



Fiscal Review Committee
Contract #: SAS Institute, Inc.
Tracking #: 33111-006419

1. Summary letter
2. Supplemental Documentation Form
3. Rule Exception Request- Submitted on 10/11/19
4. Special Contract Request
5. STS Endorsement
6. HR Endorsement
7. Proposed Contract



BILL LEE
GOVERNOR

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

PENNY SCHWINN
COMMISSIONER

SUBMITTED VIA ELECTRONIC MAIL

TO: Fiscal Review Committee

FROM: Penny Schwinn, Commissioner

Date: 10/10/2019

RE: Request to appear before the fiscal review committee regarding the sole-source contract for agency tracking
#: 33111-006419

Thank you for your consideration of the enclosed request for a sole-source contract with SAS Institute, Inc. SAS provides the statistical analysis, reporting, and research services for the state's teacher evaluation system and accountability model. This contract outlines the requirements of SAS to calculate the value-added model (TVAAS) which is required in T.C.A. § 49-1-603, T.C.A. § 49-1-604, T.C.A. § 49-1-3021, and is a requirement of our state's approved Every Student Succeeds Act (ESSA) plan. The technology and methodology for these services are proprietary and owned by SAS. Therefore, SAS is the sole entity that has the expertise, information, and staff to provide the suite of TVAAS services.

The state's current contract with SAS is expiring after a full five-year term, and a new contract is needed to continue these services. The proposed contract has a total maximum liability of \$16,270,875.00 with a term length of three-years with two one-year options to renew. This non-competitive contract for the analysis, research, and reporting of growth data is required to comply with federal and state law, and it will also provide growth results for districts, schools, and teachers with growth results. Effective in the 2020-21 school year, this contract will cover the provision of roster verification services. The maximum liability also includes the services of maintenance, support, hosting, and any required development by the vendor for users to access data as outlined in state law and our state approved ESSA plan.

Thank you for your consideration.

Supplemental Documentation Required for
Fiscal Review Committee

*Contact Name:	Joanna Collins	*Contact Phone:	615-770-3869		
*Presenter's name(s):	Joanna Collins, Aleah Guthrie, Jacqueline Montileone,				
Edison Contract Number: <i>(if applicable)</i>	TBD	RFS Number: <i>(if applicable)</i>	33111-006419		
*Original or Proposed Contract Begin Date:	January 1, 2020	*Current or Proposed End Date:	December 31, 2022		
Current Request Amendment Number: <i>(if applicable)</i>					
Proposed Amendment Effective Date: <i>(if applicable)</i>					
*Department Submitting:	Department of Education				
*Division:	Office of Strategy and Data				
*Date Submitted:	10/11/2019				
*Submitted Within Sixty (60) days:	Yes				
<i>If not, explain:</i>					
*Contract Vendor Name:	SAS Institute, Inc.				
*Current or Proposed Maximum Liability:	\$16,270,875.00				
*Estimated Total Spend for Commodities:	N/A				
*Current or Proposed Contract Allocation by Fiscal Year: <i>(as Shown on Most Current Fully Executed Contract Summary Sheet)</i>					
FY:2020	FY:2021	FY:2022	FY:2023	FY2024	FY
\$2,813,175.00	\$3,364,425.00	\$3,364,425.00	\$3,364,425.00	\$3,364,425.00	\$
*Current Total Expenditures by Fiscal Year of Contract: <i>(attach backup documentation from Edison)</i>					
FY:	FY:	FY:	FY:	FY	FY
\$	\$	\$	\$	\$	\$
IF Contract Allocation has been greater than Contract Expenditures, please give the reasons and explain where surplus funds were spent:					
IF surplus funds have been carried forward, please give the reasons and provide the authority for the carry forward provision:					
IF Contract Expenditures exceeded Contract Allocation, please give the reasons and explain how funding					

Supplemental Documentation Required for
Fiscal Review Committee

was acquired to pay the overage:			
*Contract Funding Source/Amount:			
State:	\$16,270,875.00	Federal:	
<i>Interdepartmental:</i>		<i>Other:</i>	
If "other" please define:			
If "interdepartmental" please define:			
Dates of All Previous Amendments or Revisions: <i>(if applicable)</i>		Brief Description of Actions in Previous Amendments or Revisions: <i>(if applicable)</i>	
Method of Original Award: <i>(if applicable)</i>			
*What were the projected costs of the service for the entire term of the contract prior to contract award? How was this cost determined?		The original projected costs for the contract were \$16,270,875.00. That cost was determined in accordance with pricing provided by the vendor and pricing they provide to other state education agencies.	
*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.		A non-competitive contract is necessary because SAS is the only vendor with the content knowledge, technical expertise, and capacity to deliver the analysis, reporting, research services, and trainings required in federally approved state ESSA plan and state law. SAS is the only vendor that calculates TVAAS data as the technology and methodology is proprietary; as a result, they are the only provider positioned to provide the full suite of services needed by the state (including reporting, research, roster verification, and trainings) fully aligned to the requirements in state law. The highly technical nature of TVAAS means the data production and the design and execution of effective and accurate training requires complex technical knowledge that only SAS possesses.	

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](#). Upload the completed document and route for approvals by selecting the appropriate RER e-Form in Edison. For additional guidance, please see the e-Forms Job Aid available online at the following: <https://www.teamtn.gov/cpo/learning-development/cpo-job-aids.html>. 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: If the requested changes involve contracts under a delegation, please use the RER for the DA or DGA templates. Also, any change to the template language regarding the Limitation of Contractor’s Liability shall be submitted using the Limitation of Contractor’s Liability Request.

<p>APPROVED</p> <p>[Upload this RER to e-Forms in Edison. Approval will be captured in Edison Workflow.]</p> <hr/> <p>CHIEF PROCUREMENT OFFICER</p>	<p>APPROVED</p> <p>[Upload this RER to e-Forms in Edison. Approval will be captured in Edison Workflow.]</p> <hr/> <p>COMPTROLLER OF THE TREASURY</p>
<p>Agency request tracking #</p>	33111-006419
<p>1. Procuring Agency</p>	TN Department of Education (TDOE)
<p>2. Edison contract ID #</p>	TBD
<p>3. Please select Procurement or Contract Type. (This will be the RER e-Form for routing purposes.)</p>	<input type="checkbox"/> Grant Contract – for contracts involving Grants <input checked="" type="checkbox"/> Technology - for contracts involving technology <input type="checkbox"/> Risk Management - for changes to insurance or indemnification <input type="checkbox"/> Standard – Agency Term Contract or Statewide Contract (use for non-technology contracts for goods or services)
<p>4. Contractor or Grantee</p>	SAS Institute, Inc.
<p>5. Contract’s Effective Date</p>	January 1, 2020
<p>6. Contract or grant contract’s Term (with ALL options to extend exercised)</p>	60 months
<p>7. Contract’s Maximum Liability (with ALL options to extend exercised)</p>	\$16,270,875.00
<p>8. Citation and explanation of the rule(s) for which the exception is requested</p> <p>MODIFICATIONS TO TEMPLATE PROVISIONS: Central Procurement Office Rule 06960-03-01-.16 states: “the terms and conditions of a contract subject to these Rules shall be written, in form and content, in accordance with CPO Policy”. Further, Rule 06960-03-01-.17 states “the form and content of all contract clauses shall be established by CPO Policy. This Rule shall also prescribe a procedure for approving exceptions or modifications to contract clauses prescribed or prohibited by this Rule or CPO Policy.”</p> <p>TDOE requests an exception to this rule to make modifications and additions to standard and optional terms in the CPO fee-for-service template, using the approval procedure established by the rule. These modifications were negotiated between CPO legal and the vendor, in consultation with the TDOE and STS. The terms to be the addition of:</p>	

9. **Description of requested changes** 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.

- 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' fees, ~~court costs, expert witness fees, and other litigation expenses~~ for the State to enforce the terms of this Contract.

1. 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. **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.**

- 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.32. **Insurance.** Contractor shall maintain insurance coverage as specified in this Section. The parties shall mutually agree upon additional insurance coverage, coverage amounts, and endorsements required under this Contract. The 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) authorized by the Tennessee Department of Commerce and Insurance ("TDCI"); and (b) rated A- / VII or better by A.M. Best. Commercial General Liability and Automobile Liability coverage must be on a primary basis and noncontributory with any other insurance or self-insurance carried by the State. Contractor agrees to include the State as an additional insured on Commercial General Liability and

Automobile Liability Insurance. Commercial General Liability and Automobile Liability policies must contain an endorsement for a waiver of subrogation in favor of the State. The deductible or self-insured retention ("SIR") 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. In the event that an umbrella policy is being provided to achieve any required coverage amounts, the umbrella policy shall follow form and be at least as broad as the underlying policies.

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., 3rd floor Central Procurement Office, Nashville, TN 37243 as the certificate holder. Contractor shall upon request provide the COI. 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. Upon the notification of a claim, the State shall have the right to request complete, certified copies of all required insurance policies, including endorsements required by these specifications.

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 coverage requirements and policy limits shown in the Contract. No representation is made that the minimum insurance requirements of the Contract are sufficient to cover the obligations of the Contractor arising under this Contract. The Contractor shall obtain and maintain the following insurance coverages and policy limits.

a. Commercial General Liability ("CGL") Insurance

- 1) The Contractor shall maintain CGL, which shall be written on an ISO Form CG 00 01 occurrence form (or a substitute form providing equivalent coverage) and shall cover liability arising from property damage, premises and operations products and completed operations, bodily injury, 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 limits not less than one million dollars (\$1,000,000) per occurrence. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this policy or location of

occurrence or the general aggregate limit shall be twice the required occurrence limit.

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.

c. Automobile Liability Insurance

- 1) The Contractor shall maintain automobile liability insurance which shall cover liability arising out of any automobile (including owned, leased, hired, and non-owned automobiles).
- 2) The Contractor shall maintain bodily injury/property damage with a limit not less than one million dollars (\$1,000,000) per occurrence or combined single limit.

d. Technology Professional Liability (Errors & Omissions)/Cyber Liability Insurance

- 1) The Contractor shall maintain technology professional liability (errors & omissions)/cyber liability insurance appropriate to the Contractor's profession in an amount not less than one million dollars (\$1,000,000) per occurrence or claim and one million dollars (\$1,000,000) annual aggregate, covering claims for, errors, omissions, negligence, infringement of intellectual property (including copyright and trade secret); network security and privacy risks, including but not limited to unauthorized access, failure of security, information theft, damage to destruction of or alteration of electronic information, breach of privacy perils, wrongful disclosure and release of private information, collection, or other negligence in the handling of confidential information, and including coverage for related regulatory fines, defenses, penalties and data breach response expenses.

e. Crime Insurance

- 1) The Contractor shall maintain crime insurance providing coverage for third party fidelity, including cyber theft and extortion, and not contain a condition requiring an arrest or conviction.
- 2) Any crime insurance policy shall have a limit not less than one million dollars (\$1,000,000) per claim and one million dollars (\$1,000,000) in the aggregate. Any crime insurance policy shall contain a Social Engineering Fraud Endorsement with a limit of not less than two hundred fifty thousand dollars (\$250,000). This insurance may be written on a claims-made basis, but in the event that coverage is cancelled or non-renewed, the Contractor shall purchase an extended reporting or "tail coverage" of at least one (1) year after the Term.

2. E.2. Contractor Hosted Services Confidential Data, Audit, and Other Requirements

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 and the Contractor's processing environment containing Confidential State Data shall either (1) 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 (2) be subject to an annual engagement by a CPA firm in accordance with the standards of the American Institute of Certified Public Accountants ("AICPA") for a System and Organization Controls for service organizations ("SOC") Type II audit. ~~The State shall approve the SCO audit control objectives.~~ The Trust Services Criteria in the SOC audit shall include the security and availability categories. The Contractor shall provide proof of current ISO certification or FedRAMP authorization for the Contractor and Subcontractor(s), or provide the State with the Contractor's and Subcontractor's annual SOC Type II audit report ~~within 30 days from when the CPA firm provides the audit report of the Contractor or Subcontractor~~ once annually upon request. The Contractor shall work in good faith on any corrective action plans to the State for any issues included in the audit report which directly impact any Hosted Services provided to the State.

If the scope of the most recent SOC audit report does not include all of the current State fiscal year, upon request from the State, the Contractor must provide to the State a letter from the Contractor or Subcontractor stating whether the Contractor or Subcontractor made any material changes to their control environment since the prior audit and, if so, whether the changes, in the opinion of the Contractor or Subcontractor, would negatively affect the auditor's opinion in the most recent audit report.

No additional funding shall be allocated for these certifications, authorizations, or audits as these are included in the Maximum Liability of this Contract.

- (4) The Contractor must annually perform ~~network Penetration Tests. and Vulnerability Assessments against its Processing Environment.~~

“Processing Environment” shall mean the combination of software and hardware on which the Application runs. “Application” shall mean the computer code that supports and accomplishes the State’s requirements as set forth in this Contract. “Penetration Tests” shall be in the form of attacks on the Contractor’s network, with the purpose of discovering security weaknesses which have the potential to gain access to the infrastructure supporting the Processing Environment’s features and data.

Contractor shall apply patches to any Windows based operating systems in the Processing Environment regularly and will make reasonable efforts to apply such patches on a monthly basis. Upon becoming aware of any known critical patches, SAS shall apply such patches to any State affected systems as soon as reasonably practicable. Vulnerability Assessments will be conducted every two weeks with respect to the Application. The “Vulnerability Assessment” shall be designed and executed to define, identify, and classify the security holes (vulnerabilities) in the Processing Environment.

- (5) 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 mutually agreed upon by the Parties.
- (6) Upon termination of this Contract and in consultation with the State, the Contractor shall delete and render irrecoverable 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. Upon request of the State, Contractor shall provide a written confirmation of such deletion to the State within sixty (60) calendar days after removal.

b. Minimum Requirements

- (1) The Contractor and all data centers used by the Contractor to host State data, including those of all Subcontractors, must comply with the State’s Enterprise Information Security Policies in effect as of the date of this Amendment. The State’s Enterprise Information Security Policies document is found at the following URL: <https://www.tn.gov/finance/strategic-technology-solutions/strategic-technology-solutions/sts-security-policies.html>. **The parties acknowledge and agree that the clarifications included herein shall apply to the applicability of such policies document.**
- (2) The Contractor agrees to maintain the Application so that it will run on a current, manufacturer-supported Operating System. “Operating System” shall mean the software that supports a computer’s basic functions, such as scheduling tasks, executing applications, and controlling peripherals.
- (3) 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 installed Application to ensure that security vulnerabilities are not introduced.

c. Comptroller Audit Requirements

Upon thirty (30) calendar days advance notice and at a mutually agreeable time, not to exceed once annually, the Contractor and Subcontractor(s) agree to allow the State, the Comptroller of the Treasury, or their duly appointed representatives to perform an audit of the Contractor’s security obligation as defined in this Contract. Contractor will provide to the State, the Comptroller

of the Treasury, or their duly appointed representatives reasonable access to Contractor and Subcontractor(s) personnel for the purpose of performing the information technology control audit.

The audit may include a review of general controls. General controls are the policies and procedures that apply to all or a large segment of the Contractor's or Subcontractor's information systems and applications and include controls over security management, access controls, configuration management, segregation of duties, and contingency planning. The audit shall include the Contractor's and Subcontractor's compliance with the State's Enterprise Information Security Policies and all applicable requirements, laws, regulations or policies.

The audit may include interviews with technical and management personnel, physical inspection of controls, and review of paper or electronic documentation.

For any audit issues identified, the Contractor and Subcontractor(s) shall provide a corrective action plan to the State within 30 days from the Contractor or Subcontractor receiving the audit report.

Each party shall bear its own expenses incurred while conducting the information technology controls audit.

- d. 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:~~

~~f. "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:~~

~~g.~~

~~h. 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: 24 hours~~

~~i. 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: 48 hours~~

~~j.~~

~~k. The Contractor and the Subcontractor(s) 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 Recovery Test that its Disaster Recovery Capabilities meet the RPO and RTO requirements.~~

- E.3. Family Educational Rights and Privacy Act & Tennessee Data Accessibility, Transparency and Accountability Act. The Contractor shall comply with Family Educational Rights and Privacy Act of 1974 (20 U.S.C. 1232(g)) and its accompanying regulations (34 C.F.R. § 99) ("FERPA"). The Contractor warrants that the Contractor is familiar with FERPA requirements and that it will comply with these requirements in the performance of its duties under this Contract. The Contractor agrees to cooperate with the State, as required by FERPA, in the performance of its duties under this Contract. The Contractor agrees to maintain the confidentiality of all education records and student information. The Contractor shall only use such records and information for the exclusive purpose of performing its duties under this Contract. The obligations set forth in this Section shall survive the termination of this Contract.

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

Any instances of unauthorized disclosure of data containing personally identifiable information in violation of FERPA or DATAA that come to the attention of the Contractor shall be reported to the State within ~~twenty-four hours (24)~~ forty-eight hours (48) of Contractor confirming such unauthorized disclosures. Contractor shall indemnify and hold harmless State, its employees, agents and representatives, from and against any and all claims, liabilities, losses, or causes of action that may arise, accrue, or result to any person or entity that is injured or damaged as a result of Contractor's failure to comply with this section.

3. 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 or ensure 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. **And shall destroy all records as said in PII in section e.2**

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 **forty-eight (48)** of Contractor confirming such unauthorized disclosures forty-eight (48) 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. The obligations set forth in this Section shall survive the termination of this Contract.

4. E.9 Additional lines, items, or options. At its sole discretion, the State may make written requests to the Contractor to add lines, items, or options that are needed and within the Scope but were not included in the original Contract. Such lines, items, or options will be added to the Contract through a Memorandum of Understanding ("MOU"), not an amendment.
- a. After the Contractor receives a written request to add lines, items, or options, the Contractor shall have ten (10) business days to respond with a written proposal. The Contractor's written proposal shall include:
 - (1) The effect, if any, of adding the lines, items, or options on the other goods or services required under the Contract;
 - (2) Any pricing related to the new lines, items, or options;
 - (3) The expected effective date for the availability of the new lines, items, or options; and
 - (4) Any additional information requested by the State.
 - b. The State may negotiate the terms of the Contractor's proposal by requesting revisions to the proposal.
 - c. To indicate acceptance of a proposal, **both parties shall execute the proposal**. The signed proposal shall constitute a MOU between the Parties, and the lines, items, or options shall be incorporated into the Contract as if set forth verbatim.
 - d. Only after a MOU has been executed shall the Contractor perform or deliver the new lines, items, or options.

10. Scope of Goods or Services Caption: Research and reporting services related to data analysis of state Assessments

11. Justification: Deviation agreed upon through negotiations led by CPO involving TDOE and STS

Signature of Agency head or designee and date

[Either upload signed RER to e-Forms in Edison or capture authorized agency approval in Edison Workflow]

TO: Chris Salita, Director of Sourcing

FROM: Tamara Byrd, Sourcing Account Specialist- TDOE

DATE: July 26, 2019

SUBJECT: Special Contract Request cy19 - 13972
33111-006419 –Data Analysis of State Assessments

TByrd
Digitally signed by TByrd
DN: cn=TByrd, o=Sourcing
Account Specialist, ou=TDOE,
email=tamara.byrd@tn.gov,
c=US
Date: 2019.07.26 14:51:58 -05'00'

The Tennessee Department of Education (TDOE) is seeking a sole source procurement contract for research and reporting services related to data analysis of state assessments.

The Educational Value-Added Assessment Services (“EVAAS”) provide reports showing analyses of student achievement data based on longitudinal merging and warehousing of data provided by customers. Subject to the terms of the applicable EVAAS service agreement, SAS will perform multivariate, longitudinal analyses using data for students and, if applicable, teachers, for customer’s assessment purposed. EVAAS technology and methodology is proprietary and owned by SAS; therefore, SAS is the sole entity that has the expertise, information, and staff to provide EVAAS services.

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

SAS is the only vendor that calculates a value-added model that complies with the requirements in T.C.A § 49-1-603 and T.C.A. §49-1-604. The value added methodology that the contractor employs for analysis, reporting and research purposes is proprietary, and no other contactor can offer a similar service.

This contract will provide the required data analysis and reporting, hosting and displaying confidential data securely, and related research for measuring and improving academic performance as required in statute.

Sourcing Specialist recommends approval of a sole source contract for three (3) years with two (2) options to renew with SAS Institute Inc. for a maximum contract cost of \$16,270,875.00.

Chris Salita
Digitally signed by Chris Salita
DN: cn=Chris Salita, o=CPO, ou=32101,
email=Chris.Salita@tn.gov, c=US
Date: 2019.08.14 07:55:11 -05'00'

Chris Salita, Director of Sourcing	Date
Mark Naftel - Associate Counsel	7/29/19
CPO Attorney	Date

Digitally signed by Mark Naftel - Associate Counsel
DN: cn=Mark Naftel - Associate Counsel, o=General
Services, ou=Central Procurement Office,
email=mark.naftel@tn.gov, c=US
Date: 2019.07.29 09:38:01 -05'00'

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>APPROVED</p> <p>Michael F. Perry-CS</p> <p><small>Digitally signed by Michael F. Perry-CS DN: cn=Michael F. Perry-CS, o=CPO, ou=32101, email=Chris.Salita@tn.gov, c=US Date: 2019.08.14 07:55:26 -05'00'</small></p>	<p>APPROVED</p> <p>Bryan Chriske on behalf of Comptroller Justin P. Wilson</p> <p><small>Digitally signed by Bryan Chriske on behalf of Comptroller Justin P. Wilson Date: 2019.08.19 09:36:17 -05'00'</small></p>
<p>CHIEF PROCUREMENT OFFICER</p> <p>DATE</p>	<p>COMPTROLLER OF THE TREASURY</p> <p>DATE</p>

Request Tracking #	33111-006419
1. Contracting Agency	TN Department of Education (TDOE)
2. Type of Contract or Procurement Method	<input type="checkbox"/> No Cost <input type="checkbox"/> Revenue <input checked="" type="checkbox"/> Sole Source <input type="checkbox"/> Proprietary <input type="checkbox"/> Competitive Negotiation <input type="checkbox"/> Other _____
3. Requestor Contact Information	Jacqueline Montileone, Jacqueline.Montileone@tn.gov , 615-390-2446 <i>Jacqueline.Montileone@tn.gov</i>
4. Brief Goods or Services Caption	Research and reporting services related to data analysis of state assessments <i>7/25/2019</i>

Request Tracking #	33111-006419
5. Description of the Goods or Services to be Acquired	<p>The contractor will conduct data analysis, statistical modeling, research activities, and technical training associated with the production of value-added results (Tennessee Value-Added Assessment System [TVAAS]). TVAAS is required in state law and policy for the purposes of teacher evaluation and for holding schools and districts accountable for performance as required under federal education legislation.</p> <p>This contract will provide for the required data analysis and reporting, hosting and displaying confidential data securely, and related research for measuring and improving academic performance as required in statute.</p>
6. Proposed Contractor	SAS Institute Inc.
7. Name & Address of the Contractor's principal owner(s) – NOT required for a TN state education institution	100 SAS Campus Drive Cary, NC 27513
8. Proposed Contract Period – with ALL options to extend exercised The proposed contract start date shall follow the approval date of this request.	January 1, 2020 – December 31, 2022 60 months (initial term of 36 months with 2 options to renew)
9. Strategic Technology Solutions ("STS") Pre-Approval Endorsement Request – information technology (N/A to THDA)	<input type="checkbox"/> Not Applicable <input checked="" type="checkbox"/> Attached
10. eHealth Pre-Approval Endorsement Request – health-related professional, pharmaceutical, laboratory, or imaging	<input checked="" type="checkbox"/> Not Applicable <input type="checkbox"/> Attached
11. Human Resources Pre-Approval Endorsement Request – contracts with an individual, state employee training, or services related to the employment of current or prospective state employees	<input type="checkbox"/> Not Applicable <input checked="" type="checkbox"/> Attached
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.	<input checked="" type="checkbox"/> NO <input type="checkbox"/> YES,
13. Maximum Contract Cost – with ALL options to extend exercised	\$ 16,270,875.00
14. Was there an initial government estimate? If so, what amount?	<input checked="" type="checkbox"/> NO <input type="checkbox"/> YES, \$

Request Tracking #	33111-006419
15. Cost Determination Used- How did agency arrive at the estimate of expected costs?	SAS provided a cost proposal and payment schedule that included data analysis and research services, secure data warehousing and reporting, and technical support. Furthermore, this payment schedule aligns with what other states are charged for the same or similar services.
16. Explanation of Fair and Reasonable Price- Explain how agency determined that price is fair and reasonable	<p>The department determined that the costs of continuing to contract with SAS for value-added analysis and reporting are fair and reasonable in light of the resources that would be required needed to change statute to allow the possibility of using other vendors, procure a similar set of services, integrate the analysis with state systems, and retrain district, school, and state users. The department has invested significant time, effort, and resources into educating and engaging stakeholders around TVAAS, further increasing switching costs and the resources required to deploy a different solution (i.e., in terms of training, technical assistance, guidance, communications, etc.).</p> <p>Furthermore, because SAS currently provides analysis, research, and value-added reporting to a number of other states, they can achieve an economy of scale and distribute development costs across customers to offer Tennessee a fair value. Their pricing aligns with what they charge other state clients.</p>
17. Documentation of Discussions with Contractor- How did agency document discussions with Contractor? Attach documentation to this request as applicable.	The department documents discussions with the contractor through minutes of weekly calls and through email correspondence.

<p>Request Tracking #</p>	<p>33111-006419</p>
<p>18. Explanation of Need for or requirement placed on the State to acquire the goods or services</p>	<p>State and federal law require the department to evaluate teachers and to differentiate school performance meaningfully on an annual basis. These performance evaluations include value-added performance as a significant part of their calculations. Furthermore, teacher evaluation specifically requires TVAAS by law, so we would be unable to fulfill our legal obligations without the teacher evaluation provisions of the contract. As it relates to annual evaluations of schools and districts, the department is required to submit a plan to the US Department of Education under the federal Every Student Succeeds Act. This plan is considered a binding document, and any deviation from the plan jeopardizes federal funding (hundreds of millions of dollars). As our state plan specifically includes TVAAS, the contract is necessary to fulfill our obligations as outlined in our plan.</p>
<p>19. Proposed contract impact on current State operations</p>	<p>The uses of teacher, school, and district evaluations include, but are not limited to:</p> <ul style="list-style-type: none"> • Federally and state-required reporting of teacher, school, and district performance • Teacher evaluation and district pay for performance policies • Identification of low-performing schools, as required by law • Disbursement of millions of dollars of federal and state monies to low-performing schools <p>Inability to execute this contract would jeopardize all of the operations listed above. Furthermore, school districts consistently rate the value-added data, reporting, and analysis they receive as among the most useful for improving student performance. If we are unable to execute the contract, it would further threaten the state's ability to sustain the improvement in student performance we have seen in recent years.</p>

Request Tracking #	33111-006419
20. Justification – Specifically explain why the goods or services should be acquired through the procurement method or contract type selected.	Please see the attached sole source letter. SAS is the only vendor that calculates a value-added model that complies with the requirements in T.C.A. § 49-1-603 and T.C.A. § 49-1-604 and is the only vendor able to provide the full suite of services outlined in the contract. The value-added methodology that the contractor employs for analysis, reporting and research purposes is proprietary, and no other contractor can offer a similar service. Furthermore transitioning to another vendor would significantly increase infrastructure and training costs associated with hosting the web applications used for reporting data, as well teaching the thousands of statewide users of the system to use a new platform for accessing and analyzing data.
For No Cost and Revenue Contracts Only	
21. What costs will the State incur as a result of this contract? If any, please explain.	
22. What is the total estimated revenue that the State would receive as a result of this contract?	
23. Could the State also contract with other parties interested in entering substantially the same agreement? Please explain.	<input type="checkbox"/> NO <input type="checkbox"/> YES
24. Summary of State responsibilities under proposed contract	
For Sole Source and Proprietary Procurements Only	
25. Evidence of Contractor's experience & length of experience providing the goods or services to be procured.	SAS is the industry leader in value-added calculations for education. They have been providing data analysis, research, and reporting services to Tennessee for nearly a decade and have consistently delivered high quality products on time. SAS currently provides these services in 5 states, including NC, OH, PA, SC, and TN.
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.	<input type="checkbox"/> NO <input checked="" type="checkbox"/> YES, Method: Sole Source Name/Address: SAS Institute Inc. 100 SAS Campus Drive Cary, NC 27513

Request Tracking #	33111-006419
27. Contractor selection process and efforts to identify reasonable, competitive, procurement alternatives	Please see attached sole source letter. The original methodology the contractor employs was developed by a researcher at the University of Tennessee. The researcher sold the model to the current contractor. Efforts to replicate this methodology would be prohibitively expensive in terms of the staff, training, time, and money required.
Signature Required for all Special Contract Requests	
<p>Signature of Agency head or authorized designee, title of signatory, and date (the authorized designee may sign his or her own name if indicated on the Signature Certification and Authorization document)</p> <p style="text-align: right;">Digitally signed by Dr. Penny Schwinn_jc DN: cn=Dr. Penny Schwinn_jc, o, ou, email=joanna.collins@tn.gov, c=US Date: 2019.07.23 16:17:08 -05'00'</p> <p>Dr. Penny Schwinn_jc</p> <p>Signature: _____</p> <p style="text-align: right;">Date: _____</p>	



SAS Institute World Headquarters
SAS Campus Drive
Cary, NC 27513
Tel (919) 677 8000 Fax (919) 677 4444
U.S. Sales (800) 727 0025
www.sas.com

The Power to Know.

June 5, 2019

State of Tennessee, Division of Assessment, Accountability & Data Governance
Andrew Johnson Tower, 10th Floor
710 James Robertson Parkway
Nashville, Tennessee 37246
Attn: Mary Batiwalla

Re: SAS Institute Inc. EVAAS Services

Dear Ms. Batiwalla:

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

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

The Educational Value-Added Assessment Services ("EVAAS") provide reports showing analyses of student achievement data based on longitudinal merging and warehousing of data provided by customers. Subject to the terms of the applicable EVAAS service agreement, SAS will perform multivariate, longitudinal analyses using data for students and, if applicable, teachers, for customer's assessment purposes. EVAAS technology and methodology is proprietary and owned by SAS; therefore, SAS is the sole entity that has the expertise, information, and staff to provide EVAAS services.

Under certain circumstances, eligible government entities may procure EVAAS services through SAS' authorized government reseller of SAS commercial software offerings. Currently, Executive Information Systems, LLC ("EIS") with offices at 6901 Rockledge Drive, Suite 600, Bethesda, Maryland 20817, is SAS' sole authorized reseller for EVAAS services to such government entities. EIS may sell EVAAS Services under an approved federal schedule contract or terms approved by SAS.

Sincerely,

Dave Gray
Sr. Manager, Sales Operations
SAS Institute Inc., US Public Sector



STS Pre-Approval Endorsement Request E-Mail Transmittal

TO : STS Contracts
Department of Finance & Administration
E-mail : it.abc@tn.gov

FROM : Evan Kramer
E-mail : Evan.Kramer@tn.gov

DATE : 7/5/2019 Received by STS on Friday, July 5, 2019

RE : Request for STS Pre-Approval Endorsement

Applicable RFS # 33111-006419	
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.	
<input type="checkbox"/> Applicable <input checked="" type="checkbox"/> Not Applicable	
Additional language is attached and endorsement is contingent upon inclusion of this additional language:	
<input checked="" type="checkbox"/> Applicable <input type="checkbox"/> Not Applicable	
STS Endorsement Signature & Date:	
Stephanie Dedmon, CIO (WMH)	Digitally signed by Stephanie Dedmon, CIO (WMH) Date: 2019.07.23 14:02:23 -05'00'
Chief Information Officer	
<i>NOTE: Proposed contract/grant support is applicable to the subject IT service technical merit.</i>	

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.

Applicable RFS # 33111-006419	
Contracting Agency	Education
Agency Contact (name, phone, e-mail)	Evan Kramer, 615-761-6623, Evan.Kramer@tn.gov
<p>Attachments Supporting Request (mark all applicable)</p> <p>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.</p> <p> <input type="checkbox"/> Solicitation Document <input type="checkbox"/> Special Contract Request <input type="checkbox"/> Amendment Request <input checked="" type="checkbox"/> Proposed Contract/Grant or Amendment <input type="checkbox"/> Original Contract/Grant and Previous Amendments (if any) </p>	
<p>Information Systems Plan (ISP) Project Applicability</p> <p>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.</p> <p>IT Director/Staff Name Confirming (required): Steven Sanders</p> <p> <input type="checkbox"/> Applicable – Approved ISP Project# <input checked="" type="checkbox"/> Not Applicable </p>	
<p>Subject Information Technology Service Description</p> <p>Provide a brief summary of the information technology services involved. Clearly identify included technologies such as system development/maintenance, security, networking, etc. As applicable, identify the contract or solicitation sections related to the IT services.</p> <p>As specified in sections A.4, A.5, and A.6 of the attached contract, the proposed contractor is responsible for maintaining the security and privacy of personally identifiable information used in the data analysis and research activities included in the scope of the contract. The proposed contractor will also be responsible for maintaining a secure web application that houses personally identifiable information regarding academic performance on statewide standardized tests.</p>	

Attachment: STS Endorsement Conditions

This STS endorsement is contingent upon modification of the procurement documents as described below.

STS endorses with the understanding Education will provide the Recovery Objectives values on page 22 section E.2.d.



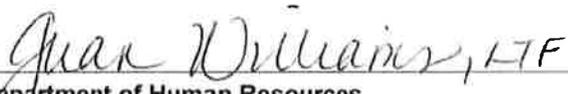
HR Pre-Approval Endorsement Request E-Mail Transmittal

TO : Department of Human Resources
E-mail : DOHR.Contracts@tn.gov

FROM : Evan Kramer
E-mail : Evan.Kramer@tn.gov

DATE : 7/5/2019

RE : Request for Human Resources Pre-Approval Endorsement

Applicable RFS #
Human Resources Endorsement Signature & Date:
 Department of Human Resources
7/8/19

Department of Human Resources (HR) pre-approval endorsement is required pursuant to procurement regulations pertaining to contracts with an individual; contracts that involve training State employees (except training pursuant to an information technology system procurement); or services relating to the employment of current or prospective state employees (interviewing, screening, evaluating, *et cetera*). This request seeks to ensure that HR 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 HR endorsement of the described procurement (with the appropriate signature above), and return this document via e-mail at your earliest convenience.

Contracting Agency	Education
Agency Contact (name, phone, e-mail)	Evan Kramer, 615-761-6623, Evan.Kramer@tn.gov
Attachments Supporting Request (as applicable – copies without signatures acceptable)	
<input type="checkbox"/> Solicitation Document <input type="checkbox"/> Special Contract Request <input type="checkbox"/> Amendment Request <input checked="" type="checkbox"/> Proposed contract or amendment	
Subject HR Service Description (Brief summary of HR services involved. As applicable, identify the contract and solicitation sections related to the HR services.)	
The proposed contractor will provide data analysis and research services as well as training for understanding and using the statistical model used to compute value-added results. The scope of work is outlined in section A.4 of the attached draft contract.	

**CONTRACT**

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

Begin Date January 1, 2020	End Date December 31, 2022	Agency Tracking # 33111-006419	Edison Record ID		
Contractor Legal Entity Name SAS Institute Inc.			Edison Vendor ID 0000000751		
Goods or Services Caption (one line only) Research and reporting services related to data analysis of state Assessments					
Contractor <input checked="" type="checkbox"/> Contractor		CFDA #			
Funding —					
FY	State	Federal	Interdepartmental	Other	TOTAL Contract Amount
2020	\$2,813,175.00				\$2,813,175.00
2021	\$3,364,425.00				\$3,364,425.00
2022	\$3,364,425.00				\$3,364,425.00
TOTAL:	\$9,542,025.00				\$9,542,025.00
Contractor Ownership Characteristics:					
<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 employs no more than ninety-nine (99) employees.					
<input type="checkbox"/> Government <input checked="" type="checkbox"/> Non-Minority/Disadvantaged <input type="checkbox"/> Other:					
Selection Method & Process Summary (mark the correct response to confirm the associated summary)					
<input type="checkbox"/> Competitive Selection		Describe the competitive selection process used			
<input checked="" type="checkbox"/> Other		Sole source; the Contractor is the only provider of the research, analysis, and reporting services required by state and federal law. SAS is the only vendor that calculates a value-added model that complies with the requirements in Tenn. Code Ann. § 49-1-603 and Tenn. Code Ann. § 49-1-604 and is the only vendor able to provide the full suite of services outlined in the contract.			
Budget Officer Confirmation: There is a balance in the appropriation from which obligations hereunder are required to be paid that is not already encumbered to pay other obligations.					
Speed Chart (optional) ED00000449		Account Code (optional) 70803000			

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

RFS Number	33111-006419							
Edison ID								
Fiscal Year	Department ID	Speedchart Number	Program Code	Account Code	Fund	Project/Grant Code	CFDA #	Amount
2020	3311101000	ED00000449	873100	70803000	25000	N/A	N/A	\$2,813,175.00
2021	3311101000	ED00000449	873100	70803000	25000	N/A	N/A	\$3,364,425.00
2022	3311101000	ED00000449	873100	70803000	25000	N/A	N/A	\$3,364,425.00
TOTAL								\$9,542,025.00

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

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

The Contractor is a For-Profit Corporation.

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

Contractor Edison Registration ID # 0000000751

A. SCOPE:

- A.1. The Contractor shall provide all goods or services and deliverables as required, described, and detailed below and shall meet all service and delivery timelines as specified by this Contract.
- A.2. Definitions. For purposes of this Contract, definitions shall be as follows and as set forth in the Contract:
- a. Analytical Services – Services provided by the Contractor to ensure the technical soundness of Assessments. Such services may include the selection of representative samples of Tennessee students, conducting pilot studies, scaling of items and Assessment forms, scale/item parameter drift studies, item bias/differential item functioning (DIF) analysis, setting of performance standards, and demonstration of Assessment reliability and validity.
 - b. Assessment – An evaluation of student achievement related to knowledge and skills in a specific content area.
 - c. State-Mandated Assessment – An Assessment that local education agencies (LEAs) and schools are required to administer in accordance with state or federal law and/or policy.
 - d. State-Supported Assessment – An Assessment whose administration is supported by the State in which participation is optional at the school or district level.
 - e. Calibration – Placing items on a common scale so that items measuring the same underlying content represent a position on the scale that is also represented by other items of comparable difficulty.
 - f. Comparability and Equating – Statistical evidence that the Assessment is similar in content and psychometric characteristics to the current Assessment.
 - g. Criterion-Referenced Comparability and Equating – An Assessment aligned to pre-defined content standards and designed to measure student achievement relative to those standards.
 - h. Local Education Agency ("LEA") – A school district or school system that is the financial and administrative agency for school(s) in a certain region of the State.
 - i. Online Applications – Web-based products as defined in section A.6
 - j. Every Student Succeeds Act ("ESSA") – Federal Legislation related to Education, provides for mandated CRT Assessments.
 - k. Scientific Validity and Empirical Standards –the Assessment shall meet the criteria for Assessment development, administration, and use described in the *Standards for Educational and Psychological Testing* (1999) adopted by the American Educational Research Association (AERA), the American Psychological Association (APA), and the National Council on Measurement in Education (NCME). www.apa.org/science/standards.html. www.apa.org/science/testing.html
 - l. Standards and Assessment Peer Review by the Office of Student Achievement and School Accountability of the U.S. Department of Education – Specific federal compliance requirements for the appropriateness of Assessments used by states. <http://www.ed.gov/admins/lead/account/saa.html#peerreview>.

- m. State Special Schools – A school that is managed by the State. Summary data for State Special Schools is included with public schools. Current schools include: Alvin C. York Institute, Tennessee Governor’s Academy, Tennessee School for the Blind, Tennessee School for the Deaf, West Tennessee School for the Deaf, and Department of Children’s Services.
- n. Student Identification System (“SSID”) – A secure system for providing individual student identification numbers as required by Tenn. Code Ann. § 49-6-5105.
- o. Tennessee Comprehensive Assessment Program (TCAP) – The program for designing and administering Assessments as required by State and federal law.
- p. TCAP Achievement - Achievement Assessment mandatory for grades 3-8 and optional for grades K-2.
- q. TCAP Alternative/MSAA – Alternative Assessment for students with the most significant cognitive disabilities.
- r. TCAP Assessments – Used to identify all State Assessments as a group.
- s. TCAP Constructed Response Assessment (“CRA”) – Assessment administered in grades 3-11 that requires students to write in and develop their answer, as differentiated from a multiple-choice question.
- t. TCAP End of Course Assessments (“EOC”) – Assessments administered for high school content areas.
- u. TCAP Writing Assessment (“WA”) – Writing Assessment administered in grades 3-11.
- v. Teacher Advancement Program (“TAP”) – comprehensive, systemic reform model designed to address the challenges of K-12 education which includes strategies to attract, retain, develop and motivate talented people to the teaching profession.
- w. Value-Added Assessment System (“TVAAS”) - One component of the State accountability program that utilizes a statistical methodology to measure student achievement gains.
- x. Test Year (“TY”) - The Assessment administration period from July 1 through June 30. Final reporting for the Test Year may extend into the following Test Year.
- y. Validity and Reliability Requirements – Statistical and psychometrical evidence that the Assessment consistently measures the standards and determines level of proficiency.

A.3. Annual Work Plan and Deliverables. The Contractor shall provide the deliverables under this Contract in accordance with the delivery schedule stated in the Annual Work Plan, as described below:

- a. Annual Work Plan – The Contractor shall prepare, for State approval, a detailed Annual Work Plan for each Test Year that incorporates the development schedules for the activities of this Contract. The initial Annual Work Plan shall be provided to the State within thirty (30) days after the Effective Date and each May 1 thereafter. Each subsequent Annual Work Plan shall be provided to the State by May 1 or following business day, each year and shall cover the period June 1 through May 31 for that Test Year. The last Annual Work Plan (due May 1, 2022) shall cover the period from June 1, 2022 through December 31, 2022. The Annual Work Plan shall establish the dates of the deliverables listed in sections A.5 and A.6 of this Contract. Materials shall be considered delivered and final after written notification is given to the Contractor via email or other electronic methods by the State contact in E.2 or their official designee.
 - (1) The Annual Work Plan shall include the steps for all project work tasks and deliverables including initiation and completion dates, and task responsibilities for the Contractor and the State to avoid any disruption of services, requirements or deliverables to the students, teachers, schools, LEAs, and State.
 - (2) The Annual Work Plan will outline by task and due date each activity to be performed under this Contract following the deliverable timelines established in A.4. It is understood that all deliverables for research and analysis are contingent upon the delivery of clean data from the State and/or Assessment vendors.
 - (3) Dates are subject to review and change based upon the delivery of clean data, changes in state and/or federal reporting deadlines, and changes in state education policies. The Annual Work Plan must describe all activities related to the support services, research, analysis, and online reporting, including each

stage of production. The Annual Work Plan will serve as a monitoring document to be used by the State to assure timely completion of tasks as scheduled.

- (4) The Contractor shall establish secure SharePoint, file transfer protocol ("FTP") websites, or application programming interfaces ("API") for use in maintaining the Annual Work Plan and other communications, including but not limited to posting file layouts, research data, and analysis documentation for review, with the State for contract management.
- (5) The Annual Work Plan shall be delivered in Microsoft Project or mutually agreeable format. The Annual Work Plan shall be maintained as a fluid, ongoing project document for each Test Year.
- (6) The Contractor shall maintain, edit, and update the Annual Work Plan as needed. All changes to timelines and deliverables in the Annual Work Plan must be approved by the State; the Contractor shall provide an updated version of the plan in the agreed upon format to the State within two business days of any agreed upon change.
- (7) The Contractor shall annually provide the facility, transportation, food, and lodging for an Annual Work Plan review between the representatives of the State and the Contractor for planning, research projects, and report approval, as needed. State representatives in consultation with the Contractor shall make selection of the meeting site and dates. Meeting participants shall include the key project staff including project coordinators and their supervisors from both organizations.

- b. Roster Verification – Linkage application that allows teachers to select or verify their students and the proportion of instructional responsibility for which they are accountable and responsible, as well as accompanying support for effective implementation of the application.
- c. Teacher Value-Added Reporting – Teacher-effect information as detailed in A.8.a and other value-added reporting deliverables.
- d. Accountability Value-Added Reporting – Accountability data for federal and state reporting.
- e. Research and Development – Studies shall be conducted as requested by the State on timelines determined through the Annual Work Plan.
- f. Training – Webinars created in collaboration with the State.
- g. e-Learning Courses – Learning modules created in collaboration with the State.
- h. Training Consultation – Consultation shall be provided to the State as needed throughout the contract year.

A.4. Ownership. The State shall own all the contents of all materials, reports, data, and other deliverables in tangible or intangible form developed or produced by Contractor under this Contract ("Work Product"). Contractor shall retain full ownership rights to all materials pre-existing this Contract and not developed or produced specifically for the State, including any commercially available software the rights to which are owned by Contractor. The Contractor may use for its own purposes the general knowledge, skills, experience, ideas, concepts, know-how, and techniques obtained and used during the course of performing under this Contract. The Contractor may develop for itself, or for others, materials which are similar to or competitive with those that are produced under this Contract. It is expressly understood that the contracted services will not require the development of new software or modification of existing software and that the only Work Product under this Contract are reports. Contractor agrees that all data supplied by the State pursuant to this Contract remains the property of the State in all forms. Contractor shall obtain written permission of the Commissioner of Education prior to the use of such data other than the fulfillment of Contractor's obligations under this Contract.

A.5. Approvals and Revisions. The State shall have final approval rights over all materials and/or deliverables developed under this Contract. The Contractor shall not disseminate any written information, materials, or deliverables to the LEAs, public, or any other third party without the State's written approval. The Contractor shall allow the State a minimum of five (5) days to review materials and/or deliverables. If necessary, the Contractor shall make modifications as directed by the State and provide additional time of not less than three (3) days for the State to review and

sign-off on the revised submission. The Contractor is responsible for any costs associated with making modifications to materials and deliverables necessary to obtain the State's approval at no cost to the State.

A.6. General Scope of Assessment Services. The general scope of Assessment services includes the following:

- a. The Contractor shall work with the State to provide data analysis and support of the TVAAS system in accordance with Tennessee law, including Tenn. Code Ann. §§ 49-1-211, 49-1-302, 49-1-601, 49-1-602, 49-1-604, 49-1-607, 49-1-613, 49-2-303, and 49-6-3050. The Contractor shall provide analysis and research and shall work with the State to ensure all mandated Assessments meet the requirements of applicable federal law, administrative regulations or policy including but not limited to ESEA, ESSA, and IDEA.
- b. The Contractor shall work with the State to adhere to any changes in federal or state law, administrative regulation or policy. Such work shall include any documents, papers, or records requested by the State or the United States Department of Education for review and audit purposes. The Contractor shall also provide Analytical Services to ensure that all mandated Assessments meet the requirements of Tennessee law, and State Board of Education Rules and Policies.

A.7. Administration Activities. The Contractor shall provide data analysis services for all public and State Special Schools beginning in 2019-2020 (TY20):

- a. Security Procedures – The Contractor shall provide detailed, standardized security procedures for review and approval by the State. Approved security procedures shall be included in the Annual Work Plan. The procedures must:
 - (1) Comply with State of Tennessee Test Security Law, Tenn. Code Ann. § 49-1-607.
 - (2) Include Assessment security procedures in the production, distribution, and collection of all Assessment data
 - (3) Include Assessment security procedures for all student demographic data during analysis and reporting
 - (4) The Contractor shall not issue public statements to the press or to LEAs in regard to data analysis, reports, results, or procedures without approval from the state. All inquiries from the press made directly to the Contractor shall be directed to the State.

A.8. Data and Research Activities. The Contractor shall provide data and research activities as described below:

- a. Value-Added Reporting
 - (1) The Contractor shall maintain a comprehensive document that outlines all business rules and Analytical Services used in generating teacher, school, and district effects, evaluation composites, student projections, and any additional Analytical Services or metrics developed in collaboration with the State to be used in either teacher or accountability reporting. The business rules shall be updated by the Contractor as necessary to reflect changes proposed by the Contractor and approved by the State. The business rules shall be revised as necessary to accommodate any changes in state or federal law as well as changes made to Assessments. The Contractor shall use version control when making revisions to the business rules and maintain the most recent version on a secure website or SFTP.
 - (2) The Contract shall assess the suitability of Assessment scores as necessary for use in the analyses with regards to whether there is sufficient stretch in the distribution of test scores to distinguish the performance of students at different achievement levels over time as well as whether there is sufficient reliability in

- the distribution of test scores. The Contractor shall notify the State regarding results of analyses each year with any recommendations as needed.
- (3) The Contractor shall maintain existing software to accommodate the State's delivery of student-teacher linkages.
 - (4) At the State's request, the Contractor shall conduct the Roster Verification process to allow teachers to select or verify their students and the proportion of instructional responsibility for which they are accountable and responsible. This will include:
 - a. Deadline management:
 - i. Provide either dashboards or reporting that monitor completion of Roster Verification progress by district and school.
 - ii. At times specified by the State, the Contractor shall send reminder emails to districts regarding key deadlines within the Roster Verification process.
 - b. Technical assistance
 - i. Respond to emails regarding login issues, platform functionality questions, or other issues regarding the use of the Roster Verification application. As needed, the Contractor will forward non-technical questions or policy questions to the State.
 - ii. The Contractor shall respond within twenty-four (24) business hours of receipt of a question and shall maintain a log of all customer service contacts.
 - c. All training modules and technical support for end-users interacting with the Roster Verification process.
 - i. Develop comprehensive, web-based training for all components of the system (basic login and navigation, checklists for each phase of work, FAQs and sample scenarios) and all stakeholder groups (teachers, principals, district administrators) as approved by the State.
 - (5) In the event that the Contractor does not provide Roster Verification services, the Contractor shall process student-teacher linkages received from the State each year to complete the analyses as set forth in this Contract. The Contractor shall report any issues relating to the data received from the State solely to the extent it becomes aware of any issues and shall assist the State with its efforts to send updated data as necessary.
 - (6) The Contractor shall estimate teacher, school, and district effects and measures of student-level change based upon the data generated by State-Mandated and State-Supported optional Assessment administrations. Reporting of the teacher, school, and district data shall include estimates, standard errors, index scores, and levels.
 - (7) The Contractor shall provide evaluation composite indices and levels, as well as the underlying data used for these calculations, at the teacher, school, and district level as requested by the State according to the timeline established in the Annual Work Plan. The composites shall include multiple grades/subjects according to business rules approved by the State and maintained by the Contractor each year.
 - (8) The Contractor shall provide teacher-student equity reports that explore equity gaps between teaching effectiveness and student-level characteristics, compare trends among different student groups and content areas, and list highly effective teachers and enrolled students based on selected demographic information.
 - (9) The Contractor shall calculate student-level projections for State-Mandated and State-Supported Assessments using students' prior testing histories when sufficient data is available. Projections or any future student-level analytics shall be completed to the specifications outlined in the business rules document. The Contractor shall make student-level projection data available to the State in a usable and tabular format approved by the State.
 - (10) The Contractor shall provide the State with files including TVAAS results at the teacher, school, or district level, files outlining the distribution of particular results,

and files containing student projections and other student-level data as outlined in the Annual Work Plan or at the request of the State. This shall include files required for certain academic content areas, student groups, grade bands, or other configurations as required for implementing the state's accountability framework.

- (11) The Contractor shall provide teacher, school, and district level reporting including estimates, evaluation composites, and diagnostic reporting for the most recent three years and the most recent student projections on the TVAAS restricted site. In consultation with the State, the Contractor shall provision and manage access and require users to log in to access confidential data. Account access shall be administered in accordance with state and federal law. The restricted site shall be updated on the timeline established in the Annual Work Plan. The Contractor shall maintain and host this site. Any reports on the restricted site shall be printable and able to be saved in .pdf file format. For any reports that are not able to be exported via the web application, the State may request that the Contractor provide the data in tabular format as outlined in Section A.8.(a)(10).
- (12) The Contractor shall provide school and district level reporting including estimates and evaluation composites on the TVAAS public site on the timeline established in the Annual Work Plan. Contractor shall maintain and host this site.
- (13) The Contractor shall integrate student demographic and enrollment data provided by the State to allow for student queries on the restricted TVAAS sites. The Contractor shall update the data on a schedule established through the Annual Work Plan or as requested by the State.
- (14) The Contractor shall maintain help files for each report on the public and restricted site explaining the data presented in the report and how it should be interpreted. These files shall be linked on each report on the restricted and public TVAAS sites. Help files shall be updated to reflect new data elements and changes to existing reports.
- (15) The Contractor shall provide answers to questions submitted through the TVAAS public site, the TVAAS restricted site, via email, or through the State pertaining to topics including the business rules for the calculation of TVAAS scores, student projections, technical issues related to the public and restricted TVAAS sites, access to the TVAAS sites, navigating the website, and accessing or interpreting reports. The Contractor shall respond within twenty-four (24) business hours of receipt of the question and shall maintain a log of all customer service contacts.
- (16) The Contractor shall maintain a comprehensive document that details the quality assurance processes used during data analysis and generating teacher, school, and district estimates or student projections. The quality assurance document shall be revised as necessary to accommodate any changes in state or federal law as well as changes made to Assessments. The Contractor shall use version control when making revisions to the quality assurance documentation and maintain the most recent version on a secure website or SFTP.
- (17) The Contractor shall provide files including value-added and achievement data at the school, district, and state level for the State Report Card as requested by the State or on the timeline established in the Annual Work Plan in a format approved by the State.
- (18) The Contractor shall allow for the export of student projections and district, school, and teacher level value-added estimates in mutually agreeable multiple file formats to include but not be limited to .html, .csv, .txt and .xlsx through a function on the restricted site. Permissions to export data on the restricted site shall be in accordance with the permissions to view data granted to the user on the restricted site. District and school level information will be made available through the public site if requested by the State in a format proposed by the Contractor and approved by the State. These exports shall permit State users to extract data for the entire state as single files rather than having to export data for each school or district individually. These exports will be available aggregated at the school and district levels.
- (19) The Contractor shall provide website usage statistics to the State every three months. The usage statistics shall include the number of logins to the restricted

site by month, usage trends by individual user, the number of times the public site has been accessed each month and other available usage statistics as requested by the State.

- (20) The Contractor shall provide additional teacher-level composite scores as requested by LEAs implementing strategic compensation models.
- (21) The Contractor shall review training materials and resources developed by the State that reference estimates, projections, or reporting produced by the Contractor to provide feedback on accuracy and to suggest any revisions that would make the resources more accurate.
- (22) The Contractor shall maintain an updated demonstration site with simulated data containing no personally identifiable information for the most recent reporting available on the restricted site. The demonstration site shall be made available after any reporting on the restricted site is released.
- (23) RESERVED
- (24) The Contractor shall provide additional teacher-level value-added estimates for educator preparation programs that include performance of the educators completing their program.

b. Research and Development

- (1) The Contractor shall conduct research studies at the request of the State each year. The studies shall provide rigorous statistical analyses for research questions defined by the State which will aid in the determination of effective policies and practices.
- (2) The Contractor shall provide the State with estimates of the number of days required to complete each research request, an estimate of the completion date, and a description of the deliverable(s) prior to beginning work to be approved by the State. The Contractor will also maintain an updated list of the studies conducted and the days used in the current year and will provide this list to the State each month.

c. Training

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

d. e-Learning Courses

- (1) The Contractor shall collaborate with the State to produce e-Learning courses that explain the data on specific reports on the restricted, and/or public sites, and how the reports could be used to adjust instruction or identify instructional strengths or weaknesses. Upon completion of e-Learning modules, the Contractor shall post them on the public and/or restricted site as requested by the State. The Contractor shall be permitted to publish such courses once such courses are determined ready for release by the State and the Contractor.
- (2) The State shall have final approval rights for each e-Learning course. The Contractor shall provide the State with an outline of the scope of each e-Learning course at least ten (10) business days prior to requiring this approval.

- e. Training and Consultation – The Contractor shall, at the request of the State, provide consultation via phone about the content of State-developed training and resources. This consultation shall be focused on suggestions from the Contractor for improving the quality of the State-developed training and resources such as giving examples of how the Contractor has presented similar content in their own training or resources.
- f. On-Site Training Sessions
- (1) At the request of the State, the Contractor shall deliver on-site training up to five (5) times per year in Nashville, Tennessee in support of improving educator TVAAS knowledge and use.
 - (2) Depending on the specific topic and the needs identified by the State, this training may be delivered to employees of the State and/or Tennessee educators. The subjects of on-site training sessions shall be determined by the State and may include how to interpret TVAAS reports, a technical understanding of TVAAS data, and best practices in administering TVAAS training to educators.
 - (3) When requested by the State, training certification shall be available to training recipients so that they are able to redeliver the training content.
 - (4) The Contractor shall prepare all necessary materials for the on-site training sessions and shall develop content that aligns with feedback provided by the State. The Contractor shall provide the State with the opportunity to review all materials at least one week prior to the administration of an on-site training session. The Contractor shall make any requested revisions at least seventy-two (72) hours prior to the training and resubmit to the State for final approval. Required materials shall be limited to presentation slides and up to one hundred (100) copies of handouts per training per day. The State shall have a perpetual and royalty-free license to use, disclose, reproduce, publish, distribute, modify, maintain, or create derivative works from these training materials for future training purposes.
 - (5) The Contractor shall provide the State with an outline of the scope for each requested on-site training prior to its approval. This outline shall include the content to be covered and the number of trainers and days required.
 - (6) The State shall provide the meeting location for the training.
 - (7) Upon the completion of the training, the Contractor shall provide the State with soft copies of any slides or handouts used for the training.

A.9. Operations Management. The Contractor shall manage the program and operations according as follows:

- a. Project Team – The Contractor shall assign a single point of contact for this program to manage all inquiries related to materials, training, and technical assistance.
- (1) Team members must have at a minimum technical experience, knowledge, and operational experience including but not limited to the following areas where relevant to their role in the project:
 - i. Managing or coordinating the analysis and reporting of large scale Assessment data
 - ii. Communicating effectively orally and in writing
 - iii. Providing technical skills in the analysis of a large scale testing program and having a working knowledge of professional testing standards and practices
 - (2) The Contractor shall provide a personnel roster and resumes of key people who shall be assigned to perform duties or services under this Contract.
 - (3) The Contractor shall provide qualified replacements in the event that key personnel become unavailable to provide services due to resignation, illness or other factors. The Contractor shall provide the State with written notice

immediately upon departure or reassignment of any key personnel. The Contractor shall provide the State with written notification and the resume or vitae of all key personnel proposed for the project team.

b. Continuity of Contracts – The Contractor shall:

- (1) Participate in joint meetings with other State appointed Contractors, the Technical Advisory Committee (“TAC”), and System Testing Coordinators as needed.
- (2) Upon termination of this Contract, cooperate with the State in providing a transition between contracts to avoid any disruption of services, requirements or deliverables to students, teachers, schools, systems or the State. The Contractor shall provide the following transition activities at a minimum and at no cost to the State:
 - i. Securely transfer data, reports, and documentation of technical infrastructure of Online Applications to the State or to the subsequent Contractor(s), as outlined by the State
 - ii. Transfer documentation of the business rules, Comparability and Equating procedures, and Validity and Reliability Requirements

c. Management Meetings – The Contractor shall:

- (1) Unless mutually cancelled by the Parties, provide for a minimum of one weekly management meeting between the Project Manager designated by the Contractor and necessary State staff. These management meetings shall include review of the key dates and provide an opportunity to discuss task implementation and status.
- (2) Produce summary documentation with relevant tasks and activities from the Annual Work Plan and progress noted for each, as discussed in regularly scheduled meetings with the Contractor and the State staff. Unanticipated issues or problems shall be reported and addressed by both Parties as applicable as they occur. All progress reports shall be submitted in Microsoft Word or mutually agreeable format via email.

d. Records and Minutes – The Contractor shall take minutes and record lists of participants, including institutional affiliation and contact information, for all meetings. All minutes, records and lists of participants shall be provided by the Contractor to the State for review within two working days after each meeting. All records and minutes should be provided in a mutually agreed upon style and format. The Contractor shall review contact information for each meeting and update contact information if changed.

e. Technical Support Services – As outlined in Section A.8.a.(15) the Contractor shall provide answers to questions submitted through the TVAAS public site, the TVAAS restricted site, via email, or through the State pertaining to topics including the business rules for the calculation of TVAAS scores, student projections, technical issues related to the public and restricted TVAAS sites, access to the TVAAS sites, navigating the website, and accessing or interpreting reports.

- A.10. 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.11. 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:

- B.1. This Contract shall be effective for the period beginning on January 1, 2020 ("Effective Date") and ending on December 31, 2022 ("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 two (2) 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.

C. PAYMENT TERMS AND CONDITIONS:

- C.1. Maximum Liability. In no event shall the maximum liability of the State under this Contract exceed nine million five hundred forty two thousand twenty five dollars and zero cents (\$9,542,025.00) ("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 (per compensable increment)
A.8.a Value-Added Reporting and Export	
District/school value-added reporting and student projections (both web and static reports)	\$1,470,000 (Per Year)
Teacher value-added reporting (both web and static reports)	\$573,300 (Per Year)
Export functionality within the web application	\$ 147,000 (Per Year)
Teacher/student equity report	\$147,000 (Per Year)
Accountability subgroup value-added measures (both web and static reports)	\$147,000 (Per Year)
Option A: Roster Verification (two windows – fall and spring) OR Option B: Roster Verification (one window – spring)	Option A: \$551,250 (Per Year) OR Option B: \$367,000 (Per Year)
Educator Preparation Programs Completer Site	\$100,000 (Per Year)
A.8.b Research and Development	
Research and development days to be used as needed by the State	\$1,875 (Per Day)
A.8.c Training	
Webinars to explain specific topics related to understanding the calculation of scores and/or using the data on the public and/or restricted sites to strategically improve instruction	\$2,000 (Per Trainer Per Delivered Webinar)
A.8.d e-Learning Courses	
Courses that explain the data on specific reports on the restricted and/or public sites and how the reports could be used to adjust instruction or identify instructional strengths or weaknesses	\$17,500 (Per Course)
A.8.e Training and Consultation	
Consultation via phone focused on for improving the quality of the State-developed training and resources	\$250 (Per Hour)
A.8.f On-Site Sessions	
Deliver on-site training sessions determined by the State in Nashville, Tennessee in support of improving educator TVAAS knowledge and use	\$4,800 (Per Trainer Per Delivered Day)

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

- C.4. Travel Compensation. The Contractor shall not be compensated or reimbursed for travel time, travel expenses, meals, or lodging.
- C.5. Invoice Requirements. The Contractor shall invoice the State only for goods delivered and accepted by the State or services satisfactorily provided at the amounts stipulated in Section C.3., above. Contractor shall submit invoices and necessary supporting documentation, no more frequently than once a month, and no later than thirty (30) days after goods or services have been provided to the following address:
- Alex Poon
Tennessee Department of Education
9th Floor, Andrew Johnson Tower
710 James Robertson Parkway
Nashville, TN 37243
Alex.Poon@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: Tennessee Department of Education, Office of Strategy and Data;
 - (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:

Alex Poon, Director of Accountability
 Tennessee Department of Education
 710 James Robertson Parkway, 9th Floor
 Nashville, TN 37243
 Alex.Poon@tn.gov
 Telephone # 615-878-5640
 FAX # 615-532-7860

The Contractor:

Dave Gray, Sr. Manager, Sales Operations
 SAS Institute Inc.
 100 SAS Campus Drive
 Cary, NC 27513
 Dave.Gray@sas.com
 Telephone # 919-531-9405

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

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

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

- D.9. Nondiscrimination. The Contractor hereby agrees, warrants, and assures that no person shall be excluded from participation in, be denied benefits of, or be otherwise subjected to discrimination in the performance of this Contract or in the employment practices of the Contractor on the

grounds of handicap or disability, age, race, creed, color, religion, sex, national origin, or any other classification protected by federal or state law. The Contractor shall, upon request, show proof of nondiscrimination and shall post in conspicuous places, available to all employees and applicants, notices of nondiscrimination.

- D.10. Prohibition of Illegal Immigrants. The requirements of Tenn. Code Ann. § 12-3-309 addressing the use of illegal immigrants in the performance of any contract to supply goods or services to the state of Tennessee, shall be a material provision of this Contract, a breach of which shall be grounds for monetary and other penalties, up to and including termination of this Contract.
- a. The Contractor agrees that the Contractor shall not knowingly utilize the services of an illegal immigrant in the performance of this Contract and shall not knowingly utilize the services of any subcontractor who will utilize the services of an illegal immigrant in the performance of this Contract. The Contractor shall reaffirm this attestation, in writing, by submitting to the State a completed and signed copy of the document at Attachment A, semi-annually during the Term. If the Contractor is a party to more than one contract with the State, the Contractor may submit one attestation that applies to all contracts with the State. All Contractor attestations shall be maintained by the Contractor and made available to State officials upon request.
 - b. Prior to the use of any subcontractor in the performance of this Contract, and semi-annually thereafter, during the Term, the Contractor shall obtain and retain a current, written attestation that the subcontractor shall not knowingly utilize the services of an illegal immigrant to perform work under this Contract and shall not knowingly utilize the services of any subcontractor who will utilize the services of an illegal immigrant to perform work under this Contract. Attestations obtained from subcontractors shall be maintained by the Contractor and made available to State officials upon request.
 - c. The Contractor shall maintain records for all personnel used in the performance of this Contract. Contractor's records shall be subject to review and random inspection at any reasonable time upon reasonable notice by the State.
 - d. The Contractor understands and agrees that failure to comply with this section will be subject to the sanctions of Tenn. Code Ann. § 12-3-309 for acts or omissions occurring after its effective date.
 - e. For purposes of this Contract, "illegal immigrant" shall be defined as any person who is not: (i) a United States citizen; (ii) a Lawful Permanent Resident; (iii) a person whose physical presence in the United States is authorized; (iv) allowed by the federal Department of Homeland Security and who, under federal immigration laws or regulations, is authorized to be employed in the U.S.; or (v) is otherwise authorized to provide services under the Contract.
- D.11. Records. The Contractor shall maintain documentation for all charges under this Contract. The books, records, and documents of the Contractor, for work performed or money received under this Contract, shall be maintained for a period of five (5) full years from the date of the final payment and shall be subject to audit at any reasonable time and upon reasonable notice by the State, the Comptroller of the Treasury, or their duly appointed representatives. The financial statements shall be prepared in accordance with generally accepted accounting principles.
- D.12. Monitoring. The Contractor's activities conducted and records maintained pursuant to this Contract shall be subject to monitoring and evaluation by the State, the Comptroller of the Treasury, or their duly appointed representatives.
- D.13. Progress Reports. The Contractor shall submit brief, periodic, progress reports to the State as requested.
- D.14. Strict Performance. Failure by any Party to this Contract to require, in any one or more cases, the strict performance of any of the terms, covenants, conditions, or provisions of this Contract

shall not be construed as a waiver or relinquishment of any term, covenant, condition, or provision. No term or condition of this Contract shall be held to be waived, modified, or deleted except by a written amendment signed by the Parties.

- D.15. Independent Contractor. The Parties shall not act as employees, partners, joint venturers, or associates of one another. The Parties are independent contracting entities. Nothing in this Contract shall be construed to create an employer/employee relationship or to allow either Party to exercise control or direction over the manner or method by which the other transacts its business affairs or provides its usual services. The employees or agents of one Party are not employees or agents of the other Party.
- D.16. Patient Protection and Affordable Care Act. The Contractor agrees that it will be responsible for compliance with the Patient Protection and Affordable Care Act ("PPACA") with respect to itself and its employees, including any obligation to report health insurance coverage, provide health insurance coverage, or pay any financial Assessment, tax, or penalty for not providing health insurance. The Contractor shall indemnify the State and hold it harmless from 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' fees, 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. 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.

- 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.
 - 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 for the affected obligations 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 State and federal laws and regulations applicable to Contractor in the Contractor's 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, without regard to its conflict or choice of law rules. 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 - 408.
- 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 Attachments A and B;
 - 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 Tenn. Code Ann. §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 parties shall mutually agree upon additional insurance coverage, coverage amounts, and endorsements required under this Contract. The 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) authorized by the Tennessee Department of Commerce and Insurance ("TDCI"); and (b) rated A- / VII or better by A.M. Best. Commercial General Liability and Automobile Liability coverage must be on a primary basis and noncontributory with any other insurance or self-insurance carried by the State. Contractor agrees to include the State as an additional insured on Commercial General Liability and Automobile Liability Insurance. Commercial General Liability and Automobile Liability policies must contain an endorsement for a waiver of subrogation in favor of the State. The deductible or self-insured retention ("SIR") 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. In the event that an umbrella policy is being provided to achieve any required coverage amounts, the umbrella policy shall follow form and be at least as broad as the underlying policies.

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., 3rd floor Central Procurement Office, Nashville, TN 37243 as the certificate holder. Contractor shall upon request provide the COI. 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. Upon the notification of a claim, the State shall have the right to request complete, certified copies of all required insurance policies, including endorsements required by these specifications.

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 insurance obligations under this Contract shall be the coverage requirements and policy limits shown in the Contract. No representation is made that the minimum insurance requirements of the Contract are sufficient to cover the obligations of the Contractor arising under this Contract. The Contractor shall obtain and maintain the following insurance coverages and policy limits.

a. Commercial General Liability (“CGL”) Insurance

- 1) The Contractor shall maintain CGL, which shall be written on an ISO Form CG 00 01 occurrence form (or a substitute form providing equivalent coverage) and shall cover liability arising from property damage, premises and operations products and completed operations, bodily injury, 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 limits not less than one million dollars (\$1,000,000) per occurrence. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this policy or location of occurrence or the general aggregate limit shall be twice the required occurrence limit.

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.

c. Automobile Liability Insurance

- 1) The Contractor shall maintain automobile liability insurance which shall cover liability arising out of any automobile (including owned, leased, hired, and non-owned automobiles).
- 2) The Contractor shall maintain bodily injury/property damage with a limit not less than one million dollars (\$1,000,000) per occurrence or combined single limit.

d. Technology Professional Liability (Errors & Omissions)/Cyber Liability Insurance

- 1) The Contractor shall maintain technology professional liability (errors & omissions)/cyber liability insurance appropriate to the Contractor's profession in an amount not less than one million dollars (\$1,000,000) per occurrence or claim and one million dollars (\$1,000,000) annual aggregate, covering claims for, errors, omissions, negligence, infringement of intellectual property (including copyright and trade secret); network security and privacy risks, including but not limited to unauthorized access, failure of security, information theft, damage to destruction of or alteration of electronic information, breach of privacy perils, wrongful disclosure and release of private information, collection, or other negligence in the handling of confidential information, and including coverage for related regulatory fines, defenses, penalties and data breach response expenses.

e. Crime Insurance

- 1) The Contractor shall maintain crime insurance providing coverage for third party fidelity, including cyber theft and extortion, and not contain a condition requiring an arrest or conviction.
- 2) Any crime insurance policy shall have a limit not less than one million dollars (\$1,000,000) per claim and one million dollars (\$1,000,000) in the aggregate. Any crime insurance policy shall contain a Social Engineering Fraud Endorsement with a limit of not less than two hundred fifty thousand dollars (\$250,000). This insurance may be written on a claims-made basis, but in the event that coverage is cancelled or non-renewed, the Contractor shall purchase an extended reporting or "tail coverage" of at least one (1) year after the Term.

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.

D.34. 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. 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. Contractor Hosted Services Confidential Data, Audit, and Other Requirements

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 and the Contractor's processing environment containing Confidential State Data shall either (1) 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 (2) be subject to an annual engagement by a CPA firm in accordance with the standards of the American Institute of Certified Public Accountants ("AICPA") for a System and Organization Controls for service organizations ("SOC") Type II audit. The Trust Services Criteria in the SOC audit shall include the security and availability categories. The Contractor shall provide proof of current ISO certification or FedRAMP authorization for the Contractor and Subcontractor(s), or provide the State with the Contractor's and Subcontractor's annual SOC Type II audit report once annually upon request. The Contractor shall work in good faith on any corrective action plans to the State for any issues included in the audit report which directly impact any Hosted Services provided to the State.

If the scope of the most recent SOC audit report does not include all of the current State fiscal year, upon request from the State, the Contractor must provide to the State a letter from the Contractor or Subcontractor stating whether the Contractor or Subcontractor made any material changes to their control environment since the prior audit and, if so, whether the changes, in the opinion of the Contractor or Subcontractor, would negatively affect the auditor's opinion in the most recent audit report.

No additional funding shall be allocated for these certifications, authorizations, or audits as these are included in the Maximum Liability of this Contract.

- (4) The Contractor must annually perform network Penetration Tests. "Processing Environment" shall mean the combination of software and hardware on which the Application runs. "Application" shall mean the computer code that supports and accomplishes the State's requirements as set forth in this Contract. "Penetration Tests" shall be in the form of attacks on the Contractor's network, with the purpose of discovering security weaknesses which have the potential to gain access to the infrastructure supporting the Processing Environment's features and data.

Contractor shall apply patches to any Windows based operating systems in the Processing Environment regularly and will make reasonable efforts to apply such patches on a monthly basis. Upon becoming aware of any known critical patches, SAS shall apply such patches to any State affected systems as soon as reasonably practicable. Vulnerability Assessments will be conducted every

two weeks with respect to the Application. The “Vulnerability Assessment” shall be designed and executed to define, identify, and classify the security holes (vulnerabilities) in the Processing Environment.

- (5) 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 mutually agreed upon by the Parties.
- (6) Upon termination of this Contract and in consultation with the State, the Contractor shall delete and render irrecoverable 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. Upon request of the State, Contractor shall provide a written confirmation of such deletion to the State within sixty (60) calendar days after removal.

b. Minimum Requirements

- (1) The Contractor and all data centers used by the Contractor to host State data, including those of all Subcontractors, must comply with the State’s Enterprise Information Security Policies in effect as of the date of this Amendment. The State’s Enterprise Information Security Policies document is found at the following URL: <https://www.tn.gov/finance/strategic-technology-solutions/strategic-technology-solutions/sts-security-policies.html>. The parties acknowledge and agree that the clarifications included herein shall apply to the applicability of such policies document.
- (2) The Contractor agrees to maintain the Application so that it will run on a current, manufacturer-supported Operating System. “Operating System” shall mean the software that supports a computer’s basic functions, such as scheduling tasks, executing applications, and controlling peripherals.
- (3) 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 installed Application to ensure that security vulnerabilities are not introduced.

c. Comptroller Audit Requirements

Upon thirty (30) calendar days advance notice and at a mutually agreeable time, not to exceed once annually, the Contractor and Subcontractor(s) agree to allow the State, the Comptroller of the Treasury, or their duly appointed representatives to perform an audit of the Contractor’s security obligation as defined in this Contract. Contractor will provide to the State, the Comptroller of the Treasury, or their duly appointed representatives reasonable access to Contractor and Subcontractor(s) personnel for the purpose of performing the information technology control audit.

The audit may include a review of general controls. General controls are the policies and procedures that apply to all or a large segment of the Contractor’s or Subcontractor’s information systems and applications and include controls over security management, access controls, configuration management, segregation of duties, and contingency planning. The audit shall include the Contractor’s and Subcontractor’s compliance with the State’s Enterprise Information Security Policies and all applicable requirements, laws, regulations or policies.

The audit may include interviews with technical and management personnel, physical inspection of controls, and review of paper or electronic documentation.

For any audit issues identified, the Contractor and Subcontractor(s) shall provide a corrective action plan to the State within 30 days from the Contractor or Subcontractor receiving the audit report.

Each party shall bear its own expenses incurred while conducting the information technology controls audit.

- d. **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.

- E.3. **Family Educational Rights and Privacy Act & Tennessee Data Accessibility, Transparency and Accountability Act.** The Contractor shall comply with Family Educational Rights and Privacy Act of 1974 (20 U.S.C. 1232(g)) and its accompanying regulations (34 C.F.R. § 99) ("FERPA"). The Contractor warrants that the Contractor is familiar with FERPA requirements and that it will comply with these requirements in the performance of its duties under this Contract. The Contractor agrees to cooperate with the State, as required by FERPA, in the performance of its duties under this Contract. The Contractor agrees to maintain the confidentiality of all education records and student information. The Contractor shall only use such records and information for the exclusive purpose of performing its duties under this Contract. The obligations set forth in this Section shall survive the termination of this Contract.

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

Any instances of unauthorized disclosure of data containing personally identifiable information in violation of FERPA or DATAA that come to the attention of the Contractor shall be reported to the State within forty-eight hours (48) of Contractor confirming such unauthorized disclosures. Contractor shall indemnify and hold harmless State, its employees, agents and representatives, from and against any and all claims, liabilities, losses, or causes of action that may arise, accrue, or result to any person or entity that is injured or damaged as a result of Contractor's failure to comply with this section.

- 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 or ensure 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. And shall destroy all records as said in PII in section e.2

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 forty-eight (48) of Contractor confirming such unauthorized disclosures forty-eight (48) 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. The obligations set forth in this Section shall survive the termination of this Contract.

- E.5. Liquidated Damages. In the event of Contract performance or compliance failures listed in Attachment B, ("Liquidated Damages Event"), the State may assess damages on Contractor ("Liquidated Damages"). The State shall notify the Contractor of amounts to be assessed as Liquidated Damages. The Parties agree that due to the complicated nature of the Contractor's obligations under this Contract it would be difficult to specifically designate a monetary amount for Contractor's failure to fulfill its obligations regarding the Liquidated Damages Event as these amounts are likely to be uncertain and not easily proven. Contractor has carefully reviewed the Liquidated Damages contained in Attachment B and agrees that these amounts represent a reasonable relationship between the amount and what might reasonably be expected in the event of a Liquidated Damages Event. The Parties agree that the Liquidated Damages represent solely the damages and injuries sustained by the State in losing the benefit of the bargain with Contractor and do not include any injury or damage sustained by a third party. The Contractor agrees that the Liquidated Damages are in addition to any amounts Contractor may owe the State pursuant to the indemnity provision or any other sections of this Contract.

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

- E.6. RESERVED

- E.7. 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. 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.

In addition to the above indemnity, if the State's use of any deliverable, or any portion thereof, provided under this Contract, is or is likely to be enjoined by order of a court of competent jurisdiction as such an infringement or unauthorized use, the Contractor, at its expense and option, shall: (w) procure for the State the continued use of such deliverable; (x) replace such deliverable with a non-infringing counterpart; (y) modify such deliverable so it becomes non-infringing; (z) or refund the fees paid for the deliverables at issue provided that, if (x) or (y) is the option chosen by the Contractor, the replacement or modified deliverable must be capable of performing substantially the same function. Notwithstanding the foregoing, the State retains the right to terminate the Contract in accordance with Section D.6 hereunder in the event of such infringement or unauthorized use, and any such exercise of these allowable options by Contractor shall not relieve Contractor of its indemnity obligations under this Section.

The forgoing indemnity does not apply to the extent that the infringement arises from the State's: (i) use of the deliverable not in accordance with instructions, documentations, or specifications ("Misuse"); (ii) alteration, modification or revision of the Deliverables not expressly authorized by the Contractor ("Alteration"); (iii) failure to use or implement corrections or enhancements to the Deliverables made available by the Contractor to the State at no additional cost to the State, except where such failure to use or implement corrections or enhancements is a result of State's termination in accordance with the preceding paragraph; or (iv) combination of the Deliverables with materials not provided, specified, or approved by the Contractor.

- E.8 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.9 Additional lines, items, or options. At its sole discretion, the State may make written requests to the Contractor to add lines, items, or options that are needed and within the Scope but were not included in the original Contract. Such lines, items, or options will be added to the Contract through a Memorandum of Understanding ("MOU"), not an amendment.
- a. After the Contractor receives a written request to add lines, items, or options, the Contractor shall have ten (10) business days to respond with a written proposal. The Contractor's written proposal shall include:
 - (1) The effect, if any, of adding the lines, items, or options on the other goods or services required under the Contract;
 - (2) Any pricing related to the new lines, items, or options;
 - (3) The expected effective date for the availability of the new lines, items, or options; and
 - (4) Any additional information requested by the State.
 - b. The State may negotiate the terms of the Contractor's proposal by requesting revisions to the proposal.
 - c. To indicate acceptance of a proposal, both parties shall execute the proposal. The signed proposal shall constitute a MOU between the Parties, and the lines, items, or options shall be incorporated into the Contract as if set forth verbatim.
 - d. Only after a MOU has been executed shall the Contractor perform or deliver the new lines, items, or options.

IN WITNESS WHEREOF,

SAS Institute Inc.:

CONTRACTOR SIGNATURE

DATE

PRINTED NAME AND TITLE OF CONTRACTOR SIGNATORY (above)

Tennessee Department of Education:

PENNY SCHWINN, COMMISSIONER

DATE

ATTACHMENT A

ATTESTATION RE PERSONNEL USED IN CONTRACT PERFORMANCE

<p>If the attestation applies to more than one contract, modify this row accordingly.</p> <p>SUBJECT CONTRACT NUMBER:</p>	
<p>CONTRACTOR LEGAL ENTITY NAME:</p>	
<p>EDISON VENDOR IDENTIFICATION NUMBER:</p>	

If the attestation applies to more than one contract, modify the following paragraph accordingly.

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.

PRINTED NAME AND TITLE OF SIGNATORY

DATE OF ATTESTATION

ATTACHMENT B LIQUIDATED DAMAGES

Liquidated damages will apply to the Contract performance or compliance failures listed below. Contractor acknowledges that the actual damages likely to result from Contract performance or compliance failures are difficult to estimate and may be difficult for the State to prove. The parties intend that the Contractor's payment of assessed liquidated damages will compensate the State for breach of the Contractor obligations under this Contract. Liquidated damages do not serve as punishment for any breach by the Contractor.

Liquidated Damages Event	Liquidated Damages Amount	Liquidated Damages Methodology
Liquidated Damage #1. The Contractor fails to provide the district and/or school value-added reporting and student projections (both web and static reports), as set forth in Section A.8.a (18) of the Contract.	Four thousand dollars (\$4,000) per day and until such time as the inaccuracy is corrected.	The \$4,000 per day cost represents the estimated cost, based on current operational costs at the school and district level and the time required to delay and or correct the information.
Liquidated Damage #2. The Contractor fails to provide the teacher value-added reporting (both web and static reports), as set forth in Section A.8.a (17) of the Contract	One thousand six hundred dollars (\$1,600) per day and until such time as the inaccuracy is corrected.	The \$1,600 per day cost represents the estimated cost, based on current operational costs at the school and district level and the associated functions that would be inaccurate or delayed (e.g., teacher evaluation, promotion, salary/bonuses, etc.).
Liquidated Damage #3. The Contractor fails to provide the district and/or school export functionality within the web application, as set forth in Section A.8.a (18) of the Contract.	Five hundred dollars (\$500) per day and until such time as the inaccuracy is corrected.	The \$500 per day cost represents the estimated cost based on current operational costs at the school and district level and the additional time that would be required to extract the data without export functionality.
Liquidated Damage #4. The Contractor fails to provide teacher/student equity reports, as set forth in Section A.8.a (8) of the Contract.	Five hundred dollars (\$500) per day and until such time as the inaccuracy is corrected.	The \$500 per day cost represents the estimated cost based on current operational costs (e.g., teacher and student scheduling, creation of class rosters, etc.).
Liquidated Damage #5. The Contractor fails to deliver accountability subgroup value-added measures, as set forth in Section A.8.a (6, 7, 10) of the Contract.	Five hundred dollars (\$500) per day and until such time as the inaccuracy is corrected.	The \$500 per day cost represents the estimated cost based on current operational costs at the state level and the costs associated with republishing and retracting accountability data.
Liquidated Damage #6. The Contractor fails to provide Roster Verification services, as set forth in Section A.8.a (4, 5) of the Contract.	One thousand six hundred dollars (\$1,600) per day and until such time as the inaccuracy is corrected.	The \$1,600 per day cost represents the estimated cost, based on current operational costs at the school and district level and the associated functions that would be inaccurate or delayed (e.g., teacher evaluation, promotion, salary/bonuses, etc.).
Liquidated Damage #7. The Contractor fails to provide	Three hundred dollars (\$300) per day and until such time as	The \$300 per day cost represents the estimated cost based on current

additional teacher value-added estimates for the Educator Preparation Program site, as set forth in Section A.8.a (24) of the Contract.	the inaccuracy is corrected.	operational costs at the state level and the costs associated with republishing and retracting Educator Preparation Program data.
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