



Fiscal Review Committee  
Contract # 56985, Amendment 1  
Tracking # 33195-00418

1. Summary letter
2. Supplemental documentation form
3. Edison query
4. Original contract
  - a. STS endorsement
  - b. Special contract request
  - c. Rule exception request
  - d. Vendor sole source letter
5. Approved amendment request form for amendment 1
6. Proposed amendment 1



**BILL HASLAM**  
GOVERNOR

STATE OF TENNESSEE  
**DEPARTMENT OF EDUCATION**  
NINTH 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: May 23, 2018**

**RE: Request to appear before the fiscal review committee regarding non-competitive contract amendment to contract # 33195-00418**

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Please consider the enclosed request for a four year extension of the department's contract with Paul H. Brookes Publishing Co., Inc. for the use of their Assessment, Evaluation and Program System Interactive (AEPSi). AEPSi is a web-based management system used for housing the information that is obtained through AEPS (Assessment, Evaluation, and Programming System). The department's Tennessee Early Intervention System (TEIS) uses AEPS for ongoing programming for the children birth to three who are in the program. The data is specifically used to:

- plan the child's individualized family service plan (IFSP);
- generate early childhood outcome scores;
- develop curriculum and activities that early interventionists use during home visits with a child and his/her family;
- monitor the child's progress; and
- meet the U.S. Department of Education's Office of Special Education Programs (OSEP) reporting requirements for IDEA, Part C, Indicator 3.

The amendment will extend the contract to February 14, 2023 for a total contract term of 60 months, increase the maximum liability from \$229,000 to \$1,695,000.00, and increase the number of child records we are able to access in the system, which is needed due to a 20% increase in referrals to TEIS.

AEPSi is the only early childhood instrument aligned to the Tennessee Early Learning Development Standards (TN-ELDS) and cross-walked with Early Childhood Outcomes (ECO). Therefore, a non-competitive amendment is needed in order for TEIS to meet its program obligations in serving children birth through age three and complete federal OSEP reporting.

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):  | Linda Hartbarger, Joanna Collins, Elizabeth Fiveash, Annie Freeland, Aleah Guthrie |                                    |                   |    |    |
| Edison Contract Number: <i>(if applicable)</i>   | 56985  | RFS Number: <i>(if applicable)</i> | 33195-00418       |    |    |
| *Original or Proposed Contract Begin Date:   | February 15, 2018  | *Current or Proposed End Date:     | February 14, 2023 |    |    |
| Current Request Amendment Number: <i>(if applicable)</i>   | 1  |                                    |                   |    |    |
| Proposed Amendment Effective Date: <i>(if applicable)</i>  | February 14, 2019  |                                    |                   |    |    |
| *Department Submitting:  | Dept. of Education   |                                    |                   |    |    |
| *Division:   | Special Populations and Student Support  |                                    |                   |    |    |
| *Date Submitted:   | May 23, 2018   |                                    |                   |    |    |
| *Submitted Within Sixty (60) days:   | Yes  |                                    |                   |    |    |
| <i>If not, explain:</i>  | N/A  |                                    |                   |    |    |
| *Contract Vendor Name:   | Paul H. Brookes Publishing Co., Inc.   |                                    |                   |    |    |
| *Current or Proposed Maximum Liability:  | \$1,695,000  |                                    |                   |    |    |
| *Estimated Total Spend for Commodities:  | N/A  |                                    |                   |    |    |
| <b>*Current or Proposed Contract Allocation by Fiscal Year:<br/>(as Shown on Most Current Fully Executed Contract Summary Sheet)</b>           |  |                                    |                   |    |    |
| FY:2019  |  |                                    |                   |    |    |
| \$229,000  |  |                                    |                   |    |    |
| <b>*Current Total Expenditures by Fiscal Year of Contract:<br/>(attach backup documentation from Edison)</b>                                   |  |                                    |                   |    |    |
| FY:2018  |  | FY:                                | FY:               | FY | FY |
| \$0.00   |  | \$                                 | \$                | \$ | \$ |
| <b>IF</b> Contract Allocation has been greater than Contract Expenditures, please give the reasons and explain where surplus funds were spent: |  | NA                                 |                   |    |    |
| <b>IF</b> surplus funds have been carried forward, please give the reasons and provide the authority for the carry forward provision:          |  | NA                                 |                   |    |    |
| <b>IF</b> Contract Expenditures exceeded Contract Allocation, please give the reasons and explain how funding was acquired to pay the overage: |  | NA                                 |                   |    |    |
| <b>*Contract Funding Source/Amount:</b>  |  |                                    |                   |    |    |
| State:   | \$1,695,000  | Federal:                           | \$0.00            |    |    |

Supplemental Documentation Required for  
Fiscal Review Committee

|  |        |   |        |
|--|--------|---|--------|
| <i>Interdepartmental:</i>  | \$0.00 | <i>Other:</i>   | \$0.00 |
| If “ <i>other</i> ” please define:   |        | N/A   |        |
| If “ <i>interdepartmental</i> ” please define:   |        | NA  |        |
| Dates of All Previous Amendments or Revisions: <i>(if applicable)</i>  |        | Brief Description of Actions in Previous Amendments or Revisions: <i>(if applicable)</i>  |        |
| NA   |        |   |        |
|  |        |   |        |
| Method of Original Award: <i>(if applicable)</i>   |        | Sole Source   |        |
| *What were the projected costs of the service for the entire term of the contract prior to contract award?<br>How was this cost determined?  |        | The projected cost was \$229,000 for the first year and was based on the annual estimated number of active and archived child records that were to be housed in the system in the first year.   |        |
| *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. |        | There are no other vendors that can provide this service. Paul H. Brookes Publishing Co., Inc. has the only system that both aligns to Tennessee Early Learning Developments Standards (TN-ELDS) and is cross-walked with early childhood outcomes (ECO). This is important because aligning to TN-ELDS ensures that TEIS is aligned to the department’s overarching goals and initiatives. Additionally, the department must use a system that is cross-walked with ECO to ensure compliance with federal law. |        |

Edison Contract ID

Fiscal Year

[View Results](#)

No matching values were found.

| Unit | Sum Merchandise Amt | Edison Contract ID | Vendor ID | Vendor Name | Type | PO ID | Voucher ID | Invoice | Date | Fiscal Year |
|------|---------------------|--------------------|-----------|-------------|------|-------|------------|---------|------|-------------|
|------|---------------------|--------------------|-----------|-------------|------|-------|------------|---------|------|-------------|

**CONTRACT**

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

|   |                                      |  |                                       |               |                              |
|---|--------------------------------------|--|---------------------------------------|---------------|------------------------------|
| <b>Begin Date</b><br>February 15, 2018  | <b>End Date</b><br>February 14, 2019 | <b>Agency Tracking #</b><br>33195-00418  | <b>Edison Record ID</b><br>56985      |               |                              |
| <b>Contractor Legal Entity Name</b><br>Paul H. Brookes Publishing Co., Inc.   |                                      |  | <b>Edison Vendor ID</b><br>0000036579 |               |                              |
| <b>Goods or Services Caption</b> (one line only)<br>Use of the Assessment, Evaluation and Programming System Interactive (AEPSi).   |                                      |  |                                       |               |                              |
| <b>Contractor</b><br><input checked="" type="checkbox"/> Contractor   |                                      | <b>CFDA #</b><br>N/A   |                                       |               |                              |
| <b>Funding —</b>  |                                      |  |                                       |               |                              |
| <b>FY</b>   | <b>State</b>                         | <b>Federal</b>   | <b>Interdepartmental</b>              | <b>Other</b>  | <b>TOTAL Contract Amount</b> |
| 2019  | \$229,000.00                         | \$0.00   | \$0.00                                | \$0.00        | \$229,000.00                 |
|   |                                      |  |                                       |               |                              |
|   |                                      |  |                                       |               |                              |
|   |                                      |  |                                       |               |                              |
| <b>TOTAL:</b>   | <b>\$229,000.00</b>                  | <b>\$0.00</b>  | <b>\$0.00</b>                         | <b>\$0.00</b> | <b>\$229,000.00</b>          |
| <b>Contractor Ownership Characteristics:</b>  |                                      |  |                                       |               |                              |
| <input type="checkbox"/> Minority Business Enterprise (MBE):  |                                      |  |                                       |               |                              |
| <input type="checkbox"/> African American <input type="checkbox"/> Asian American <input type="checkbox"/> Hispanic American <input type="checkbox"/> Native American                         |                                      |  |                                       |               |                              |
| <input type="checkbox"/> Woman Business Enterprise (WBE)  |                                      |  |                                       |               |                              |
| <input type="checkbox"/> Tennessee Service Disabled Veteran Enterprise (SDVBE)  |                                      |  |                                       |               |                              |
| <input type="checkbox"/> Disabled Owned Business (DSBE)   |                                      |  |                                       |               |                              |
| <input type="checkbox"/> Tennessee Small Business Enterprise (SBE): \$10,000,000.00 averaged over a three (3) year period or<br>employs no more than ninety-nine (99) employees.              |                                      |  |                                       |               |                              |
| <input type="checkbox"/> Government <input checked="" type="checkbox"/> Non-Minority/Disadvantaged <input type="checkbox"/> Other:  |                                      |  |                                       |               |                              |
| <b>Selection Method &amp; Process Summary</b> (mark the correct response to confirm the associated summary)   |                                      |  |                                       |               |                              |
| <input type="checkbox"/> Competitive Selection  |                                      |  |                                       |               |                              |
| <input checked="" type="checkbox"/> Other   |                                      | Sole Source: AEPSi is the only system that both aligns to Tennessee Early Learning Developments Standards (TN-ELDS) and cross-walked with early childhood outcomes (ECO). This is important because aligning to TN-ELDS ensures that TEIS is aligned to the department's overarching goals and initiatives. Additionally, the department must use a system that is cross walked with ECO to ensure compliance with federal law. Sole source vendor has been verified by letter and approval of a special contract request. |                                       |               |                              |
| <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. |                                      |  |                                       |               |                              |
| <b>Chris Foley</b>  |                                      | Digitally signed by Chris Foley<br>DN: cn=Chris Foley, o=Tenn<br>Dept of Education, ou=OCFO,<br>email=chris.foley@tn.gov, c=US<br>Date: 2018.01.31 14:54:58 -06'00'  |                                       |               |                              |
| <b>Speed Chart</b> (optional)<br>ED0000546  |                                      | <b>Account Code</b> (optional)<br>70803000   |                                       |               |                              |

**CONTRACT  
BETWEEN THE STATE OF TENNESSEE,  
DEPARTMENT OF EDUCATION  
AND  
PAUL H. BROOKES PUBLISHING CO., INC.**

This Contract, by and between the State of Tennessee, Department of Education ("State") and Paul H. Brookes Publishing Co., Inc. ("Contractor"), is for the provision of the use of the Assessment, Evaluation and Programming System Interactive (AEPSi), as further defined in the "SCOPE." State and Contractor may be referred to individually as a "Party" or collectively as the "Parties" to this Contract.

The Contractor is a For-Profit Corporation.

Contractor Place of Incorporation or Organization: Maryland

Contractor Edison Registration ID # 0000036579

**A. SCOPE:**

- A.1. The Contractor shall provide all goods or services and deliverables as required, described, and detailed below and shall meet all service and delivery timelines as specified by this Contract.
- A.2 Definitions:
- a. Assessment, Evaluation, and Programming System for Infants and Children (AEPS)- Comprehensive curriculum and assessment tool to assist in the planning and monitoring of Individualized Family Service Plans (IFSPs).
  - b. Assessment, Evaluation and Programming System for Infants and Children Interactive (AEPSi)- Web based data management system of the AEPS.
  - c. Early Intervention Resource Agency (EIRA)- Agency which provides early intervention services to eligible infants and toddlers and their families based upon the IFSP.
  - d. Tennessee's Early Intervention System (TEIS) -A voluntary, educational program, for families with children ages birth through two years of age with disabilities or developmental delays.
- A.3. The Contractor shall provide the State access to AEPSi, to include the input of assessment data and generating reports related to said data, for a minimum of 15,000 and a maximum of 20,000 active child record licenses to all the elements of a child record, including the portion called the child profile (i.e., child name, address, and other demographic data) and all AEPS assessment, journal entries, calendar events and other records made for one child.
- A.4. The Contractor shall create administrator accounts for each EIRA and TEIS staff. Administrator accounts shall have access to create user accounts, add child records, and run reports on assessment data. TEIS staff will provide the Contractor the name of the individual(s) that need administrator accounts. The Contractor will send an email with a link to the individual to complete the process for access to AEPSi.
- A.5. The Contractor shall provide ongoing maintenance of AEPSi as part of the annual subscription license. The State must receive advance notice of at least 30 business days for any modifications to the AEPSi system that are more substantive than routine maintenance.
- A.6. The Contractor shall provide notice within three hours if the AEPSi is shut down or in the event of an emergency. The Contractor will provide an estimated time of when AEPSi will again be available but not to exceed 24 hours.
- A.7. The Contractor shall provide support materials and online tutorials to the State on all system modifications at no additional charge to the State..

- A.8. The State shall have current ownership, right, title, and interest in all data housed and stored, historical, archived, and current.
- A.9. The Contractor shall provide to the State a detailed plan of transition no later than 60 business days prior to the sale of the AEPSi system to another entity or closure of the business. The detailed plan of transition must include the steps and timeline for the transition to avoid any disruption of services and deliverables to the State.

A.10. Technical Requirements.

This section defines the technical requirements of the State for the Software as a Service (SaaS) product offering described in A.2 thru A.9.

- a. **Fault Tolerance**
- i. The Contractor shall deliver an end to end solution, inclusive of the State software if applicable, server and architectural components that are fault tolerant and thoroughly tested at a scale commensurate with anticipated usage and volume under this Contract.
  - ii. The solution shall recover without end-user intervention from the following circumstances without a material degradation of the user experience and with minimal loss of end-user data:
    1. Brief loss of connectivity between the user and the Contractor's data center servers.
    2. Brief device non-responsiveness due to CPU bind, operating system activity, or other local resource contention.
    3. Any message trapped and thrown by the Contractor's application software.
    4. Any event that occurs server-side in the Contractor's infrastructure related to load, concurrency, normal transients, or scheduled and unscheduled processes initiated by the Contractor.
  - iii. The online solution shall be able to recover saved user state (status of user activity inside the application) for critical and persistent workflows once the application is available with or without end-user intervention under the following circumstances:
    1. The State device becomes permanently non-responsive for any reason.
    2. Malfunction or failure of the State device, including; battery depletion or loss of power on the State device.
    3. Log out or user error on the State device.
    4. Permanent loss of local area network, wide area network or internet connectivity between the State device and the Contractor's data center.
    5. Infrastructure failure at the State location.
    6. Application, browser or operating system "crash" or unexpected restart on local device.
    7. Unexpected failure or unavailability of a required resource at the Contractor's data center.
- b. **Tenancy and Dedicated Resources**
- i. The Contractor shall configure tenancy for the State in its data center and on its server infrastructure in such a manner that the actions of other customers of the Contractor, tenants of the data center, or data center service providers cannot impact the performance of the solution provided to the State.
  - ii. Such requirements will include but are not limited to;
    1. Attacks on other customers / tenants such as DoS attacks.
    2. Excessive bandwidth utilization.
    3. Excessive resource utilization.
    4. Excessive power or cooling utilization.
    5. Excessive LAN and internal switching utilization.
    6. Planned maintenance, shutdowns, restarts or reconfiguration.

7. Poorly tested software, equipment, connectivity or infrastructure configuration.
  8. Inappropriate filtering, firewall or other edge device rules.
- c. Data Persistence
- i. The Contractor shall develop database and data persistence strategies that are consistent with the scalability, performance, security and redundancy profile of an enterprise grade solution.
  - ii. All data shall be stored, retained and exposed in a manner that is consistent with the requirements of the Federal Educational Rights and Privacy Act ("FERPA"), and other federal and state laws and policies as referenced in this Contract.
  - iii. All data captured, manipulated, processed or transformed within AEPsi remains the exclusive property of the State and may not be viewed, modified or disclosed to any party without the written approval of the State except for reasonable dealings as needed outlined in FERPA.
  - iv. Upon termination of the Contract, all Confidential Information in the Contractor's possession shall be returned to the State or destroyed by the Contractor as determined and directed by the State. Destruction of State data, if directed, must be performed in accordance with NIST Special Publication 800-88.
  - v. Upon State request, the Contractor shall provide a copy of all Confidential State data it holds. The Contractor shall provide such data on media and in a format determined by the State.
- d. Data Transmission
- i. The Contractor agrees to work with the State to ensure bi-directional electronic data flows as needed to ensure that business application functionalities between the State and Contractor are efficient, secure, and robust.
  - ii. Working with the State is defined as:
    1. The ability to communicate data using Web services, WebSocket, Library-based, and/or Class-based APIs.
    2. Reaching agreement on the schema of data structures for each data flow required.
    3. Reaching agreement on the protocol and format for the transmission of data in the most compatible way for all data consumers.
    4. Reaching agreement on the methodology and process for the efficient transmission of data.
    5. Reaching agreement on the security and authentication model for the most secure and trustworthy transmission of data.
- e. District Infrastructure
- i. The Contractor is advised that school districts in Tennessee do not implement a standardized IT infrastructure statewide and as such multiple device makes and models, browser and operating systems exist. The Contractor shall deliver an online solution that is compatible with the matrix of devices and operating systems in use in the state and ensure that there is an equal fidelity of user experience regardless of the device or operating system in use. The Contractor shall deliver an online solution that ensures a high-quality user experience in current versions of standard web browsers, including Internet Explorer, Safari, Chrome, and Fire Fox.
  - ii. The Contractor is advised that while all school districts in Tennessee are required to have high speed internet available to all locations within the district, the quality and performance of internet connectivity will vary considerably between districts due to factors such as; geography, infrastructure availability, specific carrier and QoS. The Contractor shall design and implement an online solution that functions in a predictable and usable manner across the range of connection speeds available in Tennessee.
  - iii. The Contractor is advised that while all school districts in Tennessee are required to have sufficient wired and/or wireless networking to ensure connectivity to the Internet, the quality and performance of local area networks will vary

considerably between locations due to factors such as: equipment type, age of equipment, building construction and environmental factors. The Contractor shall design and implement an online solution that functions in a predictable and usable manner across the range of local area network speeds available in Tennessee.

- iv. The State shall provide the Contractor with an up-to-date table of all specific district capabilities referred in this section at the start of the Contract.
  
- f. **Service Availability**
  - i. The Contractor shall implement systems and processes to ensure the availability of the online solution occurs in a manner consistent with service level agreements associated with this service.
  - ii. Service availability requirements shall include but are not limited to:
    1. Scheduled maintenance and service outage notification protocols.
    2. An incident response team.
    3. Redundancy of broadband services into Contractor's data center.
    4. Redundancy of critical servers and other data center infrastructure.
    5. Active failover between redundant components.
    6. Backup power generation.
    7. Proactive monitoring and defense protocols for service limiting exploits such as: Denial of Service (DoS) attacks.
    8. AEPSi shall be available continuously, as measured over the course of each calendar month, an average of 99.9% of the time during core business hours of 8 a.m.–5 p.m. (CT) Mondays through Fridays, excluding State holidays. "Available" means AEPSi shall be available for access and use by the State to conduct normal business associated with this system. For purposes of calculating the Availability Percentage, the following are "Exceptions" to the service level requirement and the System shall not be considered un-Available if any inaccessibility is due to:
      - a. regularly scheduled downtime (which shall occur only upon advance written notice during non-core business hours); or
      - b. loss of the State's Internet connectivity
  
- g. **Scalability**
  - i. The Contractor shall implement an infrastructure that has the ability to scale in a manner consistent with the volume, size and scale of expected usage under this Contract without service degradation or negative impact to active users.
  - ii. Scalability requirements shall include, but are not limited to:
    1. Broadband into the Contractor's data center takes into account the performance of peerage between the Contractor's broadband vendor and carriers in use in Tennessee school districts.
    2. Filtering and edge devices in the Contractor's data center.
    3. Local area networking within the Contractor's data center.
    4. Front end web servers.
    5. Caching and CDN.
    6. Middle tier servers including asynchronous and batch processing processes.
    7. Data access tiers and data throughput.
    8. Database storage.
    9. Data backup.
    10. Performance.
  
- h. **Performance**
  - i. The Contractor shall provide a data management system that is responsive to user interactions with a maximum wait time of 15 minutes.
  - ii. The Contractor shall ensure that where wait times are an expected part of the user experience, such as; loading a resource, the user receives a clear and unambiguous indicator that a long running action is taking place.

- i. Capacity Planning
  - i. The Contractor shall conduct capacity planning prior to commencement of service or service uplift to model demand and predict utilization across all components of the solution so that any potential deficiencies, resource constraints or capacity shortfalls can be identified and addressed prior to the commencement of the phase.
  - ii. Capacity planning shall include, but is not limited to;
    1. Broadband capacity into the Contractor's data center takes into account the performance of peering between the Contractor's broadband vendor and carriers in use in Tennessee school districts.
    2. Filtering and edge device capacity in the Contractor's data center.
    3. Local area networking capacity within the Contractor's data center.
    4. Front end web server capacity.
    5. Caching and CDN capacity.
    6. Middle tier server capacity including asynchronous and batch processing processes.
    7. Data access tiers and data throughput capacity.
    8. Database storage capacity.
    9. Data backup capacity.
  
- j. Monitoring and Diagnostics
  - i. The Contractor shall implement proactive exception alerting, real time monitoring and diagnostic capabilities for all components of the online solution.
  - ii. Monitoring and diagnostics shall include, but is not limited to:
    1. Logging of user access events.
    2. Logging of key user interaction events to support an audit trail if needed.
    3. Detailed logging of application errors and anomalies with stack and trace data to support diagnostics in the event of problems.
    4. Logging of all system and server-side errors and anomalies.
    5. Real time "health" monitoring of all key servers and compute resources.
    6. Proactive exception monitoring of all key servers and compute resources based on thresholds and key performance indicators with escalating exception notifications.
    7. Implementation of inline performance counters and other common diagnostic "hooks" in key application source code.
    8. Encryption technologies must be FIPS (Federal Information Processing Standard) 140-2 validated.
    9. At the term of the contract or as specified by the State, vendor shall destroy/sanitize media containing State data in accordance with NIST (National Institute of Standards and Technology) special publication 800-88.
  
- k. Software Development Lifecycle
  - i. The Contractor shall implement a methodical and structured software development lifecycle (SDLC) to minimize operational errors, improve transparency, drive inclusive decision making and ensure optimal quality assurance.
  - ii. Development of an appropriate SDLC includes, but is not limited to:
    1. An appropriate environment strategy for all software development to clearly delineate software that is in production versus that which is under development.
    2. A rigorous change management policy to ensure the sanctity of the production environment and to minimize operational errors at critical times.
    3. Inclusive process to notify the State Agency of activities potentially impacting user experiences, including; infrastructure upgrades, rolling new code, functional enhancements or changes to existing systems.

4. Robust quality assurance processes, including; code check-in rigor, usability testing, functional testing, scale and performance testing, code coverage testing and user acceptance testing.
  5. Comprehensive bug lifecycle management.
- I. Compatibility
    - i. In the event that the operating system is an integral part of the application, the Contractor agrees to maintain Operating Systems at current, manufacturer supported versions. "Operating System" shall mean the software that supports a computer's basic functions, such as scheduling tasks, executing applications, and controlling peripherals.
    - ii. The Contractor agrees to maintain the Application so that it will run on a current, manufacturer-supported Operating System. "Application" shall mean the computer code that supports and accomplishes the State's requirements as set forth in this Contract. The Contractor shall make sure that the Application is at all times fully compatible with a manufacturer-supported Operating System; the State shall not be required to run an Operating System that is no longer supported by the manufacturer.
    - iii. If the Application requires middleware or database software, Contractor shall maintain middleware and database software versions that are at all times fully compatible with current versions of the Operating System and Application, to ensure that security vulnerabilities are not introduced.
  - m. Accessibility
    - i. The Contractor shall implement accessibility features for all users that follow Section 508 Standards and ADA compliance which requires the federal government to ensure that the electronic and information technology that it develops, procures, maintains, or uses is accessible to persons with disabilities. The State will notify the Contractor in the event it is aware of any concerns regarding accessibility and the Contractor will use best efforts to work with the State to identify specific accessibility requirements required to meet the needs of State's users.
    - ii. Any updates to this standard will be the responsibility of the Contractor to plan, develop, test and deliver any mandated changes regarding these standards.
- A.11. Warranty. Contractor represents and warrants that the term of the warranty ("Warranty Period") shall be the greater of the Term of this Contract or any other warranty generally offered by Contractor, its suppliers, or manufacturers to customers of its goods or services. The goods or services provided under this Contract shall conform to the terms and conditions of this Contract throughout the Warranty Period. Any nonconformance of the goods or services to the terms and conditions of this Contract shall constitute a "Defect" and shall be considered "Defective." If Contractor receives notice of a Defect during the Warranty Period, then Contractor shall correct the Defect, at no additional charge.

Contractor represents and warrants that the State is authorized to possess and use all equipment, materials, software, and deliverables provided under this Contract.

Contractor represents and warrants that all goods or services provided under this Contract shall be provided in a timely and professional manner, by qualified and skilled individuals, and in conformity with standards generally accepted in Contractor's industry.

If Contractor fails to provide the goods or services as warranted, then Contractor will re-provide the goods or services at no additional charge. If Contractor is unable or unwilling to re-provide the goods or services as warranted, then the State shall be entitled to recover the fees paid to Contractor for the Defective goods or services. Any exercise of the State's rights under this

Section shall not prejudice the State's rights to seek any other remedies available under this Contract or applicable law.

- A.12. Inspection and Acceptance. The State shall have the right to inspect all goods or services provided by Contractor under this Contract. If, upon inspection, the State determines that the goods or services are Defective, the State shall notify Contractor, and Contractor shall re-deliver the goods or provide the services at no additional cost to the State. If after a period of thirty (30) days following delivery of goods or performance of services the State does not provide a notice of any Defects, the goods or services shall be deemed to have been accepted by the State.

**B. TERM OF CONTRACT:**

This Contract shall be effective on February 15, 2018 ("Effective Date") and extend for a period of twelve (12) months after the Effective Date ("Term"). The State shall have no obligation for goods or services provided by the Contractor prior to the Effective Date.

**C. PAYMENT TERMS AND CONDITIONS:**

- C.1. Maximum Liability. In no event shall the maximum liability of the State under this Contract exceed two hundred twenty-nine thousand dollars and zero cents (\$229,000.00) ("Maximum Liability"). This Contract does not grant the Contractor any exclusive rights. The State does not guarantee that it will buy any minimum quantity of goods or services under this Contract. Subject to the terms and conditions of this Contract, the Contractor will only be paid for goods or services provided under this Contract after a purchase order is issued to Contractor by the State or as otherwise specified by this Contract.

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

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

- a. The Contractor's compensation shall be contingent upon the satisfactory provision of goods or services as set forth in Section A.
- b. The Contractor shall be compensated based upon the following payment methodology:

| Goods or Services Description | Amount<br>(per compensable increment) |
|-------------------------------|---------------------------------------|
| Active Child Record           | \$10.95/per record                    |
| Archived Child Record         | \$1.00/ per record                    |

- C.4. Travel Compensation. The Contractor shall not be compensated or reimbursed for travel time, travel expenses, meals, or lodging.
- C.5. Invoice Requirements. The Contractor shall invoice the State only for goods delivered and accepted by the State or services satisfactorily provided at the amounts stipulated in Section C.3., above. Contractor shall submit invoices and necessary supporting documentation, no more frequently than once a month, and no later than thirty (30) days after goods or services have been provided to the following address:

Geraldine Numbers  
 Department of Education  
 TEIS / Fiscal Services Team  
 710 James Robertson Parkway  
 10<sup>th</sup> Floor, Andrew Johnson Tower  
 Nashville, TN 37243-0380  
[Geraldine.Numbers@tn.gov](mailto:Geraldine.Numbers@tn.gov)

- a. Each invoice, on Contractor's letterhead, shall clearly and accurately detail all of the following information (calculations must be extended and totaled correctly):
    - (1) Invoice number (assigned by the Contractor);
    - (2) Invoice date;
    - (3) Contract number (assigned by the State);
    - (4) Customer account name: Department of Education / TEIS;
    - (5) Customer account number (assigned by the Contractor to the above-referenced Customer);
    - (6) Contractor name;
    - (7) Contractor Tennessee Edison registration ID number;
    - (8) Contractor contact for invoice questions (name, phone, or email);
    - (9) Contractor remittance address;
    - (10) Description of delivered goods or services provided and invoiced, including identifying information as applicable;
    - (11) Number of delivered or completed units, increments, hours, or days as applicable, of each good or service invoiced;
    - (12) Applicable payment methodology (as stipulated in Section C.3.) of each good or service invoiced;
    - (13) Amount due for each compensable unit of good or service; and
    - (14) Total amount due for the invoice period.
  - b. Contractor's invoices shall:
    - (1) Only include charges for goods delivered or services provided as described in Section A and in accordance with payment terms and conditions set forth in Section C;
    - (2) Only be submitted for goods delivered or services completed and shall not include any charge for future goods to be delivered or services to be performed;
    - (3) Not include Contractor's taxes, which includes without limitation Contractor's sales and use tax, excise taxes, franchise taxes, real or personal property taxes, or income taxes; and
    - (4) Include shipping or delivery charges only as authorized in this Contract.
  - c. The timeframe for payment (or any discounts) begins only when the State is in receipt of an invoice that meets the minimum requirements of this Section C.5.
- C.6. Payment of Invoice. A payment by the State shall not prejudice the State's right to object to or question any payment, invoice, or other matter. A payment by the State shall not be construed as acceptance of goods delivered, any part of the services provided, or as approval of any amount invoiced.
- C.7. Invoice Reductions. The Contractor's invoice shall be subject to reduction for amounts included in any invoice or payment that is determined by the State, on the basis of audits conducted in accordance with the terms of this Contract, to not constitute proper compensation for goods delivered or services provided.
- C.8. Deductions. The State reserves the right to deduct from amounts, which are or shall become due and payable to the Contractor under this or any contract between the Contractor and the State of

Tennessee, any amounts that are or shall become due and payable to the State of Tennessee by the Contractor.

- C.9. Prerequisite Documentation. The Contractor shall not invoice the State under this Contract until the State has received the following, properly completed documentation.
- a. The Contractor shall complete, sign, and present to the State the "Authorization Agreement for Automatic Deposit Form" provided by the State. By doing so, the Contractor acknowledges and agrees that, once this form is received by the State, payments to the Contractor, under this or any other contract the Contractor has with the State of Tennessee, may be made by ACH; and
  - b. The Contractor shall complete, sign, and return to the State the State-provided W-9 form. The taxpayer identification number on the W-9 form must be the same as the Contractor's Federal Employer Identification Number or Social Security Number referenced in the Contractor's Edison registration information.

**D. MANDATORY TERMS AND CONDITIONS:**

- D.1. Required Approvals. The State is not bound by this Contract until it is duly approved by the Parties and all appropriate State officials in accordance with applicable Tennessee laws and regulations. Depending upon the specifics of this Contract, this may include approvals by the Commissioner of Finance and Administration, the Commissioner of Human Resources, the Comptroller of the Treasury, and the Chief Procurement Officer. Approvals shall be evidenced by a signature or electronic approval.
- D.2. Communications and Contacts. All instructions, notices, consents, demands, or other communications required or contemplated by this Contract shall be in writing and shall be made by certified, first class mail, return receipt requested and postage prepaid, by overnight courier service with an asset tracking system, or by email or facsimile transmission with recipient confirmation. All communications, regardless of method of transmission, shall be addressed to the respective Party at the appropriate mailing address, facsimile number, or email address as stated below or any other address provided in writing by a Party.

The State:

Linda Hartbarger, Executive Director  
 Department of Education  
 710 James Robertson Parkway  
 10<sup>th</sup> Floor, Andrew Johnson Tower  
 Nashville, TN 37243-0380  
 Linda.Hartbarger@tn.gov  
 Telephone # (615) 253-5032  
 FAX # (615) 532-5303

The Contractor:

Robert A. Miller  
 Paul H. Brookes Publishing Co., Inc.  
 PO Box 10624  
 Baltimore, MD 21285-0624  
[rmiller@brookespublishing.com](mailto:rmiller@brookespublishing.com)  
 Telephone # (410) 337-9580 x166  
 FAX # (410) 337-8539

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

- D.3. Modification and Amendment. This Contract may be modified only by a written amendment signed by all Parties and approved by all applicable State officials.
- D.4. Subject to Funds Availability. The Contract is subject to the appropriation and availability of State or federal funds. In the event that the funds are not appropriated or are otherwise unavailable, the State reserves the right to terminate this Contract upon written notice to the Contractor. The State's exercise of its right to terminate this Contract shall not constitute a breach of Contract by the State. Upon receipt of the written notice, the Contractor shall cease all work associated with the Contract. If the State terminates this Contract due to lack of funds availability, the Contractor shall be entitled to compensation for all conforming goods requested and accepted by the State and for all satisfactory and authorized services completed as of the termination date. Should the State exercise its right to terminate this Contract due to unavailability of funds, the Contractor shall have no right to recover from the State any actual, general, special, incidental, consequential, or any other damages of any description or amount.
- D.5. Termination for Convenience. The State may terminate this Contract for convenience without cause and for any reason. The State shall give the Contractor at least thirty (30) days written notice before the termination date. The Contractor shall be entitled to compensation for all conforming goods delivered and accepted by the State or for satisfactory, authorized services completed as of the termination date. In no event shall the State be liable to the Contractor for compensation for any goods neither requested nor accepted by the State or for any services neither requested by the State nor satisfactorily performed by the Contractor. In no event shall the State's exercise of its right to terminate this Contract for convenience relieve the Contractor of any liability to the State for any damages or claims arising under this Contract.
- D.6. Termination for Cause. If the Contractor fails to properly perform its obligations under this Contract in a timely or proper manner, or if the Contractor materially violates any terms of this Contract ("Breach Condition"), the State shall have the right to immediately terminate the Contract and withhold payments in excess of compensation for completed services or provided goods. Notwithstanding the above, the Contractor shall not be relieved of liability to the State for damages sustained by virtue of any Breach Condition and the State may seek other remedies allowed at law or in equity for breach of this Contract.
- D.7. Assignment and Subcontracting. The Contractor shall not assign this Contract or enter into a subcontract for any of the goods or services provided under this Contract without the prior written approval of the State. Notwithstanding any use of the approved subcontractors, the Contractor shall be the prime contractor and responsible for compliance with all terms and conditions of this Contract. The State reserves the right to request additional information or impose additional terms and conditions before approving an assignment of this Contract in whole or in part or the use of subcontractors in fulfilling the Contractor's obligations under this Contract.
- D.8. Conflicts of Interest. The Contractor warrants that no part of the Contractor's compensation shall be paid directly or indirectly to an employee or official of the State of Tennessee as wages, compensation, or gifts in exchange for acting as an officer, agent, employee, subcontractor, or consultant to the Contractor in connection with any work contemplated or performed under this Contract.

The Contractor acknowledges, understands, and agrees that this Contract shall be null and void if the Contractor is, or within the past six (6) months has been, an employee of the State of Tennessee or if the Contractor is an entity in which a controlling interest is held by an individual who is, or within the past six (6) months has been, an employee of the State of Tennessee.

- D.9. Nondiscrimination. The Contractor hereby agrees, warrants, and assures that no person shall be excluded from participation in, be denied benefits of, or be otherwise subjected to discrimination in the performance of this Contract or in the employment practices of the Contractor on the grounds of handicap or disability, age, race, creed, color, religion, sex, national origin, or any other classification protected by federal or state law. The Contractor shall, upon request, show proof of nondiscrimination and shall post in conspicuous places, available to all employees and applicants, notices of nondiscrimination.

- D.10. Prohibition of Illegal Immigrants. The requirements of Tenn. Code Ann. § 12-3-309 addressing the use of illegal immigrants in the performance of any contract to supply goods or services to the state of Tennessee, shall be a material provision of this Contract, a breach of which shall be grounds for monetary and other penalties, up to and including termination of this Contract.
- a. The Contractor agrees that the Contractor shall not knowingly utilize the services of an illegal immigrant in the performance of this Contract and shall not knowingly utilize the services of any subcontractor who will utilize the services of an illegal immigrant in the performance of this Contract. The Contractor shall reaffirm this attestation, in writing, by submitting to the State a completed and signed copy of the document at Attachment A, semi-annually during the Term. If the Contractor is a party to more than one contract with the State, the Contractor may submit one attestation that applies to all contracts with the State. All Contractor attestations shall be maintained by the Contractor and made available to State officials upon request.
  - b. Prior to the use of any subcontractor in the performance of this Contract, and semi-annually thereafter, during the Term, the Contractor shall obtain and retain a current, written attestation that the subcontractor shall not knowingly utilize the services of an illegal immigrant to perform work under this Contract and shall not knowingly utilize the services of any subcontractor who will utilize the services of an illegal immigrant to perform work under this Contract. Attestations obtained from subcontractors shall be maintained by the Contractor and made available to State officials upon request.
  - c. The Contractor shall maintain records for all personnel used in the performance of this Contract. Contractor's records to establish personnel status with regard to this Section D.10 shall be subject to review and random inspection at any reasonable time upon reasonable notice by the State.
  - d. The Contractor understands and agrees that failure to comply with this section will be subject to the sanctions of Tenn. Code Ann. § 12-3-309 for acts or omissions occurring after its effective date.
  - e. For purposes of this Contract, "illegal immigrant" shall be defined as any person who is not: (i) a United States citizen; (ii) a Lawful Permanent Resident; (iii) a person whose physical presence in the United States is authorized; (iv) allowed by the federal Department of Homeland Security and who, under federal immigration laws or regulations, is authorized to be employed in the U.S.; or (v) is otherwise authorized to provide services under the Contract.
- D.11. Records. The Contractor shall maintain documentation for all charges under this Contract. The books, records, and documents of the Contractor, for work performed or money received under this Contract, shall be maintained for a period of five (5) full years from the date of the final payment and shall be subject to audit at any reasonable time and upon reasonable notice by the State, the Comptroller of the Treasury, or their duly appointed representatives. The financial statements shall be prepared in accordance with generally accepted accounting principles.
- D.12. Monitoring. The Contractor's activities conducted and records maintained pursuant to this Contract shall be subject to monitoring and evaluation by the State, the Comptroller of the Treasury, or their duly appointed representatives.
- D.13. Progress Reports. The Contractor shall submit brief, periodic, progress reports to the State as requested.
- D.14. Strict Performance. Failure by any Party to this Contract to require, in any one or more cases, the strict performance of any of the terms, covenants, conditions, or provisions of this Contract shall not be construed as a waiver or relinquishment of any term, covenant, condition, or provision. No term or condition of this Contract shall be held to be waived, modified, or deleted except by a written amendment signed by the Parties.

- D.15. Independent Contractor. The Parties shall not act as employees, partners, joint venturers, or associates of one another. The Parties are independent contracting entities. Nothing in this Contract shall be construed to create an employer/employee relationship or to allow either Party to exercise control or direction over the manner or method by which the other transacts its business affairs or provides its usual services. The employees or agents of one Party are not employees or agents of the other Party.
- D.16. Patient Protection and Affordable Care Act. The Contractor agrees that it will be responsible for compliance with the Patient Protection and Affordable Care Act ("PPACA") with respect to itself and its employees, including any obligation to report health insurance coverage, provide health insurance coverage, or pay any financial assessment, tax, or penalty for not providing health insurance. The Contractor shall indemnify the State and hold it harmless for any costs to the State arising from Contractor's failure to fulfill its PPACA responsibilities for itself or its employees.
- D.17. Limitation of State's Liability. The State shall have no liability except as specifically provided in this Contract. In no event will the State be liable to the Contractor or any other party for any lost revenues, lost profits, loss of business, decrease in the value of any securities or cash position, time, goodwill, or any indirect, special, incidental, punitive, exemplary or consequential damages of any nature, whether based on warranty, contract, statute, regulation, tort (including but not limited to negligence), or any other legal theory that may arise under this Contract or otherwise. The State's total liability under this Contract (including any exhibits, schedules, amendments or other attachments to the Contract) or otherwise shall under no circumstances exceed the Maximum Liability. This limitation of liability is cumulative and not per incident.
- D.18. Limitation of Contractor's Liability. In accordance with Tenn. Code Ann. § 12-3-701, the Contractor's liability for all claims arising under this Contract shall be limited to an amount equal to two (2) times the Maximum Liability amount detailed in Section C.1. and as may be amended, PROVIDED THAT in no event shall this Section limit the liability of the Contractor for: (i) intellectual property or any Contractor indemnity obligations for infringement for third-party intellectual property rights; (ii) any claims covered by any specific provision in the Contract providing for liquidated damages; or (iii) any claims for intentional torts, criminal acts, fraudulent conduct, or acts or omissions that result in personal injuries or death.
- D.19. Hold Harmless. The Contractor agrees to indemnify and hold harmless the State of Tennessee as well as its officers, agents, and employees from and against any and all claims, liabilities, losses, and causes of action which may arise, accrue, or result to any person, firm, corporation, or other entity which may be injured or damaged as a result of acts, omissions, or negligence on the part of the Contractor, its employees, or any person acting for or on its or their behalf relating to this Contract. The Contractor further agrees it shall be liable for the reasonable cost of attorneys for the State to enforce the terms of this Contract.

In the event of any suit or claim, the Parties shall give each other immediate notice and provide all necessary assistance to respond. The failure of the State to give notice shall only relieve the Contractor of its obligations under this Section to the extent that the Contractor can demonstrate actual prejudice arising from the failure to give notice. This Section shall not grant the Contractor, through its attorneys, the right to represent the State in any legal matter, as the right to represent the State is governed by Tenn. Code Ann. § 8-6-106.

- D.20. HIPAA Compliance. The State and Contractor shall comply with obligations under the Health Insurance Portability and Accountability Act of 1996 ("HIPAA"), Health Information Technology for Economic and Clinical Health ("HITECH") Act and any other relevant laws and regulations regarding privacy (collectively the "Privacy Rules"). The obligations set forth in this Section shall survive the termination of this Contract.
- a. Contractor warrants to the State that it is familiar with the requirements of the Privacy Rules, and will comply with all applicable requirements in the course of this Contract.

- b. Contractor warrants that it will cooperate with the State, including cooperation and coordination with State privacy officials and other compliance officers required by the Privacy Rules, in the course of performance of the Contract so that both parties will be in compliance with the Privacy Rules.
  - c. The State and the Contractor will sign documents, including but not limited to business associate agreements, as required by the Privacy Rules and that are reasonably necessary to keep the State and Contractor in compliance with the Privacy Rules. This provision shall not apply if information received or delivered by the Parties under this Contract is NOT “protected health information” as defined by the Privacy Rules, or if the Privacy Rules permit the parties to receive or deliver the information without entering into a business associate agreement or signing another document.
  - d. The Contractor will indemnify the State and hold it harmless for any violation by the Contractor or its subcontractors of the Privacy Rules. This includes the costs of responding to a breach of protected health information, the costs of responding to a government enforcement action related to the breach, and any fines, penalties, or damages paid by the State because of the violation.
- D.21. Tennessee Consolidated Retirement System. Subject to statutory exceptions contained in Tenn. Code Ann. §§ 8-36-801, *et seq.*, the law governing the Tennessee Consolidated Retirement System (“TCRS”), provides that if a retired member of TCRS, or of any superseded system administered by TCRS, or of any local retirement fund established under Tenn. Code Ann. §§ 8-35-101, *et seq.*, accepts State employment, the member's retirement allowance is suspended during the period of the employment. Accordingly and notwithstanding any provision of this Contract to the contrary, the Contractor agrees that if it is later determined that the true nature of the working relationship between the Contractor and the State under this Contract is that of “employee/employer” and not that of an independent contractor, the Contractor, if a retired member of TCRS, may be required to repay to TCRS the amount of retirement benefits the Contractor received from TCRS during the Term.
- D.22. Tennessee Department of Revenue Registration. The Contractor shall comply with all applicable registration requirements contained in Tenn. Code Ann. §§ 67-6-601 – 608. Compliance with applicable registration requirements is a material requirement of this Contract.
- D.23. Debarment and Suspension. The Contractor certifies, to the best of its knowledge and belief, that it, its current and future principals, its current and future subcontractors and their principals:
- a. are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any federal or state department or agency;
  - b. have not within a three (3) year period preceding this Contract been convicted of, or had a civil judgment rendered against them from commission of fraud, or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, state, or local) transaction or grant under a public transaction; violation of federal or state antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification, or destruction of records, making false statements, or receiving stolen property;
  - c. are not presently indicted or otherwise criminally or civilly charged by a government entity (federal, state, or local) with commission of any of the offenses detailed in section b. of this certification; and
  - d. have not within a three (3) year period preceding this Contract had one or more public transactions (federal, state, or local) terminated for cause or default.

The Contractor shall provide immediate written notice to the State if at any time it learns that there was an earlier failure to disclose information or that due to changed circumstances, its

principals or the principals of its subcontractors are excluded, disqualified, or presently fall under any of the prohibitions of sections a-d.

- D.24. Force Majeure. "Force Majeure Event" means fire, flood, earthquake, elements of nature or acts of God, wars, riots, civil disorders, rebellions or revolutions, acts of terrorism or any other similar cause beyond the reasonable control of the Party except to the extent that the non-performing Party is at fault in failing to prevent or causing the default or delay, and provided that the default or delay cannot reasonably be circumvented by the non-performing Party through the use of alternate sources, workaround plans or other means. A strike, lockout or labor dispute shall not excuse either Party from its obligations under this Contract. Except as set forth in this Section, any failure or delay by a Party in the performance of its obligations under this Contract arising from a Force Majeure Event is not a default under this Contract or grounds for termination. The non-performing Party will be excused from performing those obligations directly affected by the Force Majeure Event, and only for as long as the Force Majeure Event continues, provided that the Party continues to use diligent, good faith efforts to resume performance without delay. The occurrence of a Force Majeure Event affecting Contractor's representatives, suppliers, subcontractors, customers or business apart from this Contract is not a Force Majeure Event under this Contract. Contractor will promptly notify the State of any delay caused by a Force Majeure Event (to be confirmed in a written notice to the State within one (1) day of the inception of the delay) that a Force Majeure Event has occurred, and will describe in reasonable detail the nature of the Force Majeure Event. If any Force Majeure Event results in a delay in Contractor's performance longer than forty-eight (48) hours, the State may, upon notice to Contractor: (a) cease payment of the fees until Contractor resumes performance of the affected obligations; or (b) immediately terminate this Contract or any purchase order, in whole or in part, without further payment except for fees then due and payable. Contractor will not increase its charges under this Contract or charge the State any fees other than those provided for in this Contract as the result of a Force Majeure Event.
- D.25. State and Federal Compliance. The Contractor shall comply with all applicable state and federal laws and regulations in the performance of this Contract.
- D.26. Governing Law. This Contract shall be governed by and construed in accordance with the laws of the State of Tennessee. The Tennessee Claims Commission or the state or federal courts in Tennessee shall be the venue for all claims, disputes, or disagreements arising under this Contract. The Contractor acknowledges and agrees that any rights, claims, or remedies against the State of Tennessee or its employees arising under this Contract shall be subject to and limited to those rights and remedies available under Tenn. Code Ann. §§ 9-8-101 - 407.
- D.27. Entire Agreement. This Contract is complete and contains the entire understanding between the Parties relating to its subject matter, including all the terms and conditions of the Parties' agreement. This Contract supersedes any and all prior understandings, representations, negotiations, and agreements between the Parties, whether written or oral.
- D.28. Severability. If any terms and conditions of this Contract are held to be invalid or unenforceable as a matter of law, the other terms and conditions of this Contract shall not be affected and shall remain in full force and effect. The terms and conditions of this Contract are severable.
- D.29. Headings. Section headings of this Contract are for reference purposes only and shall not be construed as part of this Contract.
- D.30. Incorporation of Additional Documents. Each of the following documents is included as a part of this Contract by reference. In the event of a discrepancy or ambiguity regarding the Contractor's duties, responsibilities, and performance under this Contract, these items shall govern in order of precedence below:
- a. any amendment to this Contract, with the latter in time controlling over any earlier amendments;
  - b. this Contract with any attachments or exhibits (excluding the items listed at subsections c. through f., below), which includes Attachment A;

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

To achieve the required coverage amounts, a combination of an otherwise deficient specific policy and an umbrella policy with an aggregate meeting or exceeding the required coverage amounts is acceptable. For example: If the required policy limit under this Contract is for two million dollars (\$2,000,000) in coverage, acceptable coverage would include a specific policy covering one million dollars (\$1,000,000) combined with an umbrella policy for an additional one million dollars (\$1,000,000). If the deficient underlying policy is for a coverage area without aggregate limits (generally Automobile Liability and Employers' Liability Accident), Contractor shall provide a copy of the umbrella insurance policy documents to ensure that no aggregate limit applies to the umbrella policy for that coverage area.

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

The State agrees that it shall give written notice to the Contractor as soon as practicable after the State becomes aware of any claim asserted or made against the State, but in no event later than

thirty (30) calendar days after the State becomes aware of such claim. The failure of the State to give notice shall only relieve the Contractor of its obligations under this Section to the extent that the Contractor can demonstrate actual prejudice arising from the failure to give notice. This Section shall not grant the Contractor or its insurer, through its attorneys, the right to represent the State in any legal matter, as the right to represent the State is governed by Tenn. Code Ann. § 8-6-106.

**The Contractor shall obtain and maintain, at a minimum, the following insurance coverages and policy limits.**

a. Commercial General Liability Insurance

- 1) The Contractor shall maintain commercial general liability insurance, which shall be written on an Insurance Services Office, Inc. (also known as ISO) occurrence form (or a substitute form providing equivalent coverage) and shall cover liability arising from property damage, premises/operations, independent contractors, contractual liability, completed operations/products, personal and advertising injury, and liability assumed under an insured contract (including the tort liability of another assumed in a business contract).

The Contractor shall maintain bodily injury/property damage with a combined single limit not less than one million dollars (\$1,000,000) per occurrence and two million dollars (\$2,000,000) aggregate for bodily injury and property damage, including products and completed operations coverage with an aggregate limit of at least two million dollars (\$2,000,000).

b. Workers' Compensation and Employer Liability Insurance

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

D.33. Major Procurement Contract Sales and Use Tax. Pursuant to Tenn. Code Ann. § 4-39-102 and to the extent applicable, the Contractor and the Contractor's subcontractors shall remit sales and

use taxes on the sales of goods or services that are made by the Contractor or the Contractor's subcontractors and that are subject to tax.

**E. SPECIAL TERMS AND CONDITIONS:**

- E.1. Conflicting Terms and Conditions. Should any of these special terms and conditions conflict with any other terms and conditions of this Contract, the special terms and conditions shall be subordinate to the Contract's other terms and conditions.
- E.2. Confidentiality of Records. Strict standards of confidentiality of records and information shall be maintained in accordance with applicable state and federal law. All material and information, regardless of form, medium or method of communication, provided to the Contractor by the State or acquired by the Contractor on behalf of the State that is regarded as confidential under state or federal law shall be regarded as "Confidential Information." Nothing in this Section shall permit Contractor to disclose any Confidential Information, regardless of whether it has been disclosed or made available to the Contractor due to intentional or negligent actions or inactions of agents of the State or third parties. Confidential Information shall not be disclosed except as required or permitted under state or federal law. Contractor shall take all necessary steps to safeguard the confidentiality of such material or information in conformance with applicable state and federal law.

The obligations set forth in this Section shall survive the termination of this Contract.

- E.3. Intellectual Property Indemnity. The Contractor agrees to indemnify and hold harmless the State of Tennessee as well as its officers, agents, and employees from and against any and all claims or suits which may be brought against the State concerning or arising out of any claim of an alleged patent, copyright, trade secret or other intellectual property infringement arising from or associated with any goods or services provided by Contractor under this Contract arising from or associated with any goods or services provided by Contractor under this Contract. In any such claim or action brought against the State, the Contractor shall satisfy and indemnify the State for the amount of any settlement or final judgment, and the Contractor shall be responsible for all legal or other fees or expenses incurred by the State arising from any such claim. The State shall give the Contractor notice of any such claim or suit, however, the failure of the State to give such notice shall only relieve Contractor of its obligations under this Section to the extent Contractor can demonstrate actual prejudice arising from the State's failure to give notice. This Section shall not grant the Contractor, through its attorneys, the right to represent the State of Tennessee in any legal matter, as provided in Tenn. Code Ann. § 8-6-106.
- E.4. Personally Identifiable Information. While performing its obligations under this Contract, Contractor may have access to Personally Identifiable Information held by the State ("PII"). For the purposes of this Contract, "PII" includes "Nonpublic Personal Information" as that term is defined in Title V of the Gramm-Leach-Bliley Act of 1999 or any successor federal statute, and the rules and regulations thereunder, all as may be amended or supplemented from time to time ("GLBA") and personally identifiable information and other data protected under any other applicable laws, rule or regulation of any jurisdiction relating to disclosure or use of personal information ("Privacy Laws"). Contractor agrees it shall not do or omit to do anything which would cause the State to be in breach of any Privacy Laws. Contractor shall, and shall cause its employees, agents and representatives to: (i) keep PII confidential and may use and disclose PII only as necessary to carry out those specific aspects of the purpose for which the PII was disclosed to Contractor and in accordance with this Contract, GLBA and Privacy Laws; and (ii) implement and maintain appropriate technical and organizational measures regarding information security to: (A) ensure the security and confidentiality of PII; (B) protect against any threats or hazards to the security or integrity of PII; and (C) prevent unauthorized access to or use of PII. Contractor shall immediately notify State: (1) of any disclosure or use of any PII by Contractor or any of its employees, agents and representatives in breach of this Contract; and (2) of any disclosure of any PII to Contractor or its employees, agents and representatives where the purpose of such disclosure is not known to Contractor or its employees, agents and representatives. The State reserves the right to review Contractor's policies and procedures used to maintain the security and confidentiality of PII and Contractor shall, and cause its

employees, agents and representatives to, comply with all reasonable requests or directions from the State to enable the State to verify and/or procure that Contractor is in full compliance with its obligations under this Contract in relation to PII. Upon termination or expiration of the Contract or at the State's direction at any time in its sole discretion, whichever is earlier, Contractor shall immediately return to the State any and all PII which it has received under this Contract and shall destroy all records of such PII.

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

- E.5. Software License Warranty. Contractor grants a license to the State to use all software provided under this Contract in the course of the State's business and purposes.
- E.6. Extraneous Terms and Conditions. Contractor shall fill all orders submitted by the State under this Contract. No purchase order, invoice, or other documents associated with any sales, orders, or supply of any good or service under this Contract shall contain any terms or conditions other than as set forth in the Contract. Any such extraneous terms and conditions shall be void, invalid and unenforceable against the State. Any refusal by Contractor to supply any goods or services under this Contract conditioned upon the State submitting to any extraneous terms and conditions shall be a material breach of the Contract and constitute an act of bad faith by Contractor.
- E.7. Contractor Hosted Services and Confidential Data.
- a. "Confidential State Data" is defined as data deemed confidential by State or Federal statute or regulation. The Contractor shall protect Confidential State Data as follows:
- (1) The Contractor shall ensure that all Confidential State Data is housed in the continental United States, inclusive of backup data.
  - (2) The Contractor shall encrypt Confidential State Data at rest and in transit using the current version of Federal Information Processing Standard ("FIPS") 140-2 validated encryption technologies.
  - (3) The Contractor's processing environment containing Confidential State Data shall be in accordance with at least one of the following security standards: (i) International Standards Organization ("ISO") 27001; (ii) Federal Risk and Authorization Management Program ("FedRAMP"); or (iii) American Institute of Certified Public Accountants ("AICPA") Service Organization Controls ("SOC") 2 Type II certified. The Contractor shall provide proof of current certification annually and upon State request.
  - (4) The Contractor must comply with the State's Enterprise Information Security Policies. This document is found at the following URL:  
<https://www.tn.gov/content/dam/tn/finance/documents/Enterprise-Information-Security-Policies-ISO-27002-Public.pdf>
  - (5) In the event that the operating system is an integral part of the application, the Contractor agrees to maintain Operating Systems at current, manufacturer supported versions. "Operating System" shall mean the software that supports a

computer's basic functions, such as scheduling tasks, executing applications, and controlling peripherals.

- (6) The Contractor agrees to maintain the Application so that it will run on a current, manufacturer-supported Operating System. "Application" shall mean the computer code that supports and accomplishes the State's requirements as set forth in this Contract. The Contractor shall make sure that the Application is at all times fully compatible with a manufacturer-supported Operating System; the State shall not be required to run an Operating System that is no longer supported by the manufacturer.
  - (7) If the Application requires middleware or database software, Contractor shall maintain middleware and database software versions that are at all times fully compatible with current versions of the Operating System and Application, to ensure that security vulnerabilities are not introduced.
  - (8) With advance notice from the State, and no more than one (1) time per year the Contractor agrees to allow the State to perform logical and physical audits of the Contractor's facility and relevant systems.
  - (9) The Contractor must annually perform Penetration Tests and Vulnerability Assessments against its Processing Environment. "Processing Environment" shall mean the combination of software and hardware on which the Application runs. "Penetration Tests" shall be in the form of software attacks on the Contractor's computer system, with the purpose of discovering security weaknesses, and potentially gaining access to the computer's features and data. The "Vulnerability Assessment" shall have the goal of defining, identifying, and classifying the security holes (vulnerabilities) in the Contractor's computer, network, or communications infrastructure. The Contractor shall allow the State, at its option, to perform Penetration Tests and Vulnerability Assessments on the Contractor's Processing Environment.
- b. Business Continuity Requirements. The Contractor shall maintain set(s) of documents, instructions, and procedures which enable the Contractor to respond to accidents, disasters, emergencies, or threats without any stoppage or hindrance in its key operations ("Business Continuity Requirements"). Business Continuity Requirements shall include:
- (1) "Disaster Recovery Capabilities" refer to the actions the Contractor takes to meet the Recovery Point and Recovery Time Objectives defined below. Disaster Recovery Capabilities shall meet the following objectives:
    - i. Recovery Point Objective ("RPO"). The RPO is defined as the maximum targeted period in which data might be lost from an IT service due to a major incident: six hours.
    - ii. Recovery Time Objective ("RTO"). The RTO is defined as the targeted duration of time and a service level within which a business process must be restored after a disaster (or disruption) in order to avoid unacceptable consequences associated with a break in business continuity: twenty-four hours.
  - (2) The Contractor shall perform at least one Disaster Recovery Test every three hundred sixty-five (365) days. A "Disaster Recovery Test" shall mean the process of verifying the success of the restoration procedures that are executed after a critical IT failure or disruption occurs. The Disaster Recovery Test shall use actual State Data Sets that mirror production data, and success shall be defined as the Contractor verifying that the Contractor can meet the State's RPO and RTO requirements. A "Data Set" is defined as a collection of related sets of information that is composed of separate elements but can be

manipulated as a unit by a computer. The Contractor shall provide written confirmation to the State after each Disaster Recover Test that its Disaster Recovery Capabilities meet the RPO and RTO requirements.

- c. Upon State request, the Contractor shall provide a copy of all Confidential State Data it holds. The Contractor shall provide such data on media and in a format determined by the State.
- d. Upon termination of this Contract and in consultation with the State, the Contractor shall destroy all Confidential State Data it holds (including any copies such as backups) in accordance with the current version of National Institute of Standards and Technology ("NIST") Special Publication 800-88. The Contractor shall provide a written confirmation of destruction to the State within ten (10) business days after destruction.

IN WITNESS WHEREOF,

PAUL H. BROOKES PUBLISHING CO., INC.:

*Melissa A. Behm* *February 1, 2018*  
 \_\_\_\_\_  
 CONTRACTOR SIGNATURE DATE

*Melissa A. Behm, Executive Vice President*  
 \_\_\_\_\_  
 PRINTED NAME AND TITLE OF CONTRACTOR SIGNATORY (above)

TENNESSEE DEPARTMENT OF EDUCATION:

Candice McQueen\_jc

Digitally signed by Candice McQueen\_jc  
 DN: cn=Candice McQueen\_jc, o, ou=TN Department of  
 Education, email=joanna.collins@tn.gov, c=US  
 Date: 2018.02.01 15:40:55 -06'00'

\_\_\_\_\_

CANDICE MCQUEEN, Ph.D., COMMISSIONER DATE

ATTACHMENT A

ATTESTATION RE PERSONNEL USED IN CONTRACT PERFORMANCE

|                                      |                                      |
|--------------------------------------|--------------------------------------|
| SUBJECT CONTRACT NUMBER:             | 56985                                |
| CONTRACTOR LEGAL ENTITY NAME:        | Paul H. Brookes Publishing Co., Inc. |
| EDISON VENDOR IDENTIFICATION NUMBER: | 0000036579                           |

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. Attach evidence documenting the individual's authority to contractually bind the Contractor, unless the signatory is the Contractor's chief executive or president.

JEFFREY D. BROOKES, PRESIDENT

PRINTED NAME AND TITLE OF SIGNATORY

2/1/18

DATE OF ATTESTATION

### Document Approval Status

|   |                                       |
|---|---------------------------------------|
| SetID SHARE                               | Contract ID 0000000000000000000056985 |
| Supplier Paul H Brookes Publishing Co Inc |                                       |

**Review/Edit Approvers**

#### Agency Approvals

SHARE/00000000000000000000000056985: **Approved**

Agency Approvals

|  |   |  |
|--|---|--|
| <b>Approved</b><br>✓ Sarah L Morgan<br>Document Approval 1<br>02/01/18 - 4:35 PM | → | <b>Approved</b><br>✓ David A Zundel<br>Document Approval 2<br>02/01/18 - 4:54 PM |
|--|---|--|

CPO Level 1 & 2 Approvals

|   |
|---|
| <b>Approved</b><br>✓ Tamara D Byrd<br>Document Approval 3<br>02/02/18 - 8:58 AM |
|---|

#### Budget Office

SHARE/00000000000000000000000056985: **Approved**

Budget Threshold Approv >100K

|  |
|--|
| <b>Approved</b><br>✓ John Kerr<br>Con - Budget Office Approval<br>02/05/18 - 6:16 AM |
|--|

#### Comptroller Special Appr

SHARE/00000000000000000000000056985: **Approved** [View/Hide Comments](#)

Rule Exceptions

|   |
|---|
| <b>Approved</b><br>✓ Donald J Ivancic<br>Document Approval - Comptrolle<br>02/06/18 - 7:54 AM |
|---|

**Comments**

#### CPO Final Contract Approval

SHARE/00000000000000000000000056985: **Approved**

CPO Final Contract Approval

|  |
|--|
| <b>Approved</b><br>✓ Traci Poston<br>Document Approval 3<br>02/06/18 - 9:12 AM |
|--|

Comments  

[Return to Document Management](#)



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

**TO :** STS Contracts  
Department of Finance & Administration  
E-mail : [it.abc@tn.gov](mailto:it.abc@tn.gov)

**FROM :** Department of Education, Tennessee's Early Intervention System (TEIS)  
Barbara Bridges, TEIS contracts manager  
E-mail : [Barbara.Bridges@tn.gov](mailto:Barbara.Bridges@tn.gov)

**DATE :** 11/17/17

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

**Applicable RFS # Tracking #33195-00418**

### State Security Confidential Information Applicability

Under Tenn. Code Ann. §10-7-504(i) vendor identity or a description of the goods or services provided by the vendor shall be confidential.

- Applicable  
 Not Applicable

### STS Endorsement Signature & Date:

**Mark F. Bengel (by WMH)**

Digitally signed by Mark F. Bengel (by WMH)  
DN: cn=Mark F. Bengel (by WMH), o=TN Finance & Admin,  
ou=Strategic Technology Solutions, email=william.hafley@tn.gov,  
c=US  
Date: 2017.12.21 11:55:38 -06'00'

**Chief Information Officer**

*NOTE: Proposed contract/grant support is applicable to the subject IT service technical merit.*

Strategic Technology Solutions (STS) pre-approval endorsement is required pursuant to procurement regulations pertaining to contracts with information technology as a component of the scope of service. This request seeks to ensure that STS is aware of and has an opportunity to review the procurement detailed below and in the attached document(s). This requirement applies to any procurement method regardless of dollar amount.

Please indicate STS 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>                   | Department of Education, Tennessee's Early Intervention System   |
| <b>Agency Contact</b> (name, phone, e-mail) | Barbara Bridges, (615) 253-2595,<br><a href="mailto:Barbara.Bridges@tn.gov">Barbara.Bridges@tn.gov</a> |

**Applicable RFS #    Tracking #33195-00418****Attachments Supporting Request** (mark all applicable)

Note: The complete draft procurement document and the applicable documents listed below must accompany this request when submitted to STS. Special Contract Requests and Amendment Requests without Agency Head signature are acceptable. STS is aware that these documents will not have CPO signature when submitted with this request.

- Solicitation Document
- Special Contract Request
- Amendment Request
- Proposed Contract/Grant or Amendment
- Original Contract/Grant and Previous Amendments (if any)

**Information Systems Plan (ISP) Project Applicability**

To avoid delay of STS pre-approval, the applicability of an ISP project to the procurement must be confirmed with agency IT staff prior to submitting this request to STS. If necessary, agency IT staff should contact STS Planning with questions concerning the need for an ISP project.

IT Director/Staff Name Confirming (required): Joseph Payne

- Applicable – Approved ISP Project#
- Not Applicable

**Subject Information Technology Service Description**

Access and use of Assessment, Evaluation and Programming System Interactive (AEPSi), a web based data management system. The Contractor shall provide the State access to AEPSi , to include the input of assessment data and generating reports related to said data, for a minimum of 15,000 child record licenses to all the elements of a child record, including the portion called the child profile (i.e., child name, address, and other demographic data) and all AEPS assessment, journal entries, calendar events and other records made for one child.

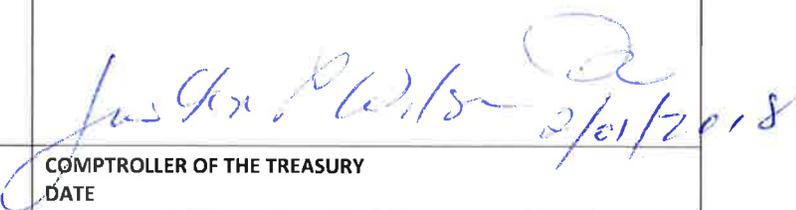
**Note that the standard department technical requirements that have been approved by STS in the past are listed in A.11.**

# Special Contract Request

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

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

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

|   |   |
|---|---|
| <p><b>APPROVED</b></p> <p><b>Michael F. Perry-CS</b></p> <p><small>Digitally signed by Michael F. Perry-CS<br/>DN: cn=Michael F. Perry-CS, o=CPO, ou=32101, email=Chris.Salita@tn.gov, c=US<br/>Date: 2018.01.31 11:42:36 -06'00'</small></p> | <p><b>APPROVED</b></p>  |
| <p>CHIEF PROCUREMENT OFFICER      DATE</p>  | <p>COMPTROLLER OF THE TREASURY<br/>DATE</p>   |

|  |  |
|--|--|
| Request Tracking #                                     | 33195-00418  |
| 1. Contracting Agency                                  | Department of Education, Tennessee's Early Intervention System   |
| 2. Type of Contract or Procurement Method              | <input type="checkbox"/> No Cost<br><input type="checkbox"/> Revenue<br><input checked="" type="checkbox"/> Sole Source<br><input type="checkbox"/> Proprietary<br><input type="checkbox"/> Competitive Negotiation<br><input type="checkbox"/> Other _____  |
| 3. Requestor Contact Information                       | Barbara Bridges, (615) 253-2595, <a href="mailto:Barbara.Bridges@tn.gov">Barbara.Bridges@tn.gov</a>  |
| 4. Brief Goods or Services Caption                     | Access and use of AEPSinteractive (AEPSi), the web-based management system for the Assessment, Evaluation, and Programming System (AEPS) for Tennessee's Early Intervention System (TEIS) eligible children ages newborn through age 2.  |
| 5. Description of the Goods or Services to be Acquired | <p>AEPSi is the web-based management system used for housing the information obtained from the AEPS (Assessment, Evaluation, and Programming System). TEIS uses AEPS for ongoing programming, specifically, the following:</p> <ul style="list-style-type: none"> <li>• Plan the child's individualized family service plan (IFSP);</li> <li>• Generate early childhood outcome scores;</li> </ul> |

|   |   |
|---|---|
| <b>Request Tracking #</b>   | <b>33195-00418</b>  |
|   | <ul style="list-style-type: none"> <li>• Develop curriculum and activities that early interventions use during home visits with the family; and</li> <li>• Monitor the child's progress.</li> </ul> <p>It also ensures that the department meets the U.S. Department of Education's Office of Special Education Programs (OSEP) reporting requirements for IDEA, Part C, Indicator 3. This indicator requires the department to report on the percent of infants and toddlers with IFSPs who demonstrate positive social-emotional skills, acquisition and use of knowledge and skills, and use of appropriate behaviors to meet their needs.</p> |
| <b>6. Proposed Contractor</b>   | <b>Paul E. Brookes Publishing Co., Inc.</b>   |
| <b>7. Name &amp; Address of the Contractor's principal owner(s)</b><br>– NOT required for a TN state education institution  | <b>Jeffrey D. Brookes, President</b><br><b>Paul H. Brookes, Chairman of the Board</b><br><br><b>Paul E. Brookes Publishing Co, Inc.</b><br><b>PO Box 10624</b><br><b>Baltimore, MD 21285-0624</b>   |
| <b>8. Proposed Contract Period</b> – with ALL options to extend exercised<br><i>The proposed contract start date shall follow the approval date of this request.</i>                  | <b>12 months</b>  |
| <b>9. Strategic Technology Solutions ("STS") Pre-Approval Endorsement Request</b><br>– information technology (N/A to THDA)   | <input type="checkbox"/> Not Applicable <input checked="" type="checkbox"/> Attached  |
| <b>10. eHealth Pre-Approval Endorsement Request</b><br>– health-related professional, pharmaceutical, laboratory, or imaging  | <input checked="" type="checkbox"/> Not Applicable <input type="checkbox"/> Attached  |
| <b>11. Human Resources Pre-Approval Endorsement Request</b><br>– state employee training  | <input checked="" type="checkbox"/> Not Applicable <input type="checkbox"/> Attached  |
| <b>12. Are these goods or services currently available on a statewide contract? If YES, please explain why the current statewide contract is not being used for this procurement.</b> | <input checked="" type="checkbox"/> NO <input type="checkbox"/> YES,  |
| <b>13. Maximum Contract Cost</b> – with ALL options to extend exercised   | \$229,000.00  |
| <b>14. Was there an initial government estimate? If so, what amount?</b>  | <input checked="" type="checkbox"/> NO <input type="checkbox"/> YES, \$   |
| <b>15. Cost Determination Used-</b> How did agency arrive at the estimate of expected costs?  | <b>The estimate is based on a per record cost and the approximate number of records used and the number of records archived.</b>  |
| <b>16. Explanation of Fair and Reasonable Price-</b> Explain how agency determined that price is fair and reasonable  | <b>Paul H. Brookes provides a discount from \$19.95 per child record to \$10.95 based on volume.</b>  |

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| <b>Request Tracking #</b>   | <b>33195-00418</b>  |
| <b>17. Documentation of Discussions with Contractor-</b> How did agency document discussions with Contractor? Attach documentation to this request as applicable. | TEIS staff communicated with the proposed contractor via telephone beginning in January 2015 prior to the first sole source contract that was approved (Edison ID 45721). Communication has since taken place via phone and email.  |
| <b>18. Explanation of Need for or requirement placed on the State to acquire the goods or services</b>  | The department is required by OSEP to report on the requirements for IDEA, Part C, Indicator 3. This indicator requires the department to report on the percent of infants and toddlers with IFSPs who demonstrate positive social-emotional skills, acquisition and use of knowledge and skills, and use of appropriate behaviors to meet their needs. The department does not have the capacity to track the information needed for the indicator 3 report. |
| <b>19. Proposed contract impact on current State operations</b>   | TEIS will be in compliance with office of Special Education Programs (OSEP) federal regulations.  |
| <b>20. Justification</b> – Specifically explain why the goods or services should be acquired through the procurement method or contract type selected.            | AEPSi is the only system that both aligns to Tennessee Early Learning Developments Standards (TN-ELDS) and cross-walked with early childhood outcomes (ECO). This is important because aligning to TN-ELDS ensures that TEIS is aligned to the department's overarching goals and initiatives. Additionally, the department must use a system that is cross walked with ECO to ensure compliance with federal law. Please see attached sole source letter.    |
| <b>For No Cost and Revenue Contracts Only</b>   |   |
| <b>21. What costs will the State incur as a result of this contract? If any, please explain.</b>  |   |
| <b>22. What is the total estimated revenue that the State would receive as a result of this contract?</b>   |   |
| <b>23. Could the State also contract with other parties interested in entering substantially the same agreement? Please explain.</b>                              | <input type="checkbox"/> NO <input type="checkbox"/> YES  |
| <b>24. Summary of State responsibilities under proposed contract</b>  |   |
| <b>For Sole Source and Proprietary Procurements Only</b>  |   |
| <b>25. Evidence of Contractor's experience &amp; length of experience providing the goods or services to be procured.</b>   | Length of experience: 9+ years<br>Brookes works with numerous state-level government clients to implement child assessment tools for statewide use, including the Louisiana Department of Education Part B 619 Program and the State of Florida AWI Office of Early Learning. Brookes has been involved with  |

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|--|---|
| Request Tracking #   | 33195-00418   |
|  | <p>Louisiana since 2006, when Part B 619 selected AEPS as its assessment tool for reporting OSEP child outcomes. Starting in 2009, Part B 619 expanded use of AEPS and AEPSi for year-round ongoing assessment, intervention planning, and progress monitoring. Brookes has provided training webinars on the system to Louisiana users over the past 6 years and provided in-depth trainings for 90 administrators and supervisors that included interactive hands-on exercises on effectively managing a program using AEPSi; suggestions for shortening assessment time and managing assessment data; and using AEPSi reports to track child progress, inform intervention, and share results with families/caregivers.</p> <p>Brookes also partners with smaller agencies within states and cities, such as the New York City Department of Health &amp; Mental Hygiene, Bureau of Early Intervention. For this partnership, Brookes has provided print and online AEPS product for a pilot program at 8 agencies serving 500 children, with citywide implementation at 100 agencies serving 30,000 children scheduled to begin in 2014. Brookes continues to provide in-person trainings for AEPS and AEPSi, along with live and pre-recorded webinars, online inter-rater reliability training, and the implementation of a Training of Trainers program. In New Hampshire, Brookes worked closely with school districts that are using AEPS and AEPSi; Brookes is invited to participate in their annual roundtable for practitioners. In Roanoke, Virginia, Brookes helped the school system interface AEPSi with their educational database.</p> |
| <p>26. Has the contracting agency procured the subject goods or services before? If yes, provide the method used to purchase the goods or services and the name and address of the contractor.</p> | <p><input type="checkbox"/> NO      <input checked="" type="checkbox"/> YES,<br/> Method: Sole Source<br/> Name/Address:<br/> Paul E. Brookes Publishing Co, Inc.<br/> PO Box 10624<br/> Baltimore, MD 21285-0624</p>   |
| <p>27. Contractor selection process and efforts to identify reasonable, competitive, procurement alternatives</p>  | <p>The department researched publishing companies in 2015 prior to the execution of the first sole source contract and confirmed in 2017 that AEPSi remains the only early childhood</p>  |

|   |  |
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| <b>Request Tracking #</b>   | <b>33195-00418</b>   |
|   | <b>instrument aligned with TN-ELDS and ECO.</b>  |
| <b>Signature Required for all Special Contract Requests</b>   |  |
| <p><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)</p> |  |
| <p><b>Candice<br/>McQueen_jc</b></p>  | <p>Digitally signed by Candice McQueen_jc<br/> DN: cn=Candice McQueen_jc, o, ou=TN<br/> Department of Education,<br/> email=joanna.collins@tn.gov, c=US<br/> Date: 2017.11.20 17:25:45 -06'00'</p> |
| Signature:  | Date:  |

· P A U L · H ·  
**BROOKES**  
PUBLISHING CO.®

P.O. BOX 10624, BALTIMORE, MARYLAND 21285-0624  
800-638-3775 410-337-8539 (fax) www.brookespublishing.com

November 13, 2017

Tennessee Early Intervention System  
ATTN: Jill Rigsby  
Andrew Johnson Tower, 10th floor  
710 James Robertson Parkway, Nashville, TN 37243

Dear Jill Rigsby,

This letter is to inform you that the Paul H. Brookes Publishing Company is the sole national source for all AEPS print products and AEPSi – AEPS interactive online subscription – (including associated setup, customization, archived child records, training fees, etc.). Additionally, AEPS is currently the only early childhood instrument aligned with TN Early Learning Development Standards and cross walked with Early Childhood Outcomes

| <u>STOCK</u> | <u>TITLE</u>       |
|--------------|--------------------|
| AEPSIC       | AEPSi Child Record |

We look forward to your future business. If we may be of any further assistance, please do not hesitate to contact us at the telephone number listed above. Thank you for your interest in Brookes Publishing Co.

Sincerely yours,



Brookes Publishing Co., Inc.  
Sales Operations Manager



# STS Pre-Approval Endorsement Request E-Mail Transmittal

**TO :** STS Contracts  
Department of Finance & Administration  
E-mail : [it.abc@tn.gov](mailto:it.abc@tn.gov)

**FROM :** Barbara Bridges, TEIS contracts manager (TEIS)  
E-mail : [Barbara.Bridges@tn.gov](mailto:Barbara.Bridges@tn.gov)

**DATE :** 11/17/17

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

**Applicable RFS # Tracking #33195-00418**

**State Security Confidential Information Applicability**

Under Tenn. Code Ann. §10-7-504(i) vendor identity or a description of the goods or services provided by the vendor shall be confidential.

- Applicable
- Not Applicable

**STS Endorsement Signature & Date:**

**Mark F. Bengel (by WMH)**

Digitally signed by Mark F. Bengel (by WMH)  
DN: cn=Mark F. Bengel (by WMH), o=TN Finance & Admin,  
ou=Strategic Technology Solutions, email=william.hafley@tn.gov,  
c=US  
Date: 2017.12.21 11:55:38 -06'00'

**Chief Information Officer**

*NOTE: Proposed contract/grant support is applicable to the subject IT service technical merit.*

Strategic Technology Solutions (STS) pre-approval endorsement is required pursuant to procurement regulations pertaining to contracts with information technology as a component of the scope of service. This request seeks to ensure that STS is aware of and has an opportunity to review the procurement detailed below and in the attached document(s). This requirement applies to any procurement method regardless of dollar amount.

Please indicate STS 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>                   | Intervention System  |
| <b>Agency Contact</b> (name, phone, e-mail) | Barbara Bridges, (615) 253-2595,<br><a href="mailto:Barbara.Bridges@tn.gov">Barbara.Bridges@tn.gov</a> |

**Applicable RFS #    Tracking #33195-00418**

**Attachments Supporting Request (mark all applicable)**

Note: The complete draft procurement document and the applicable documents listed below must accompany this request when submitted to STS. Special Contract Requests and Amendment Requests without Agency Head signature are acceptable. STS is aware that these documents will not have CPO signature when submitted with this request.

- Solicitation Document
- Special Contract Request
- Amendment Request
- Proposed Contract/Grant or Amendment
- Original Contract/Grant and Previous Amendments (if any)

**Information Systems Plan (ISP) Project Applicability**

To avoid delay of STS pre-approval, the applicability of an ISP project to the procurement must be confirmed with agency IT staff prior to submitting this request to STS. If necessary, agency IT staff should contact STS Planning with questions concerning the need for an ISP project.

IT Director/Staff Name Confirming (required): Joseph Payne

- Applicable – Approved ISP Project#
- Not Applicable

**Subject Information Technology Service Description**

Access and use of Assessment, Evaluation and Programming System Interactive (AEPSi), a web based data management system. The Contractor shall provide the State access to AEPSi , to include the input of assessment data and generating reports related to said data, for a minimum of 15,000 child record licenses to all the elements of a child record, including the portion called the child profile (i.e., child name, address, and other demographic data) and all AEPS assessment, journal entries, calendar events and other records made for one child.

**Note that the standard department technical requirements that have been approved by STS in the past are listed in A.11.**

**From:** [Barbara Bridges](#)  
**To:** [Tamara Byrd](#); [Joanna Collins](#)  
**Cc:** [Kristen B. McKeever](#)  
**Subject:** RE: SCR 33195-00418 cy18-10080  
**Date:** Thursday, January 18, 2018 9:21:30 AM  
**Attachments:** [image002.png](#)  
[image005.png](#)  
[image006.png](#)  
[image007.png](#)

---

Good morning,

We did not have a contract for these services, as we have procured it previously via subscription and direct PO.

Barbara



### Education

**Barbara Bridges** |

Tennessee Early Intervention System (TEIS)  
Andrew Johnson Tower, 10<sup>th</sup> floor  
710 James Robertson Parkway, Nashville, TN 37243  
Phone: (615) 253-2595 Fax: (615) 532-5303

[Barbara.Bridges@tn.gov](mailto:Barbara.Bridges@tn.gov)

[tn.gov/education](http://tn.gov/education)

**From:** Tamara Byrd  
**Sent:** Wednesday, January 17, 2018 1:41 PM  
**To:** Barbara Bridges <[Barbara.Bridges@tn.gov](mailto:Barbara.Bridges@tn.gov)>; Joanna Collins <[Joanna.Collins@tn.gov](mailto:Joanna.Collins@tn.gov)>  
**Subject:** RE: SCR 33195-00418 cy18-10080

When did the contract expire?



### General Services

**Tamara Byrd, MSM** | Sourcing Account Specialist, TDOE  
Central Procurement Office, Tennessee Tower, 3<sup>rd</sup> Floor  
312 Rosa L. Parks Ave, Nashville, TN 37243  
p. 615-532-2314  
[tamara.byrd@tn.gov](mailto:tamara.byrd@tn.gov)  
[tn.gov/generalservices/](http://tn.gov/generalservices/)

---

**From:** Barbara Bridges  
**Sent:** Wednesday, January 17, 2018 1:40 PM  
**To:** Tamara Byrd; Joanna Collins

**From:** [Barbara Bridges](#)  
**To:** [Tamara Byrd](#); [Joanna Collins](#)  
**Cc:** [Kristen B. McKeever](#)  
**Subject:** RE: SCR 33195-00418 cy18-10080  
**Date:** Thursday, January 18, 2018 9:21:30 AM  
**Attachments:** [image002.png](#)  
[image005.png](#)  
[image006.png](#)  
[image007.png](#)

---

Good morning,

We did not have a contract for these services, as we have procured it previously via subscription and direct PO.

Barbara



### Education

**Barbara Bridges** |

Tennessee Early Intervention System (TEIS)  
Andrew Johnson Tower, 10<sup>th</sup> floor  
710 James Robertson Parkway, Nashville, TN 37243  
Phone: (615) 253-2595 Fax: (615) 532-5303  
[Barbara.Bridges@tn.gov](mailto:Barbara.Bridges@tn.gov)  
[tn.gov/education](http://tn.gov/education)

**From:** Tamara Byrd  
**Sent:** Wednesday, January 17, 2018 1:41 PM  
**To:** Barbara Bridges <[Barbara.Bridges@tn.gov](mailto:Barbara.Bridges@tn.gov)>; Joanna Collins <[Joanna.Collins@tn.gov](mailto:Joanna.Collins@tn.gov)>  
**Subject:** RE: SCR 33195-00418 cy18-10080

When did the contract expire?



### General Services

**Tamara Byrd, MSM** | Sourcing Account Specialist, TDOE  
Central Procurement Office, Tennessee Tower, 3<sup>rd</sup> Floor  
312 Rosa L. Parks Ave, Nashville, TN 37243  
p. 615-532-2314  
[tamara.byrd@tn.gov](mailto:tamara.byrd@tn.gov)  
[tn.gov/generalservices/](http://tn.gov/generalservices/)

---

**From:** Barbara Bridges  
**Sent:** Wednesday, January 17, 2018 1:40 PM  
**To:** Tamara Byrd; Joanna Collins

**Subject:** RE: SCR 33195-00418 cy18-10080

Tammy,

We are needing to pay via a direct PO until the contract is in place.

Barbara



**Education**

**Barbara Bridges |**

Tennessee Early Intervention System (TEIS)

Andrew Johnson Tower, 10<sup>th</sup> floor

710 James Robertson Parkway, Nashville, TN 37243

Phone: (615) 253-2595 Fax: (615) 532-5303

[Barbara.Bridges@tn.gov](mailto:Barbara.Bridges@tn.gov)

[tn.gov/education](http://tn.gov/education)

**From:** Tamara Byrd

**Sent:** Wednesday, January 17, 2018 1:17 PM

**To:** Barbara Bridges <[Barbara.Bridges@tn.gov](mailto:Barbara.Bridges@tn.gov)>; Joanna Collins <[Joanna.Collins@tn.gov](mailto:Joanna.Collins@tn.gov)>

**Subject:** RE: SCR 33195-00418 cy18-10080

Barbara,

When does the current contract expire?



**General Services**

**Tamara Byrd, MSM |** Sourcing Account Specialist, TDOE

Central Procurement Office, Tennessee Tower, 3<sup>rd</sup> Floor

312 Rosa L. Parks Ave, Nashville, TN 37243

p. 615-532-2314

[tamara.byrd@tn.gov](mailto:tamara.byrd@tn.gov)

[tn.gov/generalservices/](http://tn.gov/generalservices/)

**From:** Barbara Bridges

**Sent:** Wednesday, January 17, 2018 10:53 AM

**To:** Tamara Byrd; Joanna Collins

**Subject:** RE: SCR 33195-00418 cy18-10080

Hello Tammy,

We do intend to go before FRC when we renew the contract after the 1 year term;

**TO:** Chris Salita, Director of Sourcing

**FROM:** Tamara Byrd, Sourcing Account Specialist- TDOE **TByrd**

**DATE:** January 16, 2018

**SUBJECT:** Special Contract Request cy18 - 10080  
33195-00418 Access and use of AEPSinteractive (AEPSi)

Digitally signed by TByrd  
DN: cn=TByrd, o=Sourcing Account  
Specialist, ou=TDOE,  
email=tamara.byrd@tn.gov, c=US  
Date: 2018.01.16 12:21:32 -06'00'

The Tennessee Department of Education (TDOE) is requesting a sole source procurement for access and use of AEPSinteractive (AEPSi), the web-based management system for the Assessment, Evaluation, and Programming System (AEPS) for Tennessee's Early Intervention System (TEIS) eligible children ages newborn through age two (2).

Layered Solutions Inc. (LSI) is the only vendor that has been identified that can provide the necessary hardware and software to meet the visual messaging needs for the safety and security of the students and staff at the Tennessee School for the deaf. The schools primary factor in opting for the solution provided by LSI was the ability to fully integrate with the existing technologies on the campus.

LSI is the sole manufacturer and software support provider of the LSI software and mass notification software solutions. It is vital that all expansions to existing system have the ability to integrate with the current software.

Sourcing Specialist recommends approval of a sole source procurement with Layered Solutions, Inc. (LSI) for twelve (12) months with an estimated maximum contract cost of \$229,000.00.

**Chris Salita**

Digitally signed by Chris Salita  
DN: cn=Chris Salita, o=CPO,  
ou=32101,  
email=Chris.Salita@tn.gov, c=US  
Date: 2018.01.31 11:41:19 -06'00'

---

Chris Salita, Director of Sourcing

Date

**Cooper N. Gallimore**

Digitally signed by Cooper N. Gallimore  
DN: cn=Cooper N. Gallimore, o=CPO, ou=DGS,  
email=Cooper.Gallimore@tn.gov, c=US  
Date: 2018.01.31 10:56:09 -06'00'

---

CPO Attorney

Date



**TO:** Chris Salita, Director of Sourcing

**FROM:** Tamara Byrd, Sourcing Account Specialist- TDOE

**DATE:** January 16, 2018

**SUBJECT:** Special Contract Request cy18 - 10080  
33195-00418 Access and use of AEPSinteractive (AEPSi)

TByrd

Digitally signed by TByrd  
 DN: cn=TByrd, o=Sourcing  
 Account Specialist, ou=TDOE,  
 email=tamara.byrd@tn.gov,  
 c=US  
 Date: 2018.02.01 12:16:11  
 -06'00'

The Tennessee Department of Education (TDOE) is requesting a sole source procurement for access and use of AEPSinteractive (AEPSi), the web-based management system for the Assessment, Evaluation, and Programming System (AEPS) for Tennessee's Early Intervention System (TEIS) eligible children ages newborn through age two (2).

AEPSi is the only system that both aligns to Tennessee Early Learning Developments Standards (TN-ELDS) and cross-walked with early childhood outcomes (ECO). This is important because aligning TN-ELDS ensures that TEIS is aligned to the departments overarching goals and initiatives. Additionally, the department must use a system that is cross walked with ECO to ensure compliance with federal law.

Sourcing Specialist recommends approval of a sole source procurement with Paul E. Brookes Publishing Co., Inc. for twelve (12) months with an estimated maximum contract cost of \$229,000.00.

**Chris Salita**

Digitally signed by Chris Salita  
 DN: cn=Chris Salita, o=CPO,  
 ou=32101,  
 email=Chris.Salita@tn.gov, c=US  
 Date: 2018.02.01 12:46:34 -06'00'

Chris Salita, Director of Sourcing

Date

**Cooper N. Gallimore**

Digitally signed by Cooper N. Gallimore  
 DN: cn=Cooper N. Gallimore, o=CPO, ou=DGS,  
 email=Cooper.Gallimore@tn.gov, c=US  
 Date: 2018.02.01 12:20:00 -06'00'

CPO Attorney

Date

# Rule Exception Request

Use this document to request changes to Central Procurement Office templates, policies, or other procurement documents or to modify the "necessary contract clauses" identified in Tenn. Comp. R. & Reg. 0690-03-01-.17 ("CPO Rule 17"). Complete this document in conformity with CPO Rule 17, which is available [here](#). Send the completed document in PDF format to: [Agsprs.Agsprs@tn.gov](mailto:Agsprs.Agsprs@tn.gov) All Rule Exception Requests are subject to review and approval by the Chief Procurement Officer. Rule Exception Requests that propose to modify any of CPO Rule 17's necessary contract clauses shall be subject to review and approval by the Comptroller of the Treasury. Note: Any change to the template language regarding the Limitation of Contractor's Liability shall be submitted using the Limitation of Contractor's Liability Request.

**APPROVED**  
**Michael F. Perry/**  
**JMN**  


---

 CHIEF PROCUREMENT OFFICER

Digitally signed by Michael F. Perry/JMN  
 DN: cn=Michael F. Perry/JMN, o=Tennessee Central Procurement Office, ou=Department of General Services, email=mark.naftel@tn.gov, c=US  
 Date: 2018.01.29 15:31:57 -06'00'

**APPROVED**  
  


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 COMPTROLLER OF THE TREASURY

|  |   |
|--|---|
| <b>Agency request tracking #</b>   | 33195-00418   |
| <b>1. Procuring Agency</b>   | Education   |
| <b>2. Edison contract ID #</b>   | 56985   |
| <b>3. Contractor or Grantee</b>  | Paul H. Brookes Publishing Co., Inc.  |
| <b>4. Contract's Effective Date</b>  | February 15, 2018   |
| <b>5. Contract or grant contract's Term (with ALL options to extend exercised)</b>     | 12 months   |
| <b>6. Contract's Maximum Liability (with ALL options to extend exercised)</b>          | \$290,000.00  |
| <b>7. Citation and explanation of the rule(s) for which the exception is requested</b> | 0690-03-01-.17(2)(e), requiring the prohibition of illegal immigrants provision in state contracts, and CPO policy that state agencies use template language as written without deviation.  |
| <b>8. Description of requested changes</b>   | If adding new provisions or modifying existing provisions, insert the new or modified provisions in their entirety. Please provide red-lines or track changes to highlight any deviations from template language.   |
| <b>D.10. Prohibition of Illegal Immigrants.</b>  | The requirements of Tenn. Code Ann. § 12-3-309 addressing the use of illegal immigrants in the performance of any contract to supply goods or services to the state of Tennessee, shall be a material provision of this Contract, a breach of which shall be grounds for monetary and other penalties, up to and including termination of this Contract.  |
| <b>a.</b>  | The Contractor agrees that the Contractor shall not knowingly utilize the services of an illegal immigrant in the performance of this Contract and shall not knowingly utilize the services of any subcontractor who will utilize the services of an illegal immigrant in the performance of this Contract. The Contractor shall reaffirm this attestation, in writing, by submitting to the State a completed and signed copy of the document at Attachment A, semi-annually during the Term. If the Contractor is a party to more than one contract with the State, the Contractor may submit one attestation that applies to all contracts with the State. All Contractor attestations shall be maintained by the Contractor and made available to State officials upon request. |
| <b>b.</b>  | Prior to the use of any subcontractor in the performance of this Contract, and semi-annually thereafter, during the Term, the Contractor shall obtain and retain a current, written attestation that the subcontractor shall not knowingly utilize the services of an illegal immigrant to perform  |

work under this Contract and shall not knowingly utilize the services of any subcontractor who will utilize the services of an illegal immigrant to perform work under this Contract. Attestations obtained from subcontractors shall be maintained by the Contractor and made available to State officials upon request.

- c. The Contractor shall maintain records for all personnel used in the performance of this Contract. Contractor's records to establish personnel status with regard to this Section D.10 shall be subject to review and random inspection at any reasonable time upon reasonable notice by the State.
- d. The Contractor understands and agrees that failure to comply with this section will be subject to the sanctions of Tenn. Code Ann. § 12-3-309 for acts or omissions occurring after its effective date.
- e. For purposes of this Contract, "illegal immigrant" shall be defined as any person who is not: (i) a United States citizen; (ii) a Lawful Permanent Resident; (iii) a person whose physical presence in the United States is authorized; (iv) allowed by the federal Department of Homeland Security and who, under federal immigration laws or regulations, is authorized to be employed in the U.S.; or (v) is otherwise authorized to provide services under the Contract.

E.3. **Intellectual Property Indemnity.** The Contractor agrees to indemnify and hold harmless the State of Tennessee as well as its officers, agents, and employees from and against any and all claims or suits which may be brought against the State concerning or arising out of any claim of an alleged patent, copyright, trade secret or other intellectual property infringement arising from or associated with any goods or services provided by Contractor under this Contract arising from or associated with any goods or services provided by Contractor under this Contract. In any such claim or action brought against the State, the Contractor shall satisfy and indemnify the State for the amount of any settlement or final judgment, and the Contractor shall be responsible for all legal or other fees or expenses incurred by the State arising from any such claim. The State shall give the Contractor notice of any such claim or suit, however, the failure of the State to give such notice shall only relieve Contractor of its obligations under this Section to the extent Contractor can demonstrate actual prejudice arising from the State's failure to give notice. This Section shall not grant the Contractor, through its attorneys, the right to represent the State of Tennessee in any legal matter, as provided in Tenn. Code Ann. § 8-6-106.

E.7. Contractor Hosted Services and Confidential Data.

- a. "Confidential State Data" is defined as data deemed confidential by State or Federal statute or regulation. The Contractor shall protect Confidential State Data as follows:
  - (1) The Contractor shall ensure that all Confidential State Data is housed in the continental United States, inclusive of backup data.
  - (2) The Contractor shall encrypt Confidential State Data at rest and in transit using the current version of Federal Information Processing Standard ("FIPS") 140-2 validated encryption technologies.
  - (3) The Contractor's processing environment containing Confidential State Data shall be in accordance with at least one of the following security standards: (i) International Standards Organization ("ISO") 27001; (ii) Federal Risk and Authorization Management Program ("FedRAMP"); or (iii) American Institute of Certified Public Accountants ("AICPA") Service Organization Controls ("SOC") 2 Type II certified. The Contractor shall provide proof of current certification annually and upon State request.
  - (4) The Contractor must comply with the State's Enterprise Information Security Policies. This document is found at the following URL:  
<https://www.tn.gov/content/dam/tn/finance/documents/Enterprise-Information-Security-Policies-ISO-27002-Public.pdf>
  - (5) In the event that the operating system is an integral part of the application, the Contractor agrees to maintain Operating Systems at current, manufacturer supported versions. "Operating System" shall mean the software that supports a computer's basic functions, such as scheduling tasks, executing applications, and controlling peripherals.
  - (6) The Contractor agrees to maintain the Application so that it will run on a current, manufacturer-supported Operating System. "Application" shall mean the computer code

that supports and accomplishes the State's requirements as set forth in this Contract. The Contractor shall make sure that the Application is at all times fully compatible with a manufacturer-supported Operating System; the State shall not be required to run an Operating System that is no longer supported by the manufacturer.

- (7) If the Application requires middleware or database software, Contractor shall maintain middleware and database software versions that are at all times fully compatible with current versions of the Operating System and Application, to ensure that security vulnerabilities are not introduced.
  - (8) With advance notice from the State, and no more than one (1) time per year the Contractor agrees to allow the State to perform logical and physical audits of the Contractor's facility and relevant systems, that are hosting Confidential State Data.
  - (9) The Contractor must annually perform Penetration Tests and Vulnerability Assessments against its Processing Environment. "Processing Environment" shall mean the combination of software and hardware on which the Application runs. "Penetration Tests" shall be in the form of software attacks on the Contractor's computer system, with the purpose of discovering security weaknesses, and potentially gaining access to the computer's features and data. The "Vulnerability Assessment" shall have the goal of defining, identifying, and classifying the security holes (vulnerabilities) in the Contractor's computer, network, or communications infrastructure. The Contractor shall allow the State, at its option, to perform Penetration Tests and Vulnerability Assessments on the Contractor's Processing Environment.
- b. Business Continuity Requirements. The Contractor shall maintain set(s) of documents, instructions, and procedures which enable the Contractor to respond to accidents, disasters, emergencies, or threats without any stoppage or hindrance in its key operations ("Business Continuity Requirements"). Business Continuity Requirements shall include:
- (1) "Disaster Recovery Capabilities" refer to the actions the Contractor takes to meet the Recovery Point and Recovery Time Objectives defined below. Disaster Recovery Capabilities shall meet the following objectives:
    - i. Recovery Point Objective ("RPO"). The RPO is defined as the maximum targeted period in which data might be lost from an IT service due to a major incident: six hours.
    - ii. Recovery Time Objective ("RTO"). The RTO is defined as the targeted duration of time and a service level within which a business process must be restored after a disaster (or disruption) in order to avoid unacceptable consequences associated with a break in business continuity: twenty-four hours.
  - (2) The Contractor shall perform at least one Disaster Recovery Test every three hundred sixty-five (365) days. A "Disaster Recovery Test" shall mean the process of verifying the success of the restoration procedures that are executed after a critical IT failure or disruption occurs. The Disaster Recovery Test shall use actual State Data Sets that mirror production data, and success shall be defined as the Contractor verifying that the Contractor can meet the State's RPO and RTO requirements. A "Data Set" is defined as a collection of related sets of information that is composed of separate elements but can be manipulated as a unit by a computer. The Contractor shall provide written confirmation to the State after each Disaster Recover Test that its Disaster Recovery Capabilities meet the RPO and RTO requirements.
- c. Upon State request, the Contractor shall provide a copy of all Confidential State Data it holds. The Contractor shall provide such data on media and in a format determined by the State.
- d. Upon termination of this Contract and in consultation with the State, the Contractor shall destroy all Confidential State Data it holds (including any copies such as backups) in accordance with the current version of National Institute of Standards and Technology ("NIST") Special Publication 800-88. The Contractor shall provide a written confirmation of destruction to the State within ten (10) business days after destruction.

**9. Justification**

These changes are minor and in the nature of clarifications. The proposed revision to D.10.c clarifies that Contractor's records subject to review by the State are records that establish Contractor's employees' status. E.3 was revised to state a link between what Contractor provided and a possible IP infringement claim. The original language of E.7.a(8) giving the State a right to audit the hosting facilities needed to be revised since a subcontractor will host the data, not Contractor. A central procurement office attorney negotiated these revisions and STS is satisfied with the hosting arrangement and this language.

**Signature of Agency head or designee and date****Candice McQueen\_jc**

Digitally signed by Candice McQueen\_jc  
DN: cn=Candice McQueen\_jc, o, ou=TN Department of Education,  
email=joanna.collins@tn.gov, c=US  
Date: 2018.01.29 13:16:08 -06'00'



P.O. BOX 10624, BALTIMORE, MARYLAND 21285-0624  
800-638-3775 410-337-8539 (fax) www.brookespublishing.com

November 13, 2017

Tennessee Early Intervention System  
ATTN: Jill Rigsby  
Andrew Johnson Tower, 10th floor  
710 James Robertson Parkway, Nashville, TN 37243

Dear Jill Rigsby,

This letter is to inform you that the Paul H. Brookes Publishing Company is the sole national source for all AEPS print products and AEPSi – AEPS interactive online subscription – (including associated setup, customization, archived child records, training fees, etc.). Additionally, AEPS is currently the only early childhood instrument aligned with TN Early Learning Development Standards and cross walked with Early Childhood Outcomes

| <u>STOCK</u> | <u>TITLE</u>       |
|--------------|--------------------|
| AEPSIC       | AEPSi Child Record |

We look forward to your future business. If we may be of any further assistance, please do not hesitate to contact us at the telephone number listed above. Thank you for your interest in Brookes Publishing Co.

Sincerely yours,

A handwritten signature in cursive script that reads "Cathy Chapman".

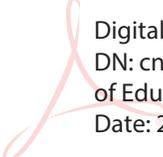
Brookes Publishing Co., Inc.  
Sales Operations Manager

# 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)

|   |   |
|---|---|
| <p><b>APPROVED</b><br/> <b>Michael F. Perry,</b><br/> <b>Chief Procurement</b><br/> <b>Officer by T. L.</b><br/> <b>Stuart CPO Attorney</b></p> | <p>Digitally signed by Michael F. Perry, Chief Procurement Officer by T. L. Stuart CPO Attorney<br/> DN: cn=Michael F. Perry, Chief Procurement Officer by T. L. Stuart CPO Attorney, o=Central Procurement Office, ou=DGS, email=toni.stuart@tn.gov, c=US<br/> Date: 2018.05.18 13:21:39 -05'00'</p> |
| <b>CHIEF PROCUREMENT OFFICER</b>  | <b>DATE</b>   |

|  |  |
|--|--|
| <b>Agency request tracking #</b>   | <b>33195-00418</b>   |
| <b>1. Procuring Agency</b>   | <b>TN Department of Education</b>  |
| <b>2. Contractor</b>   | <b>Paul H. Brooks Publishing Co., Inc.</b>   |
| <b>3. Edison contract ID #</b>   | <b>56985</b>   |
| <b>4. Proposed amendment #</b>   | <b>1</b>   |
| <b>5. Contract's Original Effective Date</b>   | <b>February 15, 2018</b>   |
| <b>6. Current end date</b>   | <b>February 14, 2019</b>   |
| <b>7. Proposed end date</b>  | <b>February 14, 2023</b>   |
| <b>8. Current Maximum Liability or Estimated Liability</b>   | <b>\$229,000.00</b>  |
| <b>9. Proposed Maximum Liability or Estimated Liability</b>  | <b>\$1,695,000.00</b>  |
| <b>10. Strategic Technology Solutions Pre-Approval Endorsement Request</b><br>– <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><br>– <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><br>– <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><b>An amendment is needed to extend the contract term, increase the maximum liability, and increase the maximum number of child records stored in the system.</b></p> <p><b>An extension is needed to ensure that Tennessee Early Intervention System's (TEIS) meets its requirements to collect child progress data and report Early Childhood Outcomes (ECO) to the U.S. Department of Education's office of special education programs (OSEP).</b></p> <p><b>An increase in child records is needed because TEIS has had a 20% increase in referrals of children birth to three from FY 2015-16 to FY 2016-17. Current fiscal year 2017-18 data also shows an increase in referrals trend.</b></p> <p><b>An increase in maximum liability is needed to cover the extension and access to additional child records.</b></p> |  |

|   |                    |
|---|--------------------|
| <b>Agency request tracking #</b>  | <b>33195-00418</b> |
| <p><b>14. If the amendment involves a change in Scope, describe efforts to identify reasonable, competitive, procurement alternatives to amending the contract.</b></p> <p><b>The scope is being amended to increase the number of child records for children birth to three. The scope is not changing other than the volume of records that we can access through this database. The department researched companies in 2017 and AEPSi remains the only early childhood instrument aligned to the Tennessee Early Learning Development Standards (TN-ELDS) and cross-walked with ECOs. This alignment ensures that TEIS is providing services consistent to the department's overarching goals and initiatives.</b></p> |                    |
| <p><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)</p> <p><b>Candice<br/>McQueen_jc</b></p> <p> Digitally signed by Candice McQueen_jc<br/>DN: cn=Candice McQueen_jc, o, ou=TN Department of Education, email=joanna.collins@tn.gov, c=US<br/>Date: 2018.05.14 13:06:13 -05'00'</p>   |                    |



# STS Pre-Approval Endorsement Request E-Mail Transmittal

**TO :** STS Contracts  
Department of Finance & Administration  
E-mail : [it.abc@tn.gov](mailto:it.abc@tn.gov)

**FROM :** Department of Education, Tennessee's Early Intervention System (TEIS)  
Barbara Bridges, TEIS contracts manager  
E-mail : [Barbara.Bridges@tn.gov](mailto:Barbara.Bridges@tn.gov)

**DATE :** 11/17/17

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

**Applicable RFS # Tracking #33195-00418**

### State Security Confidential Information Applicability

Under Tenn. Code Ann. §10-7-504(i) vendor identity or a description of the goods or services provided by the vendor shall be confidential.

- Applicable  
 Not Applicable

### STS Endorsement Signature & Date:

**Mark F. Bengel (by WMH)**

Digitally signed by Mark F. Bengel (by WMH)  
DN: cn=Mark F. Bengel (by WMH), o=TN Finance & Admin,  
ou=Strategic Technology Solutions, email=william.hafley@tn.gov,  
c=US  
Date: 2017.12.21 11:55:38 -06'00'

**Chief Information Officer**

*NOTE: Proposed contract/grant support is applicable to the subject IT service technical merit.*

Strategic Technology Solutions (STS) pre-approval endorsement is required pursuant to procurement regulations pertaining to contracts with information technology as a component of the scope of service. This request seeks to ensure that STS is aware of and has an opportunity to review the procurement detailed below and in the attached document(s). This requirement applies to any procurement method regardless of dollar amount.

Please indicate STS 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>                   | Department of Education, Tennessee's Early Intervention System   |
| <b>Agency Contact</b> (name, phone, e-mail) | Barbara Bridges, (615) 253-2595,<br><a href="mailto:Barbara.Bridges@tn.gov">Barbara.Bridges@tn.gov</a> |

**Applicable RFS #    Tracking #33195-00418**

**Attachments Supporting Request** (mark all applicable)

Note: The complete draft procurement document and the applicable documents listed below must accompany this request when submitted to STS. Special Contract Requests and Amendment Requests without Agency Head signature are acceptable. STS is aware that these documents will not have CPO signature when submitted with this request.

- Solicitation Document
- Special Contract Request
- Amendment Request
- Proposed Contract/Grant or Amendment
- Original Contract/Grant and Previous Amendments (if any)

**Information Systems Plan (ISP) Project Applicability**

To avoid delay of STS pre-approval, the applicability of an ISP project to the procurement must be confirmed with agency IT staff prior to submitting this request to STS. If necessary, agency IT staff should contact STS Planning with questions concerning the need for an ISP project.

IT Director/Staff Name Confirming (required): Joseph Payne

- Applicable – Approved ISP Project#
- Not Applicable

**Subject Information Technology Service Description**

Access and use of Assessment, Evaluation and Programming System Interactive (AEPSi), a web based data management system. The Contractor shall provide the State access to AEPSi , to include the input of assessment data and generating reports related to said data, for a minimum of 15,000 child record licenses to all the elements of a child record, including the portion called the child profile (i.e., child name, address, and other demographic data) and all AEPS assessment, journal entries, calendar events and other records made for one child.

**Note that the standard department technical requirements that have been approved by STS in the past are listed in A.11.**



## CONTRACT AMENDMENT COVER SHEET

|   |  |  |  |               |   |
|---|--|--|--|---------------|---|
| <b>Agency Tracking #</b><br>33195-00418   | <b>Edison ID</b><br>56985                | <b>Contract #</b><br>56985                 | <b>Amendment #</b><br>1                  |               |   |
| <b>Contractor Legal Entity Name</b><br>Paul H. Brookes Publishing Co., Inc.   |  |  | <b>Edison Vendor ID</b><br>36579         |               |   |
| <b>Amendment Purpose &amp; Effect(s)</b><br>Extend the term from one year to five, add the renewal clause, and increase maximum liability.  |  |  |  |               |   |
| <b>Amendment Changes Contract End Date:</b> <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO   |  | <b>End Date:</b> February 14, 2023         |  |               |   |
| <b>TOTAL Contract Amount INCREASE or DECREASE per this Amendment</b> (zero if N/A):   |  |  | <del>\$1,466,000</del> <b>193,201.00</b> |               |   |
| <b>Funding —</b>  |  |  |  |               |   |
| <b>FY</b>   | <b>State</b>                             | <b>Federal</b>                             | <b>Interdepartmental</b>                 | <b>Other</b>  | <b>TOTAL Contract Amount</b>                |
| 2019  | <del>\$229,000</del> <u>237.815.00</u>   | \$0.00                                     | \$0.00                                   | \$0.00        | <del>\$237,815.00</del> <u>\$229,000.00</u> |
| 2020  | <del>\$284,000</del> <u>258.701.00</u>   | \$0.00                                     | \$0.00                                   | \$0.00        | <del>\$284,000.00</del> <u>\$258,701.00</u> |
| 2021  | <del>\$339,000</del> <u>281.884.00</u>   | \$0.00                                     | \$0.00                                   | \$0.00        | <del>\$339,000.00</del> <u>\$281,884.00</u> |
| 2022  | <del>\$394,000</del> <u>307.620.00</u>   | \$0.00                                     | \$0.00                                   | \$0.00        | <del>\$394,000.00</del> <u>\$307,620.00</u> |
| 2023  | <del>\$449,000</del> <u>336.181.00</u>   | \$0.00                                     | \$0.00                                   | \$0.00        | <del>\$449,000.00</del> <u>\$336,181.00</u> |
| <b>TOTAL:</b>   | <del>\$1,695,000</del> <u>422.201.00</u> | <b>\$0.00</b>                              | <b>\$0.00</b>                            | <b>\$0.00</b> | <del>\$1,695,000</del> <u>\$422,201.00</u>  |
| <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)<br>ED546  |  | <b>Account Code</b> (optional)<br>70803000 |  |               |   |

**AMENDMENT 1  
OF CONTRACT 56985**

This Amendment is made and entered by and between the State of Tennessee, Department of Education, hereinafter referred to as the "State" and Paul H. Brookes Publishing Co., Inc., 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.3 is deleted in its entirety and replaced with the following:
  - A.3. The Contractor shall provide the State access to AEPSi, to include the input of assessment data and generating reports related to said data, for a minimum of 15,000 and a maximum of 40,000 active child record licenses to contain all the elements of a child record, including the portion called the child profile (i.e., child name, address, and other demographic data) and all AEPS assessment, journal entries, calendar events and other records made for one child.
2. Contract section B is deleted in its entirety and replaced with the following:

**B. TERM OF CONTRACT:**

- B.1. This Contract shall be effective for the period beginning on February 15, 2018 ("Effective Date") and ending on February 14, 2023 ("Term"). The State shall have no obligation for goods or services provided by the Contractor prior to the Effective Date.
- B.2. Renewal Options. This Contract may be renewed upon satisfactory completion of the Term. The State reserves the right to execute up to four (4) renewal options under the same terms and conditions for a period not to exceed twelve (12) months each by the State, at the State's sole option. In no event, however, shall the maximum Term, including all renewals or extensions, exceed a total of sixty (60) months.
3. Contract section C.1 is deleted in its entirety and replaced with the following:

- C.1. Maximum Liability. In no event shall the maximum liability of the State under this Contract exceed one million ~~four~~ hundred ~~ninety-five~~ ~~twenty-two~~ thousand, ~~two hundred and one~~ dollars and zero cents (~~\$1,422,201,004,695,000.00~~). This Contract does not grant the Contractor any exclusive rights. The State does not guarantee that it will buy any minimum quantity of goods or services under this Contract. Subject to the terms and conditions of this Contract, the Contractor will only be paid for goods or services provided under this Contract after a purchase order is issued to Contractor by the State or as otherwise specified by this Contract.

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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 February 14, 2019. All other terms and conditions of this Contract not expressly amended herein shall remain in full force and effect.

**IN WITNESS WHEREOF,**

**PAUL H. BROOKES PUBLISHING CO., INC.:**

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**SIGNATURE**

**DATE**

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

**TENNESSEE DEPARTMENT OF EDUCATION:**

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**DR. CANDICE MCQUEEN, COMMISSIONER**

**DATE**