, Inc. These contracts were originally procured through a formal competitive RFQ process in an effort to acquire third-party software solutions for school districts across the state. These solutions provide Tennessee school districts with student management packages designed to maximize the collection and reporting of student data and information.

The amendments request contract extensions which will enable school districts to continue to use their current student information system (SIS) solutions without disruption, as changing a SIS application has a major impact on district's critical day-to-day operations. The limited modification to the scope of services is expected to result in savings to the Azure platform costs while modifications to the payment methodology merely reflect the more streamlined billing process that was implemented for districts, vendors and the department of education.

The minimal change in scope has no impact on the actual delivery of the primary services provided under the contracts; the delivery of a SIS application. The amendments further incorporate a significant reduction to the maximum liability for the contracts as a result of recalculating the potential costs based on the actual spend under the contracts to date. Additionally, the amendments for Chalkable, Inc. (originally Software Technology, Inc.) and Severin Intermediate Holdings LLC dba PowerSchool Group LLC (originally NCS Pearson, Inc.) also incorporate vendor name changes as both entities underwent name changes subsequent to the award of the original contracts. Documentation of vendor name changes is forthcoming to supplement this packet.

Thank you for your consideration.

Supplemental Documentation Required for Fiscal Review Committee

*Contact Name:	Joanna Collins	*Contact Phone:	(615) 770-3869
*Presenter's name(s):	Joanna Collins, Elizabeth Fiveash, and Cliff Lloyd		
Edison Contract Number: (*if applicable*)	NV39619	RFS Number: (*if applicable*)	33111-00314
*Original or Proposed Contract Begin Date:	November 1, 2013	*Current or **Proposed** End Date:	June 30, 2017

Current Request Amendment Number: (*if applicable*)	2
Proposed Amendment Effective Date: (*if applicable*)	10/01/2016
*Department Submitting:	Education
*Division:	Information Systems
*Date Submitted:	6/22/2016
*Submitted Within Sixty (60) days:	Yes
If not, explain:	n/a
*Contract Vendor Name:	Follett School Solutions, Inc.
*Current or **Proposed** Maximum Liability:	$2,666,944.51
*Estimated Total Spend for Commodities:	$0.00

*Current or **Proposed** Contract Allocation by Fiscal Year:
(as Shown on Most Current Fully Executed Contract Summary Sheet)

FY: 2014	FY: 2015	FY: 2016	FY: 2017	FY	FY
$0.00	$74,126.55	$62,309.25	$2,530,508.71	$	$

*Current Total Expenditures by Fiscal Year of Contract:
(attach backup documentation from Edison)

FY: 2014	FY: 2015	FY:2016	FY:	FY	FY
$0.00	$74,126.55	$62,309.25	$	$	$

IF Contract Allocation has been greater than Contract Expenditures, please give the reasons and explain where surplus funds were spent:	The costs shown represent the actual spend against the contract only for those districts that actually used this vendor. The original allocation was based on the assumption that a single vendor could acquire every district in the state. Any surplus funds would have reverted to the general fund.
IF surplus funds have been carried forward, please give the reasons and provide the authority for the	NA

Supplemental Documentation Required for Fiscal Review Committee

carry forward provision:			
IF Contract Expenditures exceeded Contract Allocation, please give the reasons and explain how funding was acquired to pay the overage:	NA		
*Contract Funding Source/Amount:			
State:	$2,666,944.51	Federal:	
Interdepartmental:		*Other*:	
If "*other*" please define:			
If "*interdepartmental*" please define:			
Dates of All Previous Amendments or Revisions: (*if applicable*)	Brief Description of Actions in Previous Amendments or Revisions: (*if applicable*)		
3/29/2016	Vendor name change		
Method of Original Award: (*if applicable)*	RFQ		
*What were the projected costs of the service for the entire term of the contract prior to contract award? How was this cost determined?	$25,102,647.57 Cost determined as if the vendor had all school districts in the State of Tennessee for the Student Information System.		
*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.	NA		

Unit	Sum Merchandise Amt	Edison Contract ID	Vendor ID	Vendor Name	Type	PO ID	Voucher ID	Invoice	Date	Fiscal Year
33101	1000.000	00000000000000000000039619	0000009703	Follett Software Company	DFA	0000056752	00269633	1126860	7/21/2014	2015
33101	10317.500	00000000000000000000039619	0000009703	Follett Software Company	DFA	0000058268	00273884	5121	9/5/2014	2015
33101	62809.050	00000000000000000000039619	0000057540	Follett School Solutions Inc	DFA	0000065922	00307128	5321	5/29/2015	2015
33101	62309.250	NV00000000000000000000039619	0000057540	Follett School Solutions Inc	DFA	0000074604	00347485	6861	4/22/2016	2016

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

APPROVED	
CHIEF PROCUREMENT OFFICER	DATE

Agency request tracking #	**33111-00314**
1. Procuring Agency	**Education**
2. Contractor	**Follett School Solutions, Inc.**
3. Edison contract ID #	**NV39619**
4. Proposed amendment #	**2**
5. Contract's Effective Date	**11/01/2013**
6. Current end date	**10/31/2016**
7. Proposed end date	**06/30/2017**
8. Current Maximum Liability or Estimated Liability	**$25,102,647.57**
9. Proposed Maximum Liability or Estimated Liability	**$2,666,944.51**
10. Office for Information Resources Pre-Approval Endorsement Request *– information technology service (N/A to THDA)*	☐ **Not Applicable** ☒ **Attached**
11. eHealth Pre-Approval Endorsement Request *– health-related professional, pharmaceutical, laboratory, or imaging*	☒ **Not Applicable** ☐ **Attached**
12. Human Resources Pre-Approval Endorsement Request *– state employee training service*	☒ **Not Applicable** ☐ **Attached**

13. Explain why the proposed amendment is needed

Exercising the first extension option on existing contract to enable school districts to continue to use their current student information system (SIS) without disruption, as changing a SIS application has a major impact on district's critical day-to-day operations The limited modification to the scope of services is expected to result in savings to the Azure platform costs while modifications to the payment methodology merely reflect the more streamlined billing process that was implemented for districts, vendors and the department.

14. If the amendment involves a change in Scope, describe efforts to identify reasonable, competitive, procurement alternatives to amending the contract.

Agency request tracking #	33111-00314
The contract was originally procured through a formal competitive RFQ process. The minimal change in scope has no impact on the actual delivery of the primary services provided under the contract; the delivery of a SIS application. The change in scope is limited to only three line items primarily in an effort to lower the costs associated with the Azure platform. The amendment further incorporates a significant reduction to the maximum liability as a result of recalculating the potential costs based on the actual spend under the contract to date.	
Signature of Agency head or authorized designee, title of signatory, and date (the authorized designee may sign his or her own name if indicated on the Signature Certification and Authorization document) Candice McQueen 6/21/16	

CONTRACT AMENDMENT COVER SHEET

Agency Tracking #	Edison ID	Contract #	Amendment #
33111-00314	NV39619		2

Contractor Legal Entity Name	Edison Vendor ID
Follett School Solutions, Inc.	0000057450

Amendment Purpose & Effect(s)

Revise scope, extend term, and decrease maximum liability.

Amendment Changes Contract End Date: ☒ YES ☐ NO **End Date:** 06/30/2017

TOTAL Contract Amount INCREASE or DECREASE per this Amendment (zero if N/A)**:** **($22,435,703.06)**

Funding —

FY	State	Federal	Interdepartmental	Other	TOTAL Contract Amount
2014	$0.00	$0.00	$0.00	$0.00	$0.00
2015	$74,126.55	$0.00	$0.00	$0.00	$74,126.55
2016	$62,309.25	$0.00	$0.00	$0.00	$62,309.25
2017	$2,530,508.71	$0.00	$0.00	$0.00	$2,530,508.71
TOTAL:	**$2,666,944.51**	**$0.00**	**$0.00**	**$0.00**	**$2,666,944.51**

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

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.

CPO USE

Speed Chart (optional)	Account Code (optional)
ED00000458	84510000

AMENDMENT 1
OF CONTRACT NV39619

This Amendment is made and entered by and between the State of Tennessee, Department of Education, hereinafter referred to as the "State" and Follett School Solutions, hereinafter referred to as 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. Contract section A.15 is deleted in its entirety and replaced with the following:

A.15 The Contractor shall provide a free hosting service option to districts who are designated "State Hosted Districts". The no cost hosting option may be either:

a. A data center operated by the Contractor that has been approved by the State for annexure as a State hosting facility, or
b. The State Microsoft Azure hosting platform

2. Contract section A.16 is deleted in its entirety and replaced with the following:

A.16. The Contractor may provide a paid hosting option to districts designated either "State Hosted" or "Non State Hosted", subject to the following:

a. The location of the paid hosting service must be a data center operated by the Contractor that has been approved by the State and cannot be the State Microsoft Azure hosting platform, and
b. The Contractor must maintain a no cost hosting option per A.15 above with a fidelity of user experience, functionality and performance greater than or equal to that which was provided in the preceding billing period, and
c. All costs associated with the paid hosting service must be communicated to districts in writing a minimum of six months prior to the commencement of the school year in which the hosting is to occur.

3. Contract section A.17 is deleted in its entirety and replaced with the following:

A.17. If the Contractor takes advantage of the State's Microsoft Azure hosting platform, it must do so in accordance with the following:

a. Systems deployed to Microsoft Azure must be consistent with best practice guidelines for Azure Infrastructure as a Service (IaaS) as published by Microsoft, and
b. Contractor agrees to work with State staff on the development of processes and configurations aimed at supporting business continuity, disaster recovery, cost reduction, security and performance and agrees to comply with all reasonable requests and accommodations in this regard, and
c. Contactor must strive to reduce the cost to the State for the provision of Azure compute resources needed to support the Contractor's system. In support of this, the Contractor is required to reduce the compute requirements of its product by 10% over the course of the renewal period by leveraging improved platform technologies offered by the Azure platform since first deployment. The State reserves the right to withhold commensurate payment if Contractor failed to show good faith efforts towards this cost reduction goal after three months of the commencement of this renewal period.

4. The following is added as Contract section A.21.

A.21. The Contractor agrees to the following:

a. The data must remain in the United States.
b. Confidential data must be encrypted at rest and in transit.
c. At the termination of the Contract confidential data must be destroyed in accordance with NIST pub 800-88.

5. Contract section B.1 is deleted in its entirety and replaced with the following:

B.1. This Contract shall be effective for the period beginning on November 1, 2013 ("Effective Date") and ending on June 30, 2017, ("Term"). The State shall have no obligation for goods delivered or services provided by the Contractor prior to the Effective Date.

6. Contract section C.1.a.(1) is deleted in its entirety and replaced with the following:

(1) The State shall be invoiced annually, on or after September 1, for the annual cost of licensing, maintenance and support described in the purchase order/contract, and as required below prior to any payment. The Contractor shall submit an invoice, with all necessary supporting documentation, to the State contact person.

7. Contract section C.1.a.(2) is deleted in its entirety and replaced with the following:

(2) The Participating Entity shall be invoiced annually, on or after August 1, for all services provided with the exception of the state share of the annual cost of licensing, maintenance and support which shall be paid by the State as stated above. Such invoice shall be submitted by Contractor only after completion of the work described in the purchase order/contract, and as required below prior to any payment. The Contractor shall submit an invoice, with all necessary supporting documentation, to the Participating Entity contact person.

8. Contract section C.1.a.(3) is deleted in its entirety and replaced with the following:

(3) Invoices shall clearly and accurately detail the following required information:

Invoice/reference number (assigned by the Contractor)
Invoice date
Contract number (Edison Record ID – from contract summary sheet)
Account name: TN Dept. of Education Statewide Student Management System
Contractor name (vendor legal name)
Contractor FEI number or SS (Edison Vendor ID - from contract summary sheet)
Contractor remittance address and contact information
Description of delivered item or service: 20xx-xx <SIS product name> Annual license, maintenance and support fees (include period of services July 1 – June 30, total ADM count & rate $2.55/ADM)
Total amount due for delivered item or service (combined total costs for respective districts)

9. Contract section C.2 is deleted in its entirety and replaced with the following:

C.2. Maximum Liability. In no event shall the maximum liability of the State under this Contract exceed two million, six hundred sixty-six thousand nine hundred forty-four dollars and fifty-one cents *(*$2,666,944.51*)*. The payment rates in Attachment A 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 Attachment A. 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.

10. Contract section E.2 is deleted in its entirety and replaced with the following:

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. All communications, regardless of method of transmission, shall be addressed to the respective Party at the appropriate mailing address, facsimile number, or email address as stated below or any other address provided in writing by a Party.

The State:

Cliff Lloyd
Department of Education
Andrew Johnson Tower, 10th Floor
710 James Robertson Parkway
Nashville, TN 37243
Cliff.Lloyd@tn.gov
Telephone # (615) 626-0020
FAX # (615) 532-5942

The Contractor:

George Gatsis
Sr. Vice President, Technology Platforms
Follett School Solution, Inc.
1340 Ridgeway Drive
McHenry, IL 60050
ggatsis@follett.com
Telephone # (877) 899-8550
Fax # (800) 852-5458

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

11. Contract section E.12 is deleted in its entirety and replaced with the following:

E.12. Federal Educational Rights and Privacy Act & Tennessee Data Accessibility, Transparency and Accountability Act. The Contractor shall comply with the Federal Educational Rights and Privacy Act of 1974 (20 U.S.C. 1232(g)) and its accompanying regulations (34 C.F.R. § 99) ("FERPA"). The Contractor warrants that the Contractor is familiar with FERPA requirements and that it will comply with these requirements in the performance of its duties under this Contract. The Contractor agrees to cooperate with the State, as required by FERPA, in the performance of its duties under this Contract. The Contractor agrees to maintain the confidentiality of all education records and student information. The Contractor shall only use such records and information for the exclusive purpose of performing its duties under this Contract.

The Contractor shall also comply with Tenn. Code Ann. § 49-1-701, *et seq.*, known as the "Data Accessibility, Transparency and Accountability Act," and any accompanying administrative rules or regulations (collectively "DATAA"). The Contractor agrees to maintain the confidentiality of all records containing student and de-identified data, as this term is defined in DATAA, in any databases, to which the State has granted the Contractor access, and to only use such data for the exclusive purpose of performing its duties under this Contract.

Any instances of unauthorized disclosure of data containing personally identifiable information in violation of FERPA or DATAA that come to the attention of the Contractor shall be reported to the State within twenty-four (24) hours. Contractor shall indemnify and hold harmless State, its employees, agents and representatives, from and against any and all claims, liabilities, losses, or causes of action that may arise, accrue, or result to any person or entity that is injured or damaged as a result of Contractor's failure to comply with this section.

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 October 1, 2016. All other terms and conditions of this Contract not expressly amended herein shall remain in full force and effect.

IN WITNESS WHEREOF,

FOLLETT SCHOOL SOLUTIONS, INC.:

SIGNATURE **DATE**

PRINTED NAME AND TITLE OF SIGNATORY (above)

DEPARTMENT OF EDUCATION:

CANDICE MCQUEEN, COMMISSIONER **DATE**

CONTRACT AMENDMENT COVER SHEET

Agency Tracking #	Edison ID	Contract #	Amendment #
33111-00314	NV39619	N/A	1

Contractor Legal Entity Name	Edison Vendor ID
Follett School Solutions, Inc.	0000057540

Amendment Purpose & Effect(s)

Update the contract to reflect the vendor's new name and vendor ID following a company merger.

Amendment Changes Contract End Date: ☐ YES ☒ NO **End Date:** October 31, 2016

TOTAL Contract Amount INCREASE or DECREASE per this Amendment (zero if N/A): **$0.00**

Funding —

FY	State	Federal	Interdepartmental	Other	TOTAL Contract Amount
2014	$4,881,070.36	$0.00	$0.00	$0.00	$4,881,070.36
2015	$8,367,549.19	$0.00	$0.00	$0.00	$8,367,549.19
2016	$8,367,549.19	$0.00	$0.00	$0.00	$8,367,549.19
2017	$3,486,478.83	$0.00	$0.00	$0.00	$3,486,478.83
TOTAL:	**$25,102,647.57**	**$0.00**	**$0.00**	**$0.00**	**$25,102,647.57**

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

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.

3/2/16

Speed Chart (optional)	Account Code (optional)
ED00000458	84510000

CPO USE

AMENDMENT 1
OF CONTRACT NV39619

This Amendment is made and entered by and between the State of Tennessee, Department of Education, hereinafter referred to as the "State" and Follett School Solutions, Inc.(as amended herein) , hereinafter referred to as 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. The following is added as Contract section E.15:

   E.15. Contractor Name. All references to "Follett Software Co." shall be deleted and replaced with "Follett School Solutions, Inc."

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 March 16, 2016. All other terms and conditions of this Contract not expressly amended herein shall remain in full force and effect.

IN WITNESS WHEREOF,

FOLLETT SCHOOL SOLUTIONS, INC.:

Robert B. Ferris 3/8/2016

SIGNATURE **DATE**

Robert B. Ferris, Controller

PRINTED NAME AND TITLE OF SIGNATORY (above)

TENNESSEE DEPARTMENT OF EDUCATION:

Candice McQueen JC 3/9/16

CANDICE MCQUEEN, COMMISSIONER **DATE**

Contract Approval – Agency Legal Certification

A completed contract routed for Central Procurement Office (CPO) approval via Edison must be accompanied by this Agency Legal Certification template that has been signed and attached in PDF format.

1. Edison Contract ID #	33111-00314
2. Contracting Agency Name	TN Department of Education
3. Contractor Name	Follett School Solutions, Inc.
4. Service Caption	Update the contract to reflect the vendor's new name and vendor ID following a company merger
5. Agency Contact (name, phone, e-mail)	Deborah Gilliam, 615-253-1637, Debbie.gilliam@tn.gov

6. Legal Certification

By signing below, the department's legal staff certifies that:

1) the contract as submitted includes only CPO template language (unless the agency has obtained an approved rule exception request);
2) the contract is legally sufficient both in form and substance to protect the best interests of the State; and
3) the contract does not contravene applicable law.

Joanna Collins 3/9/16

Agency Attorney Signature & Date

7. (Optional) Alternative to Legal Certification Request

Note: If there are extenuating circumstances and a department's legal staff is unable to certify to a contract in the above manner, you must provide a written explanation with Agency Head signature, in the space provided below. Once the explanation is received by the CPO, instructions will be provided to the department as to what will be needed in order to gain approval of the contract, e.g., providing a Microsoft Word version of the contract, etc. **Please keep in mind that this alternative will slow down the approval process and should be the exception, not the rule.**

Justification

Agency Head Signature & Date – *contracting agency head or authorized signatory*

CONTRACT

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

Begin Date	End Date	Agency Tracking #	Edison Record ID
November 1, 2013	October 31, 2016	33111-00314	39619

Contractor Legal Entity Name	Edison Vendor ID
Follett Software Company	0000009703

Service Caption (one line only)

Student Information System Solution

Subrecipient or Vendor	CFDA #
☐ Subrecipient ☒ Vendor	N/A

Funding —

FY	State	Federal	Interdepartmental	Other	TOTAL Contract Amount
2014	$4,881,070.36	$0.00	$0.00	$0.00	$4,881,070.36
2015	$8,367,549.19	$0.00	$0.00	$0.00	$8,367,549.19
2016	$8,367,549.19	$0.00	$0.00	$0.00	$8,367,549.19
2017	$3,486,478.83	$0.00	$0.00	$0.00	$3,486,478.83
TOTAL:	**$25,102,647.57**	**$0.00**	**$0.00**	**$0.00**	**$25,102,647.57**

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)

☒ RFQ	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 331.11 Program 281000 to fund the SEA portion of the contract (i.e. $2.55 per student), LEAs will purchase from this contract (as a Master Agreement) for their portion of the SIS expenditure. The current, state master contract with NCS Pearson expires in 2014 without
renewal.

John F. Sharp

Speed Chart	Account Code
ED00000458	84510000

CONTRACT
BETWEEN THE STATE OF TENNESSEE,
DEPARTMENT OF EDUCATION
AND
FOLLETT SOFTWARE COMPANY

This Contract, by and between the State of Tennessee, Department of Education, hereinafter referred to as the 'State" and Follett Software Company, hereinafter referred to as the "Contractor," is for the provision of Student Information System Solution, as further defined in the "SCOPE OF SERVICES."

The Contractor is For-Profit Corporation
Contractor Place of Incorporation or Organization: State of Illinois
Contractor Edison Registration ID # 0000009703

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 Contractor shall provide a third-party software solution to provide local education agencies (LEAs) with a student management software package to maximize utilization of student data and information. This software solution will be targeted to the LEAs. It must be available for adoption by 137 LEAs, four (4) state special schools, and any new LEAS that may be created.

a. The system functionality must support online student data and analysis.

b. The system must have capability for recording student data and information required by federal and state rules, regulations, and laws including but not limited to the following:

(1) Attendance data
(2) LEA and school calendars
(3) Student demographics
(4) Student enrollment, transfer and withdrawal information
(5) Master Scheduling
(6) Grades
(7) Graduation Requirements
(8) Testing and assessment data
(9) Discipline
(10) Transportation
(11) Health
(12) Exceptional Student Education (ESE)
(13) Language Services
(14) Faculty and staff
(15) Special Services
(16) Counseling
(17) Adult and community education
(18) Student activity fund and other fees
(19) Standard and ad-hoc reporting

A.3. The Contractor shall provide a system that is available in a web-delivery model where all solution support is delivered by the Contractor.

A.4. The Contractor shall provide all necessary software components and licensing for deployment and implementation of the solution including, but not limited to, database or application server licensing, etc.

A.5. The Contractor shall provide a solution that may be accessed by users via any major commercially available web browsers on any basic configuration PC or Mac computer.

A.6. The Contractor shall provide a solution with the ability to integrate or interface with the State's ERP system(s) and other common systems needed in the process of gathering student data.

A.7. The Student Information System Solution provided by the Contractor is subject to the service level agreement as provided and agreed to by both parties.

A.8. The Contractor shall provide a written Disaster Recovery plan, which shall be approved by the State and which outlines criterion for classifying Disaster Recovery situations and procedures for managing Disaster Recovery situations.

A.9. Contractor shall provide a system with the capability to sustain 99% continuous uptime outside of scheduled maintenance windows.

A.10. The Contractor shall provide a communication plan, which outlines the change/release management plan for introducing product upgrades and modifications, and communicating reasons and impacts of the upgrades and modifications to the customer organization. This shall also include a formal test and quality assurance plan, all requiring approval by the State of Tennessee prior to implementation

A.11. Contractor shall provide product upgrades at no additional cost, without operational impact, deterioration of services, support or technical SLA performance during upgrades.

A.12. Contractor shall provide to the State on demand, database schema(s) and provide information about database structure(s), including layout and table interdependencies. The schemas shall include, at a minimum, a description of the data characteristics of the tables and columns in database(s), which includes data types and sizes, nullability, index, sequence, key and constraint information.

A.13. Contractor shall provide to the State on a continual basis a current data dictionary. The data dictionary shall, at a minimum, consist of record types (tables) created in the database by systems generated command files, for each supported back-end DBMS.

A.14. Contractor shall disclose all information regarding software that contains a "phone-home", metering, or other feature designed to periodically transmit usage, statistical or other data to the Contractor or an affiliate of the Contractor. The Contractor shall warrant and represent that the "phone-home" or other such feature:

a. Will not result in the transmission of any Confidential Information from TDOE systems; and

b. Will not create a security vulnerability that would permit any unauthorized party to gain access to TDOE systems or data; and

c. Will only send information at mutually agreed upon times, and that at all other times TDOE may prevent access to the internet.

Contractor shall not implement any feature that will flag, terminate, or prohibit the usage of the software by the State or any educational institution in the State of Tennessee.

A.15. Contractor's system shall provide the ability to run in Azure IaaS immediately upon execution of this contract.

A.16. Contractor's system shall have the ability to be migrated to Azure PaaS prior to June 2014.If a component required for the migration is not made available by Azure by June 2014, the vendor may request written permission from the Department of Education for an adjustment to the deadline.

A.17. Contractor's system shall meet all technical requirements to run on the Azure platform as defined by the Azure service provider.

A.18. Contractor shall provide a system with the ability to integrate any state reporting data held with other current data systems. The system shall provide the ability to integrate any data held within future State systems within sixty (60) calendar days of notification by the State.

A.19. Contractor shall provide data conversion from the currently implemented student information system for a minimum of five years of data. At the State or LEA's request, Contractor shall provide data conversion for any number of years.

A.20. Contractor shall provide system support staff available for the Tennessee customer base with a minimum required availability of Monday through Friday, 7:00 a.m. to 5:00 p.m. CST.

B. CONTRACT PERIOD:

B.1 Contract Period. This Contract shall be effective for the period beginning November 1, 2013 and ending on October 31, 2016 with two options to renew. The Contractor hereby acknowledges and affirms that the State shall have no obligation for supplies ordered or 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. Payment Methodology.

a. Billing instructions - The Contractor shall invoice the State and the LEA ("Participating Entity") as follows:

(1) The State shall be invoiced quarterly for the annual cost of licensing, maintenance and support described in the purchase order/contract, and as required below prior to any payment. The Contractor shall submit an invoice, with all necessary supporting documentation, to the State contact person.

(2) The Participating Entity shall be invoiced for all services provided with the exception of annual cost of licensing, maintenance and support which shall be paid by the State as stated above. Such invoice shall be submitted by Contractor only after completion of the work described in the purchase order/contract, and as required below prior to any payment. The Contractor shall submit an invoice, with all necessary supporting documentation, to the Participating Entity contact person.

(3) Invoices shall clearly and accurately detail the following required information:

Invoice/reference number (assigned by the Contractor)
Invoice date
Contract number (assigned by the State) and/or PO number (assigned by the State and/or Participating Entity)
Account name
Participating Entity

Account/customer number (uniquely assigned by the Contractor)
Contractor name
Contractor FEI number or SS
Security number (as referenced in contract)
Contractor contact
Contractor remittance address
Description of delivered item or service
Total amount due for delivered item or service.

(4) The Contractor understands and agrees that the invoice shall:

i. Include only charges for service described in contract or purchase order and in accordance with payment terms and conditions set forth in contract or purchase order.
ii. Not include any future work (other than ongoing support) but will only be submitted for completed service.
iii. Not include sales tax or shipping charges (unless otherwise stipulated in the contract or purchase order).

(5) The Contractor agrees that the timeframe for payment (and any discounts) begins when the Participating Entity or State is in receipt of an invoice approved by the State or Participating Entity that meets the minimum requirements stated above.

b. Line Items – The Participating Entity agrees to purchase those line items deemed necessary for base functionality as defined in Section A. Scope of Services. The Participating Entity retains the right, but is not required to purchase the optional line items outlined in the master contract.

c. The costs associated with this contract are located in Attachment A of this contract.

C.2. Maximum Liability. In no event shall the maximum liability of the State under this Contract exceed twenty-five million, one hundred two thousand, six hundred forty-seven dollars and 57 cents ($25,102,647.57). The payment rates in Attachment A 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 Attachment A. 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.3. Travel Compensation. The Contractor shall not be compensated or reimbursed for travel, meals, or lodging.

C.4. 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 regarding a Student Information System

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.5. F.O.B. Destination for shipment to: All local education agencies and state special schools located within the State of Tennessee.

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 Chief Procurement Officer, 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 Chief Procurement Officer, 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 terminate the Contract and withhold payments in excess of fair compensation for completed services.

a. The State will provide notification of termination for cause in writing. This notice will: (1) specify in reasonable detail the nature of the breach; (2) provide the Contractor with an opportunity to cure, which must be requested in writing no less than 10 days from the date of the Termination Notice; and (3) shall specify the effective date of termination in the event the Contractor fails to correct the breach. The Contractor must present the State with a written request detailing the efforts it will take to resolve the problem and the time period for such resolution. This opportunity to "cure" shall not apply to circumstances in which the Contractor intentionally withholds its services or otherwise refuses to perform. The State will not consider a request to cure contract performance where there have been repeated problems with respect to identical or similar issues, or if a cure period would cause a delay that would impair the effectiveness of State operations. In circumstances where an opportunity to cure is not available, termination will be effective immediately.

b. Notwithstanding the foregoing, 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 B, 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, response, 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. 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.11. 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.12. 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.13. State Liability. The State shall have no liability except as specifically provided in this Contract.

D.14. Limitation of Liability. The parties agree that the Contractor's liability under this Contract shall be limited to an amount equal to two times the total value of the Purchase Orders issued against this Contract within the twelve (12) month period immediately prior to the claim. In no event shall the total liability for all claims exceed two times the total amount of the Purchase Orders against this contract and PROVIDED THAT in no event shall this section limit the liability of the Contractor for intentional torts, criminal acts, or fraudulent conduct.

D. 15. Indemnification. Subject to paragraph D.14., the Contractor agrees to indemnify and hold harmless the State of Tennessee as well as its officers, agents, and employees from and against any and all claims, liabilities, losses, and causes of action which may arise, accrue, or result to any person, firm, corporation, or other entity which may be injured or damaged as a result of acts, omissions, or negligence on the part of the Contractor, its employees, or any person acting for or on its or their behalf relating to this Contract. The Contractor further agrees it shall be liable for the reasonable cost of attorneys for the State 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.

In the event of any such suit or claim, the Contractor shall give the State immediate notice thereof and shall provide all assistance required by the State in the State's defense. The State shall give the Contractor written notice of any such claim or suit, and the Contractor shall have full right and obligation to conduct the Contractor's own defense thereof. Nothing contained herein shall be deemed to accord to the Contractor, through its attorney(s), the right to represent the State of

Tennessee in any legal matter, such rights being governed by Tennessee Code Annotated, Section 8-6-106

D.16. 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.

D.17. 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.18. 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) Technology Professional 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.

D.19. State and Federal Compliance. The Vendor shall comply with all applicable State and Federal laws and regulations in the performance of this Contract.

D.20. Governing Law. This Contract shall be governed by and construed in accordance with the laws of the State of Tennessee. The Vendor 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 Vendor acknowledges and agrees that any rights or claims against the State of Tennessee or its employees hereunder, and any remedies arising there from, 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.21. 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.22. 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.23. 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 Gilliam,
State of Tennessee
Department of Education
10th Floor Andrew Johnson Tower
710 James Robertson Parkway
Nashville, TN 37243
Debbie.Gilliam@tn.gov
Telephone # (615) 253-1637
FAX # (615) 532-5303

The Vendor:

Simona Rollinson, President, Software and Technology
Follett Software Company
1391 Corporate Dr.
McHenry, IL 60050
srollinson@follettsoftware.com
Telephone # 815-578-7266
FAX # 800-807-3623

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. 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.6. 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 response to RFQ-**33111-00214** (Attachment B) 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.

E.7. 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.8. Incorporation of Additional Documents. Each of the following documents is included as a part of this Contract by reference. In the event of a discrepancy or ambiguity regarding the Contractor's duties, responsibilities, and performance under this Contract, these items shall govern in order of precedence below.

a. any written amendments to this Contract with the latest amendment taking precedence over any prior written amendments;

b. this Contract document with any attachments or exhibits (excluding the items listed at subsections c. through g., below);

c. Software Licensing Agreement

d. any clarifications of or addenda to the Contractor's response seeking this Contract;

e. the State solicitation, as may be amended, requesting responses in competition for this Contract;

f. any technical specifications provided to Respondents during the procurement process to award this Contract;

g. the Contractor's response seeking this Contract.

E.9 HIPAA Compliance. The State and the Grantee shall comply with obligations under the Health Insurance Portability and Accountability Act of 1996 (HIPAA) and its accompanying regulations.

a. The Grantee warrants to the State that it is familiar with the requirements of HIPAA and its accompanying regulations, and will comply with all applicable HIPAA requirements in the course of this contract.

b. The Grantee warrants that it will cooperate with the State, including cooperation and coordination with State privacy officials and other compliance officers required by HIPAA and its regulations, in the course of performance of the grant so that both parties will be in compliance with HIPAA.

c. The State and the Grantee will sign documents, including but not limited to business associate agreements, as required by HIPAA and that are reasonably necessary to keep the State and the Grantee in compliance with HIPAA. This provision shall not apply if information received by the State under this grant is NOT "protected health information" as defined by HIPAA, or if HIPAA permits the State to receive such information without entering into a business associate agreement or signing another such document.

E.10. Participation Permitted by Participating Entities

The Contractor agrees to permit Tennessee local education agencies or state special school districts (each of which is a "Participating Entity") to receive services from the state pursuant to this master contract. The Contractor agrees to extend its terms and configuration-specific pricing under this Contract to a Participating Entity that executes a Participating Addendum. A Participating Entity shall enter into a Participating Addendum with the State setting forth a Participating Entity's specific terms and conditions, if any. Payment obligation for all orders placed by a Participating Entity shall be the sole responsibility of the Participating Entity and not the State of Tennessee. The Participating Addendum shall be in a form agreed upon by the State and the Participating Entity.

E.11 ISO/IEC 27000 Series Compliance. Contractor shall have measures in place that ensure that all data records are transported, stored, and accessed in a secure manner. All data shall be property of the State of Tennessee. The system provided by the Contractor shall be compliant with best practices for secure application development as defined in ISO/IEC 27000 series, as found in policies found at http://www.tn.gov/finance/oir/security/docs/PUBLIC-Enterprise-Information-Security-Policies-v1-6.pdf.

E.12 FERPA Compliance. The State and Contractor shall comply with the Family Education Rights and Privacy Act of 1974 (20 U.S.C. § 1232g) (FERPA) and its accompanying regulations (34 C.F.R. 99). Contractor warrants that it is familiar with requirements of FERPA and its accompanying regulations and that it will comply with all applicable FERPA requirements in the performance of its duties in this contract. Contractor agrees to cooperate with the State as required by FERPA and its regulations in the performance of its duties in this contract. Contractor agrees to maintain the confidentiality of all education records and student information and use such records and information for the exclusive purpose of performing its duties in this contract. The Contractor shall reaffirm this attestation, in writing, by submitting to the State a completed and signed copy of the Authorization and Acknowledgement of Compliance document at Attachment C.

E.13 National School Lunch Act Compliance. The State and Contractor shall comply with the National School Lunch Act (79 P.L. 396, 60 Stat. 230) and accompanying regulations. Contractor warrants that it is familiar with requirements of National School Lunch Act and its accompanying regulations and that it will comply with all applicable National School Lunch Act requirements in the performance of its duties in this contract. Contractor agrees to cooperate with the State as required by National School Lunch Act 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.

E.14 Please see Attachment D for Tennessee Department of Revenue Registration clause.

IN WITNESS WHEREOF,

MLS 10/31/13

FOLLETT SOFTWARE COMPANY:

10/25/13

CONTRACTOR SIGNATURE **DATE**

MARY LEE SCHNEIDER, CEO

PRINTED NAME AND TITLE OF CONTRACTOR SIGNATORY (above)

DEPARTMENT OF EDUCATION:

10/31/13

KEVIN HUFFMAN, COMMISSIONER

DATE

OFFICE ★ CENTRAL ★ PROCUREMENT ★

ATTACHMENT A

Follett (Aspen)

Feature	Period	Unit Pricing	Cost
SIS Package			
Application Licensing, Maintenance and Support	Annual	Per ADM	$4.90
New Follett District to State Hosted			
Implementation, Data Conversion and Training	One Time	Per ADM	$9.50 ADM > 2,000 $15.50 ADM < 2,000 Flat fee of $3,500 ADM ≤ 200
Follett or Local Hosted to State Hosted			
Implementation, Data Conversion and Training	One Time	Per District	$0.00
Daily Training Rates			
Remote Training	Per Day	Per Hour	$100
On Site Training	Per Day	Per Day	$1,600
Add-on/Extended Service Options			
Learning Management System (LMS) - Aspen Curriculum and Learning Software License	Annual	Per ADM	$2.00
Library, Textbook & Asset Management Systems Licensing *These services are district hosted*	One Time	Per School	**Destiny Library Manager/TitlePeek Package:** $1,500 per school license (includes implementation, project management & training), Annual renewal/Support $550 per school after year one. **Destiny Textbook Manager:** $1,500 per school license (includes implementation, project management & training), Annual renewal/support, $550 per school after year one. **Destiny Asset Manager:** $1,500 per school license (includes implementation, project management & training) , Annual renewal/support, $550 per school after year one. **Data Conversion fee:**

			$699 per school applies for districts moving from another vendor's library, textbook or asset management system
Silver Implementation Package	One Time	Per District	$4,700
Gold Implementation Package	One Time	Per District	$15,000
ASPEN PROFESSIONAL LEARNING - ON-SITE	One Time	Per Day	$1,600
ASPEN PREPARE TO BUILD - DISTRICT ONSITE CONSULTING - TWO DAYS	One Time	Per Workshop	$4,000
ASPEN SCHEDULE BUILD - DISTRICT ONSITE CONSULTING - THREE DAYS	One Time	Per Workshop	$12,000
ASPEN PROFESSIONAL LEARNING WORKSHOP - PER ATTENDEE/PER DAY - TWO DAYS	One Time	Per Attendee	$250
ASPEN USER CONFERENCE	One Time	Per Attendee	$400
ASPEN CUSTOM DEVELOPMENT - STANDARD	One Time	Per Hour	$200
ASPEN CONFIGURATION-CONSULTING SERVICE - REMOTE	One Time	Per Hour	$250
ASPEN CONSULTING SERVICES - ON-SITE	One Time	Per Day	$2,000
ASPEN CONFIGURATION-CONSULTING SERVICE - REMOTE	One Time	Per Hour	$200

ATTACHMENT B

ATTESTATION RE PERSONNEL USED IN CONTRACT PERFORMANCE

SUBJECT CONTRACT NUMBER:	
CONTRACTOR LEGAL ENTITY NAME:	Follett Software Company
FEDERAL EMPLOYER IDENTIFICATION NUMBER: (or Social Security Number)	20-1607245

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.

MARY LEE SCHNEIDER, CEO

PRINTED NAME AND TITLE OF SIGNATORY

10/25/13

DATE OF ATTESTATION

ATTACHMENT C
AUTHORIZATION AND ACKNOWLEDGEMENT OF COMPLIANCE

Whereas, State has contracted with **Contractor/Grantee** on **Start Date** through **End Date** (**Agency Tracking #**), for **Description of Services**, and

Whereas, The above referenced contract may require the disclosure by the State to **Contractor/Grantee** 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 **Contractor/Grantee** hereby agree as follows:

1. **Contractor/Grantee** 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: Specific Student Information the Contractor/Grantee has information to.
2. **Contractor/Grantee** 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. **Contractor/Grantee** agrees to destroy all confidential student information when it is no longer needed for purposes of fulfilling its obligations under the above referenced contract.

Contractor/Grantee	10/25/13 **DATE**
TENNESSEE DEPARTMENT OF EDUCATION	10/31/13 **DATE**

ATTACHMENT D

Tennessee Department of Revenue Registration. The Contractor shall be registered with the Department of Revenue for the collection of Tennessee sales and use tax. This registration requirement is a material requirement of this contract.

MC
10/31/13