

**FISCAL REVIEW COMMITTEE SUBMISSION**  
**Contract #67477, 33101-2100533111FA3**

1. Fiscal Review Committee summary letter
  2. Fiscal Review Committee supplemental sheet
  3. Special contract request
  4. STS endorsement
  5. HR endorsement
  6. Proposed contract
-



STATE OF TENNESSEE  
**DEPARTMENT OF EDUCATION**

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

**BILL HASLAM**  
GOVERNOR

**Penny Schwinn**  
COMMISSIONER

TO: Executive Director, Fiscal Review Committee

FROM: Dr. Penny Schwinn, Commissioner

DATE: July 29, 2020

RE: Request to appear before fiscal review committee regarding non-competitive contract request RFS # 3301-2100533111FA3.

Please consider the enclosed request for a non-competitive contract with the Board of Regents of the University of Wisconsin System on behalf of the University of Wisconsin – Madison’s Wisconsin Center for Educational Research (WCER). WCER is the organizational home of WIDA, a multi-state coalition of state education agencies that acts in collaboration to research, design and implement a standards-based educational system that promotes equitable educational opportunities for English language learners (ELLs) in pre-kindergarten through grade twelve.

States are required under federal law to provide an annual assessment of English proficiency for all students with limited English proficiency in schools in the state (Every Student Succeeds Act Sec. 1111 (b)(3)(7)). The department’s contract with WCER enables Tennessee to comply with these requirements through an annual administration of ACCESS for ELLs.

A non-competitive contract is needed because WIDA is the only vendor with an ELL assessment that meets the following state requirements:

- Assessment includes an alternative ELL assessment for students with significant cognitive disabilities
- Assessment aligns to the standards we have adopted in Tennessee. State Board of Education Policy 3.207 states “All ESL services shall be aligned to the Tennessee (WIDA) English language development standards and founded on evidence-based educational practices”.

Therefore, WIDA is the only vendor that offers the total assessment package needed in TN, with standards, framework, alternate assessments, screeners, multiple grade-span summative assessments for ELLs. Further, TN educators are extensively trained on WIDA. State Board of Education Policy 3.207 requires that teachers instructing ELL students be trained on implementing WIDA English Language Development Standards within their classroom, thus aligning instruction and assessment.

The department is requesting a three-year contract with two options to renew, at a maximum liability of \$5,567,338.00 in state funding for the initial term. The only alternative for Tennessee would be to develop and implement a custom assessment, the cost of which would be exponentially higher than the ACCESS for ELLs. Therefore, it is in the best interest of the State to pursue this contract.

Thank you for your consideration.

## Supplemental Documentation Required for Fiscal Review Committee

### Instructions:

1. No contract or contract amendment will be placed on the Committee's agenda for consideration until this form has been fully completed and all back-up documentation has been submitted.
2. Please complete each section as it applies to contracts or amendments that are being submitted. Sections denoted with an asterisk (\*) are considered mandatory. This information should provide for background information on previous actions, if applicable, that have taken place on the contract document and associated amendments.
3. Add rows as necessary.
4. Submit this document, any attachments, your summary letter, and contract documentation for review by the Fiscal Review Committee.
5. **Contact Name:** Enter first and last name of person to contact with questions about this document or any of the submitted information.
6. **Contact Number:** Enter the telephone number (including extension) of the contact person listed.
7. **Presenter's Name(s):** Enter the name of each person who will be presenting this request to the Committee.
8. **Edison Contract Number:** Enter the contract number issued by the Edison system for this document.
9. **RFS Number:** Enter the Edison system issued RFS number for this document.
10. **Original Contract Begin Date:** Enter the beginning date of the original contract or the proposed effective date for new contracts.
11. **Current End Date:** Enter the end date that is currently reflected in Section B.1. of this contract (prior to amendment request if applicable) or the proposed end date for new contracts.
12. **Current Requested Amendment Number:** Enter the amendment number (*if applicable*) that is currently being requested.
13. **Proposed Amendment Effective Date:** Enter the proposed effective date for the requested amendment (*if applicable*).
14. **Department Submitting:** Enter the title of the agency/department submitting this request.
15. **Division:** Enter the title of the division within the agency/department submitting this request.
16. **Date Submitted:** Enter the date the request was sent to Fiscal Review Committee staff.

## Supplemental Documentation Required for Fiscal Review Committee

17. **Submitted Within Sixty (60) days:** Enter yes or no in this blank if request was submitted within 60 days of the proposed effective date.
18. ***If not, explain:*** Provide detailed rationale as to why the deadline for submission was not met. ***Please Note:*** Late submissions will be rolled for one meeting and placed at the end of the agenda.
19. **Contract Vendor Name:** Enter the officially registered vendor name.
20. **Current or Proposed Maximum Liability:** Enter the dollar amount that is reflected on the most current fully executed contract summary sheet and in Section C. 1 or the proposed maximum liability for new contracts.
21. ***For commodities contracts, Estimated Total Spend:*** Enter the estimated total expenditures for the contract if the contract does not have a “maximum liability.”
22. **Current Contract Allocation by Fiscal Year:** Enter the amounts reflected on the contract summary sheet and the corresponding FY. If no contract summary sheet, enter the estimated spend per fiscal year. **\*\*NOTE:** Total of all these columns must add up to maximum liability or estimated total spend as reported in Section 20 or 21 of this document.
23. **Current Total Expenditures by Fiscal Year:** By using Edison enter the amounts that have been expended from this contract by fiscal year breakdown. Not applicable (NA) for new contracts.
24. **Explanation of surplus funds:** If the allocation exceeded the expenditure in any fiscal year, enter the explanation of each surplus funding year.
25. **Explanation of carry forward:** If agency/department has carried forward the surplus funds, enter the authority (and provide copy with this document) of the carry forward provision.
26. **Explanation of overspending contract allocation:** If agency/department has overspent the contract allocation, enter the reasons for excess expenditures and how the funding was attained.
27. **Contract Funding Source/Amount:** Enter the dollar figure in the appropriate category to reflect the source of contract funding.
28. ***If Other, please define:*** If a dollar amount is placed in the “other” category, please define the source represented.
29. ***If Interdepartmental, please define:*** If a dollar amount is placed in the “interdepartmental” category, please define all sources represented.

## Supplemental Documentation Required for Fiscal Review Committee

30. **Dates of All Previous Amendments or Revisions:** Enter all dates of prior amendment and revision (*including Contract Summary Sheet revisions*) in this section.
31. **Brief Description of Actions in Previous Amendment or Revision:**  
Enter a brief summary of prior amendments or revisions next to the appropriate effective date of the amendment (e.g. increased maximum liability, added scope items, revised contract summary sheet to reflect funding change, etc.).
32. **Method of Original Award:** Enter the procurement method of original award if requesting amendment (e.g. RFP, Special Request).
33. **Projected Cost Prior to Award and Cost Determination Used:** Enter the total cost projected by the department prior to award and explain how the agency arrived at the estimate of expected costs.
34. **For ALL new sole-source contracts, list the number of potential vendors that could provide the service or goods being procured and why those other options were not considered:** List the number of potential vendors that could provide this good or service; efforts to identify reasonable, competitive procurement alternatives; and how the Department determined a sole-source contract was in the best interest of the State.

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Fiscal Review Committee

*Contact Name:	Joanna Collins	*Contact Phone:	(615) 879-1100		
*Presenter's name(s):	Joanna Collins, Nancy Williams, Jay Klein, Casey Haugner-Wrenn				
Edison Contract Number: <i>(if applicable)</i>	67477	RFS Number: <i>(if applicable)</i>	33101-2100533111FA3		
*Original or Proposed Contract Begin Date:	November 1, 2020	*Current or Proposed End Date:	October 31, 2023		
Current Request Amendment Number: <i>(if applicable)</i>	N/A				
Proposed Amendment Effective Date: <i>(if applicable)</i>	N/A				
*Department Submitting:	Department of Education				
*Division:	Assessment				
*Date Submitted:	7/29/20				
*Submitted Within Sixty (60) days:	Yes				
	<i>If not, explain:</i>				
*Contract Vendor Name:	Board of Regents of the University of Wisconsin System on behalf of the University of Wisconsin – Madison's WCER				
*Current or Proposed Maximum Liability:	\$5,659,983.00				
*Estimated Total Spend for Commodities:	N/A				
<b>*Current or Proposed Contract Allocation by Fiscal Year: (as Shown on Most Current Fully Executed Contract Summary Sheet)</b>					
FY:21	FY:22	FY:23	FY:	FY	FY
\$1,536,211.75	\$1,708,105.25	\$2,415.666.00	\$	\$	\$
<b>*Current Total Expenditures by Fiscal Year of Contract: (attach backup documentation from Edison)</b>					
FY:21	FY:22	FY:23	FY:	FY	FY
			\$	\$	\$
<b>IF</b> Contract Allocation has been greater than Contract Expenditures, please give the reasons and explain where surplus funds were spent:			n/a		
<b>IF</b> surplus funds have been carried forward, please give the reasons and provide the authority for the carry forward provision:			n/a		
<b>IF</b> Contract Expenditures exceeded Contract Allocation, please give the			n/a		

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reasons and explain how funding was acquired to pay the overage:			
*Contract Funding Source/Amount:			
State:	\$5,659,983.00	Federal:	
<i>Interdepartmental:</i>		<i>Other:</i>	
If “ <i>other</i> ” please define:			
If “ <i>interdepartmental</i> ” please define:			
Dates of All Previous Amendments or Revisions: <i>(if applicable)</i>		Brief Description of Actions in Previous Amendments or Revisions: <i>(if applicable)</i>	
n/a		n/a	
Method of Original Award: <i>(if applicable)</i>			
<p style="text-align: center;">*What were the projected costs of the service for the entire term of the contract prior to contract award? How was this cost determined?</p>		<p>Projected costs were determined by multiplying cost per test (provided by vendor) by estimated number of English Language Learner (ELL) students in the state. The growth rate of ELL population was calculated using prior year’s growth rate and projecting forward. The cost per year of membership in the consortium (provided by vendor) is also included in the yearly calculation. The three years of the contract was then combined for a final amount.</p>	
<p style="text-align: center;">*List number of other potential vendors who could provide this good or service; efforts to identify other competitive procurement alternatives; and the reason(s) a sole-source contract is in the best interest of the State.</p>		<p>WIDA is the only vendor with an ELL assessment that meets the following state requirements:</p> <ul style="list-style-type: none"> <li>• Assessment includes an alternative ELL assessment for students with significant cognitive disabilities</li> <li>• Assessment aligns to the standards we have adopted in Tennessee. State Board of Education Policy 3.207 states “All ESL services shall be aligned to the Tennessee (WIDA) English language</li> </ul>	

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	<p>development standards and founded on evidence-based educational practices”.</p> <p>Therefore, WIDA is the only vendor that offers the total assessment package needed in TN, with standards, framework, alternate assessments, screeners, multiple grade-span summative assessments for ELLs.</p> <p>Additional support for the sole source justification is the fact that TN educators are extensively trained on WIDA. State Board of Education Policy 3.207 requires that teachers instructing ELL students be trained on implementing WIDA English Language Development Standards within their classroom, thus aligning instruction and assessment.</p>
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# PENDING APPROVAL

  

## 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.

Upload the completed document and route for approvals by selecting the appropriate SCR e-Form type in Edison. For additional guidance, please see the Special Contracts Request e-Form Job Aid available online at the following:

<https://www.teamtn.gov/cpo/learning-development/cpo-job-aids.html>.

<b>APPROVED</b> [Upload this SCR to e-Forms in Edison. Approvals will be captured in Edison Workflow.]	<b>APPROVED</b> [Upload this SCR to e-Forms in Edison. Approvals will be captured in Edison Workflow.]
CHIEF PROCUREMENT OFFICER                      DATE	COMPTROLLER OF THE TREASURY                      DATE

**Approval of the SCR does not constitute approval of the final contract.**

Request Tracking #	33101-2100533111FA3
1. Contracting Agency	TDOE, Office of Strategy
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	Tammy Billington, <a href="mailto:tammy.billington@tn.gov">tammy.billington@tn.gov</a> 615-487-0174
4. Brief Goods or Services Caption	Provision of ACCESS for ELLs, an English proficiency assessment for ELLs in grades K-12
5. Description of the Goods or Services to be Acquired	Annual provision of ACCESS for ELLS, which is a customized, standards-based English proficiency assessment for English language learners (ELLs) in grades K-12. The contract provides for development and implementation, including technology, printing, distribution, scoring, and reporting of the assessments.

<b>Request Tracking #</b>	33101-2100533111FA3
<b>6. Proposed Contractor</b>	<b>Board of Regents of the University of Wisconsin System on behalf of the University of Wisconsin- Madison's Wisconsin Center for Educational Research (WCER).</b>  WCER is the fiscal and administrative agent for the WIDA Consortium, of which TN is a member.
<b>7. Name &amp; Address of the Contractor's principal owner(s)</b> <i>– NOT required for a TN state education institution</i>	<b>As a WI state agency, there is not a "principal owner". Their authorized signatory is: Dr. Tim Boles</b>  <b>Wisconsin Center for Educational Research</b>  <b>268 Educational Sciences</b> <b>1025 W. Johnson St. MD#23</b> <b>Madison, WI 53706</b> <b>(605)263-4326</b> <b>tjboals@wisc.edu</b>
<b>8. Proposed Contract Period</b> – with ALL options to extend exercised <i>The proposed contract start date shall follow the approval date of this request.</i>	<b>36 months with 2 options to renew</b>
<b>9. Strategic Technology Solutions (“STS”) Pre-Approval Endorsement Request</b> <i>– information technology (N/A to THDA)</i>	<input type="checkbox"/> Not Applicable <input checked="" type="checkbox"/> Attached
<b>10. eHealth Pre-Approval Endorsement Request</b> <i>– health-related professional, pharmaceutical, laboratory, or imaging</i>	<input checked="" type="checkbox"/> Not Applicable <input type="checkbox"/> Attached
<b>11. Human Resources Pre-Approval Endorsement Request</b> <i>– contracts with an individual, state employee training, or services related to the employment of current or prospective state employees</i>	<input type="checkbox"/> Not Applicable <input checked="" type="checkbox"/> Attached
<b>12. Are these goods or services currently available on a statewide contract? If YES, please explain why the current statewide contract is not being used for this procurement.</b>	<input checked="" type="checkbox"/> NO <input type="checkbox"/> YES,
<b>13. Maximum Contract Cost</b> – with ALL options to extend exercised	<b>\$ 5,567,338.00</b>
<b>14. Was there an initial government estimate? If so, what amount?</b>	<input type="checkbox"/> NO <input checked="" type="checkbox"/> YES, Approx. \$5 million, as we estimated that pricing would be based on previous pricing with some market increase. The max liability aligns with this expectation.
<b>15. Cost Determination Used-</b> How did agency arrive at the estimate of expected costs?	<b>Pricing was determined through a competitive process conducted by the WIDA consortium. Cost includes all assessment services for a per student price of \$27.75.</b>

<b>Request Tracking #</b>	33101-2100533111FA3
<b>16. Explanation of Fair and Reasonable Price-</b> Explain how agency determined that price is fair and reasonable	The summative assessment is \$27.75 per student tested, with no upcharge for paper tests, which are often an accommodation for students with disabilities. We compared this with another assessment that is comparable but does not meet the State's needs, as it is not as comprehensive or aligned with standards (ELPA21). They offer \$21 per test, but with an upcharge of \$36 for each paper test and \$66 for large print. Both companies have upcharges for Braille. The pricing is comparable, but WCER's costs encompass a more comprehensive range of services. Therefore, contracting with WCER is fair and reasonable.
<b>17. Documentation of Discussions with Contractor-</b> How did agency document discussions with Contractor? Attach documentation to this request as applicable.	Documentation was maintained of correspondence with the vendor. They provided a sole source letter and pricing.
<b>18. Explanation of Need for or requirement placed on the State to acquire the goods or services</b>	States are required under federal law (ESSA Sec. 1111(b)(3)(7)) to provide an annual assessment of English proficiency for all students with limited English proficiency in schools in the state, and this contract enables Tennessee to comply with these requirements. The ACCESS for ELLs meets the criteria outlined in ESSA for ELLs (and adapts the assessment if those federal requirements change) and is aligned with the WIDA English Language Development Standards.
19. Proposed contract impact on current State operations	This contract will provide TN with an English Learners proficiency assessment that meets federal requirements and is aligned with our English Language Content Standards.

**20. Justification** – Specifically explain why the goods or services should be acquired through the procurement method or contract type selected.

**WCER is the fiscal and administrative agent for the WIDA Consortium, a group of 40 state education agencies that acts in collaboration to research, design and implement a standards-based educational system that promotes equitable educational opportunities for English language learners (ELLs) in pre-kindergarten through twelve.**

**Procuring through the WIDA Consortium is the only option that will provide an ELL assessment that meets the following state requirements:**

- **Assessment includes an alternative ELL assessment for students with significant cognitive disabilities**
- **Assessment aligns to the standards we have adopted in Tennessee. State Board of Education Policy 3.207 states “All ESL services shall be aligned to the Tennessee (WIDA) English language development standards and founded on evidence-based educational practices”.**

**Therefore, this is the only option that offers the total assessment package needed in TN, with standards, framework, alternate assessments, screeners, multiple grade-span summative assessments for ELLs.**

**Additional support for the sole source justification is the fact that TN educators are extensively trained on WIDA standards, assessments, and materials. State Board of Education Policy 3.207 requires that teachers instructing ELL students be trained on implementing WIDA English Language Development Standards within their classroom, thus aligning instruction and assessment.**

Request Tracking #	33101-2100533111FA3
	<p>All administrators and teachers in the state are trained annually with WIDA materials on the administration, testing procedures and use of the WIDA assessments (districts have invested approximately \$300k to train on WIDA standards, tools and assessments). District testing coordinators with WIDA support are provided a list of trained teachers in each district for specific components of screeners and assessments.</p>
<b>For No Cost and Revenue Contracts Only</b>	
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	
<b>For Sole Source and Proprietary Procurements Only</b>	
25. Evidence of Contractor's experience & length of experience providing the goods or services to be procured.	<p>TN has procured these services through the WIDA Consortium since 2011. 40 states procure this assessment through membership in the consortium; for the 2018-19 assessment, WIDA administered assessments to a total of 2,135,767 students across the U.S., with 47,693 in TN.</p>

Request Tracking #	33101-2100533111FA3
<p>26. Has the contracting agency procured the subject goods or services before? If yes, provide the method used to purchase the goods or services and the name and address of the contractor.</p>	<p><input type="checkbox"/> NO      <input checked="" type="checkbox"/> YES,  Method: Sole Source  Name/Address:  Wisconsin Center for Educational Research  268 Educational Sciences  1025 W. Johnson St. MD#23  Madison, WI 53706</p>
<p>27. Contractor selection process and efforts to identify reasonable, competitive, procurement alternatives</p>	<p>State Board of Education Policy 3.207 states "All ESL services shall be aligned to the Tennessee (WIDA) English language development standards and founded on evidence-based educational practices". Additionally, the policy requires that teachers instructing ELL students must be trained on implementing WIDA English Language Development Standards within their classroom, thus aligning instruction and assessment. Therefore, WIDA is the only total system with standards, framework, alternate assessments, screeners, multiple grade-span summative assessments for ELs. 40 states procure this assessment through membership in the consortium; for the 2018-19 assessment, WIDA administered assessments to a total of 2,135,767 students across the U.S., with 47,693 in TN. The other states either use a shelf test (program area determined that this is not sufficiently research-based or aligned to TN adopted standards) or ELPA21, which has no alternate assessment for students with significant cognitive disabilities. As a result, continued procurement through the WIDA Consortium is necessary to meet the State's requirements.   See attached sole source letter.</p>
Signature Required for all Special Contract Requests	

<b>Request Tracking #</b>	<b>33101-2100533111FA3</b>
<b>Signature of Agency head or authorized designee, title of signatory, and date</b> (the authorized designee may sign his or her own name if indicated on the Signature Certification and Authorization document) <b>[Either upload signed SCR in Edison or capture authorized agency approval in Edison Workflow.]</b>	
Signature: _____	Date: _____



Date: February 18, 2020

To: Tennessee State Department of Education

From: Tim Boals, Ph.D.  
Executive Director, WIDA Consortium

RE: WIDA Consortium Sole Source Justification

The Wisconsin Center for Education Research (WCER), part of the University of Wisconsin – Madison is the fiscal and administrative agent for the WIDA Consortium, which is a group of forty (40) State Education Agencies (SEAs) seeking to meet the federal requirements of Elementary and Secondary Education Act (The Every Student Succeeds Act of 2015 or ESSA) and related state requirements by developing and implementing customized, standards-based English proficiency assessments for English language learners. The Consortium member agencies have approximately 2,000,000 English language learners (ELLs) in over 40,000 schools. ESSA requires assessment of these students for proficiency in learning English annually at all grade levels, K-12.

The WIDA Consortium is a sole source provider for the following reasons:

- Individual states do not possess the large-scale, secure testing infrastructure to handle these required tasks.
- WIDA, as a group of member states, has already conducted competitive bidding for the technology, printing, distribution, scoring and reporting of the assessments using rigorous state government standards. Data Recognition Corporation (DRC) was the winner of the competition and will remain as WIDA's vendor for at least the next two years.
- US ED requires that ELP assessments be aligned to state academic standards and approvable English proficiency standards. WIDA conducts the necessary alignments and can provide states with the required reports.
- The WIDA Consortium has partnerships with nationally recognized contractors with the unique skills in the area of ELL standards and assessment development and implementation. These national partners include the Center for Applied Linguistics, TMS Management, the University of Wisconsin – Madison, and numerous individuals like, Dr. Jamal Abedi, Dr. Akihito Kamata, Dr. Lyle Bachman and Dr. Carol Myford, Dr. Greg Cizek, and Dr. Claudia Flowers. The collaboration among these institutions and national experts has created a truly unique set of products and services for the WIDA Consortium and states affiliated with us.

Thank You,

A handwritten signature in black ink, appearing to read "Tim Boals".

Tim Boals, Ph.D.



## PENDING APPROVAL

# STS Pre-Approval Endorsement Request E-Mail Transmittal

**TO :** STS Contracts  
Department of Finance & Administration  
[https://tn.service-now.com/sp?id=sc\\_cat\\_item&sys\\_id=a912fd4213b46b80316a73d36144b097](https://tn.service-now.com/sp?id=sc_cat_item&sys_id=a912fd4213b46b80316a73d36144b097)

For additional instructions please visit:  
<https://www.teamtn.gov/sts/planning-services/information-systems-planning/endorsement-request.html>

**FROM :** Nancy Williams  
E-mail : [Nancy.E.Williams@tn.gov](mailto:Nancy.E.Williams@tn.gov)

**DATE :** 04/20/2020

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

**Applicable RFS # 33111-04820**

### State Security Confidential Information Applicability

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

- Applicable  
 Not Applicable

Additional language is attached and endorsement is contingent upon inclusion of this additional language:

- Applicable  
 Not Applicable

**STS Endorsement Signature & Date:**

**Chief Information Officer**

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

<b>Applicable RFS # 33111-04820</b>
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Strategic Technology Solutions (STS) pre-approval endorsement is required pursuant to procurement regulations pertaining to contracts with information technology as a component of the scope of service. This request seeks to ensure that STS is aware of and has an opportunity to review the procurement detailed below and in the attached document(s). This requirement applies to any procurement method regardless of dollar amount.

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

<b>Contracting Agency</b>	<b>Education</b>
<b>Agency Contact</b> (name, phone, e-mail)	<b>Nancy Williams, <a href="mailto:Nancy.E.Williams@tn.gov">Nancy.E.Williams@tn.gov</a>, 615-795-7981</b>
<p><b>Attachments Supporting Request</b> (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 checked="" type="checkbox"/> Special Contract Request  <input type="checkbox"/> Amendment Request  <input type="checkbox"/> Proposed Contract/Grant or Amendment  <input type="checkbox"/> Original Contract/Grant and Previous Amendments (if any) </p>	
<p><b>Information Systems Plan (ISP) Project Applicability</b></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):</p> <p> <input type="checkbox"/> Applicable – Approved ISP Project#  <input checked="" type="checkbox"/> Not Applicable </p>	
<p><b>Subject Information Technology Service Description</b></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>The WIDA assessment is a web-based assessment. The vendor provides any needed updates and supports to districts with development/maintenance, security, networking, etc.</p>	



## PENDING APPROVAL

  

# HR Pre-Approval Endorsement Request E-Mail Transmittal

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**TO :** Department of Human Resources  
E-mail : [DOHR.Contracts@tn.gov](mailto:DOHR.Contracts@tn.gov)

**FROM :** Claudia Lewis  
E-mail : [claudia.lewis@tn.gov](mailto:claudia.lewis@tn.gov)

**DATE :**

**RE :** Request for Human Resources Pre-Approval Endorsement

<b>Applicable RFS #</b> <b>33101-2100533111FA3</b>
<b>Human Resources Endorsement Signature &amp; Date:</b>
<hr style="width: 50%; margin: auto;"/> <b>Department of Human Resources</b>

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.

<b>Contracting Agency</b>	<b>Department of Education</b>
<b>Agency Contact</b> (name, phone, e-mail)	<b>Claudia Lewis, 615-922-9179, claudia.lewis@tn.gov</b>
<b>Attachments Supporting Request</b> (as applicable – copies without signatures acceptable) <ul style="list-style-type: none"> <li><input type="checkbox"/> Solicitation Document</li> <li><input checked="" type="checkbox"/> Special Contract Request</li> <li><input type="checkbox"/> Amendment Request</li> <li><input checked="" type="checkbox"/> Proposed contract or amendment</li> </ul>	
<b>Subject HR Service Description</b> (Brief summary of HR services involved. As applicable, identify the contract and solicitation sections related to the HR services.) <p style="margin-left: 20px;">WIDA Consortium Core Package – Annual provision of ACCESS ELLS which is a customized, standards-based English proficiency assessment for English language learners (ELLs) in grades K-12. The contract provides for development and implementation, including technology, printing, distribution, scoring, and reporting of the assessments.</p>	

**Applicable RFS #      33101-2100533111FA3**

States are required under federal law (ESSA Sec. 1111(b)(3)(7) to provide an annual assessment of English proficiency for all students with limited English proficiency in schools in the state, and this contract enables Tennessee to comply with these requirements. The ACCESS for ELLS is approved by the US Department of Education for assessing English Language proficiency and is aligned with the WIDA English Language Development Standards.

As part of the scope, the contractor provides training and professional development on assessment implementation to school districts.

**CONTRACT**

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

<b>Begin Date</b> November 1, 2020	<b>End Date</b> October 31, 2023	<b>Agency Tracking #</b> 2100533111FA3	<b>Edison Record ID</b> 67477		
<b>Contractor Legal Entity Name</b> Board of Regents of the University of Wisconsin System on behalf of the University of Wisconsin – Madison's WCER			<b>Edison Vendor ID</b> 0000024340		
<b>Goods or Services Caption</b> (one line only) WIDA Consortium Core Package					
<b>Contractor</b> <input checked="" type="checkbox"/> Contractor		<b>CFDA #</b>			
<b>Funding —</b>					
<b>FY</b>	<b>State</b>	<b>Federal</b>	<b>Interdepartmental</b>	<b>Other</b>	<b>TOTAL Contract Amount</b>
FY21	\$1,536,211.75				\$1,536,211.75
FY22	\$1,708,105.25				\$1,708,105.25
FY23	\$2,415,666.00				\$2,415,666.00
<b>TOTAL:</b>	<b>\$5,659,983.00</b>				<b>\$5,659,983.00</b>
<b>Contractor Ownership Characteristics:</b>					
<input type="checkbox"/> Minority Business Enterprise (MBE): <input type="checkbox"/> African American <input type="checkbox"/> Asian American <input type="checkbox"/> Hispanic American <input type="checkbox"/> Native American					
<input type="checkbox"/> Woman Business Enterprise (WBE)					
<input type="checkbox"/> Tennessee Service Disabled Veteran Enterprise (SDVBE)					
<input type="checkbox"/> Disabled Owned Business (DSBE)					
<input type="checkbox"/> Tennessee Small Business Enterprise (SBE): \$10,000,000.00 averaged over a three (3) year period or employs no more than ninety-nine (99) employees.					
<input type="checkbox"/> Government <input checked="" type="checkbox"/> Non-Minority/Disadvantaged <input type="checkbox"/> Other:					
<b>Selection Method &amp; Process Summary</b> (mark the correct response to confirm the associated summary)					
<input type="checkbox"/> Competitive Selection		Describe the competitive selection process used			
<input checked="" type="checkbox"/> Other		WCER is the managing agency for the ACCESS for ELs test developed by the WIDA consortium in compliance with federal regulations. Tennessee has procured these services through WIDA since 2011. A non-competitive procurement is in the best interest of the State because (1) only one company has a test that will meet the State's needs, (2) users across the state have extensive training on this test, and (3) procurement through WIDA is the best value for Tennessee compared to procuring separate tests for EL students and Alternate EL students and retraining Tennessee teachers on different standards.			
<b>Budget Officer Confirmation:</b> There is a balance in the appropriation from which obligations hereunder are required to be paid that is not already encumbered to pay other obligations.					
<b>Speed Chart</b> (optional) ED00000530		<b>Account Code</b> (optional) 70803000			



**CONTRACT**  
**BETWEEN THE STATE OF TENNESSEE,**  
**DEPARTMENT OF EDUCATION**  
**AND**  
**BOARD OF REGENTS OF THE UNIVERSITY OF WISCONSIN SYSTEM**  
**ON BEHALF OF THE UNIVERSITY OF WISCONSIN-MADISON'S WISCONSIN CENTER**  
**FOR EDUCATIONAL RESEARCH**

This Contract, by and between the State of Tennessee, Department of Education ("State") and Board of Regents of the University of Wisconsin System on Behalf of the University of Wisconsin-Madison's WCER ("Contractor"), is for the provision of WIDA Consortium Core Package, 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 Non-Profit Corporation.  
Contractor Place of Incorporation or Organization: Washington  
Contractor Edison Registration ID # 000024340

**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. ACCESS for ELLs ("ACCESS for ELLs"): An annual academic test of English proficiency included in the Contractor's Core Package, on behalf of WIDA, under the brand name ACCESS for ELLs. ACCESS for ELLs is designed to access the progress of students in attaining English proficiency, including students' level of comprehension in the four recognized domains of speaking, listening, reading, and writing. ACCESS for ELLs is aligned with the WIDA English Language Development Standards. The State has adopted ACCESS for ELLs for its plan to meet both the State's and Tennessee's LEAs' Title I and III requirements.
  - b. DRC INSIGHT Portal ("DRC INSIGHT Portal"): Web-based test administration portal, hosted by Data Recognition Corporation ("DRC"), that allows for delivery of online tests to students and access to other tools needed for administration of ACCESS for ELLs.
  - c. Elementary and Secondary Education Act also known as Every Student Succeeds Act ("ESSA"): the federal law that provides for equal opportunity for all students. Title I of ESSA requires LEAs to provide an annual test of English proficiency for all students with limited English proficiency in schools served by the SEA. Title III of ESSA requires LEAs to provide an evaluation to its SEA, which is used by the LEAs and SEA to: improve programs and activities; determine the effectiveness of programs and activities in assisting children who are English Learners to attain English proficiency (using State-approved evaluation measures) and meet challenging State academic content and student academic achievement standards; and determine whether or not to continue funding for specific programs or activities.
  - d. Local Education Agencies aka LEAs ("LEAs"): Collectively refers to all Tennessee public Local Education Agencies, including the State Special Schools and the Achievement School District.
  - e. Wisconsin Center for Education Research aka WCER ("WCER" or "the Contractor"): WCER the education research center at the University of Wisconsin, Madison and serves as the organizational home of WIDA.
  - f. World-Class Instructional Design and Assessment aka WIDA ("WIDA"): The WIDA Consortium is a member-based organization made up of U.S. states, territories and

federal agencies dedicated to the research, design and implementation of a high-quality, standards-based system for K-12 English language learners.

- g. WIDA Consortium Core Package (“Core Package”): Core Package means the multi-state copyright licenses and related educational products and services offered by THE CONTRACTOR under the name WIDA Consortium to WIDA Consortium Members, namely: limited copyright licenses to certain WIDA tests, including ACCESS for ELLs, Alternate ACCESS for ELLs, the WIDA Screener, language development standards and resource guides, instructional and educator training/support materials; technical assistance and professional learning associated with implementing the WIDA ELD Standards; the printing, distributing, scoring and reporting of the ACCESS for ELLs and the Alternate ACCESS for ELLs English language tests; and educator and technical assistance and professional learning associated with administering and interpreting the ACCESS for ELLs and the Alternate ACCESS for ELLs English language tests and test results. WIDA Consortium Members all receive the same Core Package of educational services.
  - h. WIDA English Language Development Standards (“WIDA English Language Development Standards”) include the four recognized domains of speaking, listening, reading, and writing, and are based on the academic language content of preK-12 students.
  - i. WIDA Screener (“WIDA Screener” or “W-Pat”) is an English language proficiency test given to new students in Grades 1–12 to help educators identify whether they are English language learners (“ELLs”). It is a flexible, on-demand test that can be administered at any time during the school year.
- A.3. The Contractor shall annually provide the State, and its LEAs, with access to the Core Package, including annual development and administration of the ACCESS for ELLs and the WIDA Screener.
- a. The Contractor shall provide LEAs with all tools necessary to administer the ACCESS for ELLs through the DRC INSIGHT Portal. For the following exceptions, the Contractor shall provide LEAs with all tools necessary to administer the ACCESS for ELLs via paper:
    - a student requires a printed version of the test as an accommodation or an LEA/school does not have the required IT infrastructure to administer the online version.
    1. The State will annually determine the testing year window dates and inform LEAs of the annual testing year window dates and the LEAs’ corresponding task responsibilities, e.g. online order and correction submissions.
    2. Through the DRC INSIGHT Portal, the Contractor shall provide software downloads for the DRC INSIGHT secure browser, which will be used as the secure test administration platform for all students testing online. The Contractor shall provide unlimited log-ins for the DRC INSIGHT Portal for the State, LEAs, teachers, and students. The Contractor shall list the minimum web browser requirements for the DRC INSIGHT Portal on the login page.
    3. If the State determines that a student requires additional accommodations per their IEP, and that such accommodations will not invalidate the test, the Contractor shall provide those accommodations.
  - b. The Contractor shall provide the WIDA Screener, currently the W-APT, for determining appropriate initial placement of ELLs for the length of the Contract.
    1. The Contractor shall make the W-APT available as a paper and pencil test for five grade spans (kindergarten, 1-2, 3-5, 6-8, 9-12).
    2. The Contractor shall provide LEAs with all tools necessary to administer and score the W-APT. The Contractor shall provide the W-APT in a PDF format on WIDA’s secure

website to be downloaded, printed, and duplicated for use by LEA or school staff as needed.

3. The Contractor shall provide LEAs and schools the option of purchasing a reproducible master copy of the W-APT.

- A.4. Printing, Distribution, Scoring and Reporting: The Contractor shall annually coordinate and oversee all Printing, Distribution, Scoring and Reporting ("PDSR"), either directly or via its approved subcontractor, DRC.
- a. The Contractor shall include an additional 10% of printed test booklets in its distribution to LEAs in order to accommodate fluctuations in ELL populations in large LEAs.
  - b. The Contractor shall provide error free printing, distribution, scoring and reporting of the ACCESS for ELLs test. The Contractor shall correct and provide replacement materials for any errors in printed test booklets that materially affect the reliability or validity of the test at no cost to the State. The Contractor shall issue an error sheet for all errors that do not materially affect the reliability or validity of the test at no cost to the State or LEAs.
  - c. The Contractor shall provide a toll-free customer service representatives (6:00 am-8:00 pm CST Monday-Friday from September through May and 6:00 am-6:00 pm CST Monday-Friday from June through August). LEAs may contact a customer service representative 24 hours a day via email @ WIDA@datarecognitioncorp.com.
  - d. The Contractor shall populate student testing records for students testing online, and produce Pre-ID labels for all students taking paper based tests. Pre-ID labels will be packaged with the testing materials for each LEA.
  - e. The Contractor shall consult with the State and share a preview of the State-specific ordering items in advance of LEA ordering to determine the appropriate file formats, order instructions and other related information.
  - f. The Contractor shall provide test materials in large-print format upon request at no additional costs.
  - g. The Contractor shall provide test materials in Braille format upon request at no additional cost.
  - h. The Contractor shall ship to each LEA test materials designated for either the LEA or individual schools.
  - i. The Contractor shall use United Parcel Service ("UPS") for secure distribution of materials to LEAs. Materials will be shipped to arrive two weeks prior to the opening of the test window in the state. Special arrangements can be made to provide material earlier to specific sites, if approved by the Contractor. Delivery of materials will be scheduled during regular school hours 9:00 a.m. to 3:00 p.m. in the appropriate time zone, and will accommodate each LEA's holiday and breaks. The Contractor send email notifications to test coordinators when materials are shipped. All sites receiving a large volume of material will receive notification at least 24 hours before the materials are delivered. All shipments will be designated as "inside delivery required" and "secure testing materials enclosed." Signatures of receipt will provide proof of delivery and allow the Contractor, LEAs, and schools to track all shipments. The Contractor shall provide all LEA and school specific return of materials.
  - j. If an LEA requires additional materials, the contact person for the LEA may order through the DRC INSIGHT Portal, call the Contractor's customer service staff, or email this information to the Contractor. The Contractor shall respond by compiling the additional materials and shipping them directly to the LEA within three days of order receipt. If overnight or two-day expedited shipping is needed by the LEA to ensure materials arrive two weeks before the start of testing windows, then shipping may be charged directly to the LEA placing the order.
  - k. The Contractor shall scan student booklets to capture each student's test data. Booklets that cannot be scanned due to damage or extenuating circumstances shall be reported to the State.
  - l. The Contractor shall connect each student's data with a unique identification number.
  - m. The Contractor's ACCESS for ELLs Scoring Director shall oversee LEA test scoring to ensure the following: All test materials will be identified and scored using the unique identification number assigned during these data captures. Twenty percent of all items will be

blind double-scored and the Scoring Director will monitor scorers daily to ensure interrater reliability of 70% or higher.

- n. The Contractor shall provide electronic reports and data files to the State and LEAs via the DRC INSIGHT Portal, and printed score reports. Customer and specialized reports are available from the Contractor for additional charges, to be determined in accordance with the Section E.8. Additional lines, items, or options clause.
    - 1. The Contractor shall provide the State with the initial and final draft data in electronic format, including all demographic and student response data collected, raw, scale scores and proficiency levels
    - 2. The Contractor shall provide LEAs with one copy of the following reports:
      - A District Frequency Report for the LEA,
      - A School Frequency Report,
      - A School Roster,
      - An Individual Student Report
  - o. LEAs will return tests to the Contractor for scoring and reporting. The Contractor shall make reports available online and in hard copy six weeks after the receipt of all test materials by the Contractor.
- A.5. The Contractor shall provide technical assistance (“TA”) to the State and LEAs.
- a. TA shall consist of providing the State with analysis and consultation concerning Tennessee’s ACCESS for ELLs test score data in relation to the State’s and Tennessee LEA’s Title I and Title III requirements.
  - b. Up to eight hours per testing year of TA are included in the price of the ACCESS for ELLs test. The included hours of TA do not include any on-site visits. The State may obtain additional TA as needed at the daily rate in place at the time of ordering and in accordance with the Section E.8. Additional lines, items, or options clause.
  - c. The Contractor shall produce the Annual Technical Report on the ACCESS for ELLs tests that, at a minimum, fulfills the requirements of the U.S. Office of English Language Acquisition regarding the technical quality of English language proficiency tests. The non-confidential technical report shall be made available for download on the Contractor’s website.
  - d. The Contractor may create and provide the State with access to a comprehensive, longitudinally-based, online dashboard application comprising of aggregate ACCESS for ELLs test information and data from other national databases in support of the State’s educational programs. The dashboard will only contain aggregate and/or de-identified.
- A.6. The Contractor shall provide test administration training and professional learning services to the State and the State’s LEAs in consultation with the State.
- a. Test administration training
    - i. The Contractor shall provide separate training programs for online and paper-based ACCESS for ELLs administration.
      - 1. Both training programs shall be delivered online from the password-protected area of the Contractor’s website. User accounts shall be set up according to the State in consultation with the Contractor. User accounts will include training certification and test administrator security agreements.
      - 2. Paper-based administration. All LEA personnel who administer the paper-based ACCESS for ELLs test must take training and receive their training certification. Training certification for paper-based administration will require completion of all applicable training units and passing a quiz on the “speaking scoring” section. Certification through the paper-based administration training program shall produce an electronic record of those who have passed the online quizzes and it shall provide a certificate to the test administrator completing the course.
      - 3. Online administration. All LEA personnel who administer the online ACCESS for ELLs test needs to take training and receive their training certification. Training certification for online administration will require completion of all applicable training units. Certification through the online administration

training program will consist of certification checklist and shall produce an electronic record of those who completed the training and it shall provide a certificate to the test administrator completing the course.

- ii. The Contractor shall provide technical support to the State and LEA test administrators through the Contractor's Client Services Center. The Client Services Center

shall be available to assist with registering for the online training programs and troubleshooting technical difficulties related to WIDA online resources as well as answering any ACCESS for ELLs and WIDA Screener related questions. Technical questions concerning the test order platform or testing platform will be referred to the Help Desk. The Client Services Center shall be open Monday-Friday from 8:00 a.m. to 5:00 p.m. Central Standard Time and shall be available via email ([help@wida.us](mailto:help@wida.us)), through the WIDA website ([www.wida.us](http://www.wida.us)), or by toll free telephone (1-866-276-7735).

b. Professional Learning

- i. The parties shall cooperatively develop a plan for offering professional learning ("PL") activities related to the administration of the ACCESS for ELLs test and use classroom implementation of the WIDA English Language Development (ELD) Standards by Tennessee educators. The activities shall be geared toward helping LEAs to meet their Title I and Title III requirements.
- ii. Fourteen PL Units per testing year are included in the price of the ACCESS for ELLs test. The number of PL units included in the price is subject to change based on the number of students tested in the previous testing year:

Students Tested	PL Units
5,000-24,999	10 Units
25,000-44,999	14 Units
45,000-64,999	18 Units

- 1. Eighteen (18) PL units for testing year 2020-21 and future testing years are included in the price of the ACCESS for ELLs test. PL Units expire on June 30th of each testing year and cannot be rolled over from year to year. The number of PL units included in the price is subject to change based on the number of students tested in the previous testing year:

Students Tested	PL Units
25,000-44,999	14 Units
45,000-64,999	18 Units
65,000-84,999	22 Units

- iii. PL Units can be used for a variety of professional learning services. The Contractor shall release a menu of services and guidelines annually that includes a listing of each offering and its unit equivalent. The State may also cooperatively develop with Contractor customized professional learning services. The number of units for a customized service will be determined by the Contractor based on actual costs and in accordance with Section E.8. Additional lines, items, or options clause.
- iv. The Contractor shall send electronic copies of all course materials for workshops to the State in advance of the training. The electronic materials shall include printing, Instructions and room set-up instructions. The State shall be responsible for any participant registration and making and distributing all necessary hard copies of course materials, or providing online access for participants to print materials.
- v. The State is responsible for local expenses (e.g., rental of meeting space, participants per diems, substitute teachers, etc.).
- vi. The State may request additional professional learning services in accordance with the Section E.8. additional lines, items, or options clause.
- vii. If the State cancels a jointly schedule professional learning offering for which the Contractor has incurred non-cancelable costs, then the State may either reimburse

the Contractor for the incurred costs and reschedule the PL offering or it may elect to relinquish the PL units altogether at no additional cost to the State. The non-cancelable costs are as follows:

Time	Cancellation	Rescheduling
3-6 weeks prior to the event 22-42 days prior to the event	\$500+Travel costs+\$200 per Additional Day or 1 Unit	50% of the total first day cancellation fees + additional
3 or less weeks prior to the event 0-21 days prior to the event	\$2000 + Travel costs +\$700 per Additional Day or Workshop Unit Costs	day(s) cancelation fee or 1 unit

1. Travel will be booked no earlier than eight weeks prior to the event, and no penalty will be incurred for a PL offering cancelled more than eight weeks prior to the event.
    - a. No penalty will be incurred for professional learning offerings cancelled 43 days or more prior to the event.
  2. The Contractor's facilitators will make every effort to be on-site for workshops. In the event that the Contractor must cancel an event, the State will receive an additional PL Unit.
  3. Cancellations due to weather will be rescheduled at no charge within the same academic year.
- viii. The Contractor shall provide ELD Standards training and other instructional resources online.
1. A minimum 50% of PL Units allocation must be delivered through a menu of e-Learning options.

A.7 Intellectual Property Ownership and License. The Contractor and the Board of Regents of the University of Wisconsin System, on behalf of the WIDA Consortium, own the copyrights of all works covered under this agreement (collectively the "WIDA Works"). This agreement does not convey any exclusive rights, title or interest in or to the WIDA Works to the State. Because The Contractor makes these materials available to all WIDA Consortium member states, the State shall not take any actions that would limit or restrict access to the materials by other states or otherwise adversely affect the proprietary nature of the WIDA Works.

Unless otherwise expressed in writing, the State shall retain all rights in training and other materials developed by the State. Any specific works that the Contractor develops and delivers solely for the State shall be expressly agreed upon in writing and shall be on a work made for hire basis with the State retaining ownership of the works.

The WIDA Works includes the following works:

1. ACCESS for ELL English language proficiency test ("ACCESS for ELLs") including online and paper-based versions and Alternate ACCESS for ELLs;
2. WIDA English language proficiency placement test (the "WIDA Screener"), including both paper-based and online versions as they are developed (the current WIDA Screener is both paper-based test, "W-APT");
3. WIDA English Language Development Standards and Resource Guide ("WIDA ELD Standards") including Essential Actions, WIDA Can Do Descriptors by grade level cluster, individual figures, tables and charts from the Resource guide and future ELD Standards. Can Do Descriptors and Resource Guide editions;
4. WIDA Early English Language Development Standards; WIDA Early Spanish Language Development Standards, in Spanish and English; WIDA Spanish Language Development Standards; and WIDA Spanish Language Arts Standards (collectively "WIDA Language Standards");
5. WIDA Facilitator Toolkit ("WIDA Facilitator Toolkit"), including ACCESS for ELLs administration and WIDA ELD Standards training materials;
6. WIDA Consortium professional learning materials ("WIDA PL Materials"); and
7. ACCESS for ELLs technical documents and research reports.

The Contractor hereby grants the State the right to use the WIDA Works for State of Tennessee

educational purposes within the State of Tennessee only and subject to the following conditions:

The State's license to use ACCESS for ELLs is subject to the payment of the required fees set forth in Contract section C.3 and shall remain in effect as long as the State elects to use the ACCESS for ELLs for State of Tennessee educational purposes. The State acknowledges that ACCESS for ELLs is a secure test, as that term is defined in 37 C.F.R. § 202.13. The State shall implement statewide policies and procedures to ensure that the security of the test is maintained. The State shall immediately notify the Contractor if it learns of any breach or threatened breach of test security. The Contractor will print and distribute the ACCESS for ELLs for the State in accordance with the Statement and Performance of Work schedule of this Contract. The ACCESS for ELLs shall not be copied, modified, distributed or displayed, including electronic storage or retrieval, in any manner without express written permission from the Contractor and the appropriate security measures in place.

The State's license to use the current WIDA Screener, W-APT, is not subject to any fee and shall remain in effect as long as the State elects to use the ACCESS for ELLs. W-APT is a semi-secure test, meaning it is available from a password-protected secure website. The Contractor will make W-APT available electronically in PDF format. The State, LEAs and individual schools in the State may print and duplicate the W-APT for use by LEA or school staff as needed. The W-APT shall not be modified or publicly displayed, including electronic storage or retrieval, in any manner without express written permission from the Contractor. Notwithstanding the foregoing, the Contractor may phase out all support for the W-APT if/when it introduces a new version of the WIDA Screener. Any online version of the WIDA screener will not be subject to any fee. However, the Contractor may release new paper-based versions of the WIDA Screener at an additional cost, to be determined at time of release, to the State. The Contractor shall provide, as long as the contract is in effect, a version of the WIDA Screener that is not subject to any fee.

The State's license to use the WIDA ELD Standards is not subject to any and shall remain in effect as long as the State and or the Tennessee State Board of Education elects to use the WIDA ELD Standards as the State's English language development Standards. The Contractor will make the WIDA ELD Standard available electronically in PDF format from the WIDA Consortium website. The Contractor will publicly display and provide the WIDA ELD Standards for download free of charge for personal and educational purposes. Educational purposes shall include LEA and individual school/teacher use within the State of Tennessee. This license does not include the right for the State or any LEA within the State of Tennessee to copy and distribute the WIDA ELD Standards beyond de minimis use (de minimis use is less than 100 copies per event, however, making copies for multiple planned events is not de minimis use). The Contractor will publish or license to publish full color bond copies of the WIDA ELD Standards and make available to the State, LEAs and other educators within the State of Tennessee at a lower WIDA Consortium member rate. The WIDA ELD Standards shall not be modified or publicly displayed for electronic storage and retrieval in any manner without express written permission from the Contractor. However, linking to the WIDA Consortium website and stating the free availability of the WIDA ELD Standards is encouraged. The Contractor will grant additional permissions upon request but the State acknowledges that the Contractor may include additional reasonable restrictions for quality control purposes depending on the nature of the request.

The State's license to use the WIDA Language Standards is not subject to any fee and shall remain in effect as long as the State and/or the Tennessee State Board of Education Elects to use the WIDA Language Standards as the State's language standards. For purpose of this license, the State shall include any governmental agency of the State of Tennessee. The Contractor will make the WIDA Language Standards available electronically in PDF format from the WIDA Consortium website. The Contractor will publicly display and provide the WIDA Language Standards for download free of charge for personal and educational purposes. Educational purposes shall include the following: LEA, individual school/teacher, non-profit agency use within the State of Tennessee. This license does not include the right for the State,

LEAs, or non-profit agencies within the State of Tennessee to copy and distribute the WIDA Language Standards beyond de minimis use (de minimis use is less than 100 copies per event, however, making copies for multiple planned events is not de minimis use). The Contractor will publish or license to publish full color bond copies of the WIDA Language Standards and make available to the State, LEAs, non-profits and other Educators within the State of Tennessee at a lower WIDA Consortium member rate. The WIDA retrieval in any manner without express written permission from the Contractor or except in accordance with published guidelines issued by WIDA. However, linking to the WIDA Consortium website and stating the free availability of the WIDA Language Standards is encouraged. The Contractor will grant additional permissions upon request but the State acknowledges that the Contractor may include additional reasonable restrictions for quality control purposes depending on the nature of the request.

The State's license to use the WIDA Facilitator Toolkit is not subject to any fee and shall remain in effect as long as the State elects to use the ACCESS for ELLs. The Contractor will make the WIDA Facilitator Toolkit available electronically from the password-protected section of the WIDA Consortium website. The State and the State's LEAs may use the WIDA Facilitator Toolkit and its individual components for the State and LEA in-service training purposes. The State and LEAs may modify individual components of the WIDA Facilitator Toolkit only in accordance with the Contractor provided user guidelines. The State and LEAs shall not publicly distribute or display, including electronic storage or retrieval, any training materials from the WIDA Facilitator Toolkit, unless specifically permitted by the Contractor user guidelines or the Contractor.

The State's license to use the WIDA PL Materials is not subject to any fee and shall remain in effect as long as the State elects to use the WIDA ELD Standards. The Contractor will make the WIDA PL Materials available electronically to the State prior to any professional learning. The State will be responsible for copying and distributing WIDA PL Materials to participants of the State sponsored professional learning offerings. The WIDA PL Materials shall not be modified or publicly displayed for electronic storage and retrieval in any manner without express written permission from the Contractor.

The State's license to use the ACCESS for ELLs technical documents and research reports is not subject to any fee and shall remain in effect as long as the State elects to use the ACCESS for ELLs. The Contractor will make the ACCESS for ELLs technical documents and research reports available electronically to the State from the public area of the WIDA Consortium website. All confidential and proprietary information will be removed from the ACCESS for ELLs technical documents and research reports that are posted in the public area of the WIDA Consortium website. The State will receive an individual electronic copy of all ACCESS for ELLs technical documents and research reports, including those documents and reports containing confidential and proprietary information. The ACCESS for ELLs technical documents and research reports shall not be modified and no documents or reports containing confidential and proprietary information shall be publicly displayed, including electronic storage and retrieval in any manner.

The State shall remove as soon as practicable any WIDA Works that it publicly displays, including electronic storage and retrieval systems, that the Contractor determines, in its sole discretion, contain confidential or proprietary information.

WIDA, the WIDA Consortium logo, WIDA MODEL and ACCESS for ELLs are trademarks of the Board of Regents of the University of Wisconsin System (collectively the "WIDA Trademarks"). Any use of the WIDA Trademarks shall inure to the benefit of the Contractor. The State acknowledges that the Contractor may, from time-to-time, issue trademark and copyright use guidelines and policies in order to maintain the proper use and integrity of the WIDA Trademarks and WIDA Works and the quality of The Contractor services and products. Current WIDA guidelines will be posted on the WIDA website or provided to the state as applicable. The State shall assist The Contractor in implementing any trademark or copyright use guidelines for all users by the State. Tennessee's LEAs, and the State Contractors (see below).

The State may contract with third parties ("the State Contractors") to provide services to LEAs and other educational agencies within the State of Tennessee or organizations operating under

the authority of the State that the State would otherwise provide (“In-service Activities”). Contracts for in-service Activities shall be limited to a set geographic territory set by the State (“In-service Area”) and shall not authorize the provision of any the Contractor, WIDA or WIDA Consortium service, unless the State receives prior written authorization from the Contractor to do so. The State Contractors may charge a fee to cover the cost of providing In-service Activities. However, the State Contractors are prohibited from charging a greater fee to LEAs and other educational agencies outside of their In-service Area, if their In-service Area is smaller than the whole state territory.

- A.8. 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.9. Inspection and Acceptance. The State shall have the right to inspect all goods or services provided by Contractor under this Contract. If, upon inspection, the State determines that the goods or services are Defective, the State shall notify Contractor, and Contractor shall re-deliver the goods or provide the services at no additional cost to the State. If after a period of thirty (30) days following delivery of goods or performance of services the State does not provide a notice of any Defects, the goods or services shall be deemed to have been accepted by the State.

**B. TERM OF CONTRACT:**

This Contract shall be effective for the period beginning on November 1, 2020 (“Effective Date”) and ending on October 31, 2023, (“Term”). The State shall have no obligation for goods delivered or services provided by the Contractor prior to the Effective Date.

**C. PAYMENT TERMS AND CONDITIONS:**

- C.1. Maximum Liability. In no event shall the maximum liability of the State under this Contract exceed Five Million Six Hundred Fifty Nine Thousand Nine Hundred Eighty Three Dollars and no cents (\$5,659,983.00) (“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:

Testing Year	2020-21	2021-22	2022-23
Online Price	\$27.75	\$27.75	Not-to-Exceed \$32.00
Paper Price	\$27.75	\$27.75	Not-to-Exceed \$34.00
Alternate Price	\$77.00	\$141.25	Not-to-Exceed \$150.00
Braille Price	\$187.75	\$187.75	Not-to-Exceed \$194.00
Total Pop. Est.	54,500	59,405	64,751
Online Pop. Est.	47,206	51,462	56,094
Paper Pop. Est.	6,819	7,426	8,094
Alternate Pop. Est.	471	513	559
Braille Pop. Est.	4	4	4
Online Cost Est.	\$ 1,309,966.50	\$ 1,428,070.50	\$ 2,072,032.00
Paper Cost Est.	\$ 189,227.25	\$ 206,071.50	\$ 259,008.00
Alternate Cost Est.	\$36,267.00	\$72,461.25	\$ 83,850.00
Braille Cost Est.	\$751.00	\$751.00	\$ 776.00
Total Cost Est.	\$ 1,536,211.75	\$ 1,708,105.25	\$ 2,415,666.00

1. For testing year 2020-21 and future years if more than 75,000 students are tested by the State, The Contractor will discount the price of the online and/or paper test by \$1.50 for the number of students tested in excess of 75,000 students. Future volume price discounts will be announced when future ACCESS pricing is determined.

2. The Contractor shall invoice the State for test development and pre-operational costs of \$500,000 in December.
  3. The Contractor shall invoice the State for the balance of the cost, based on the actual number of students tested, upon completion and delivery of the annual test reports.
- 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:

Tennessee Department of Education  
 10th Floor  
 Andrew Johnson Tower  
 710 James Robertson Parkway  
 Nashville, TN 37243  
 615-741-0720

- a. Each invoice, on Contractor's letterhead, shall clearly and accurately detail all of the following information (calculations must be extended and totaled correctly):
  - (1) Invoice number (assigned by the Contractor);
  - (2) Invoice date;
  - (3) Contract number (assigned by the State);
  - (4) Customer account name: Department of Education, Division of Data & Research, Office of Strategy
  - (5) Customer account number (assigned by the Contractor to the above-referenced Customer);
  - (6) Contractor name;
  - (7) Contractor Tennessee Edison registration ID number; 0000024340
  - (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:

Attn: Tammy Billington  
 Tennessee Department of Education  
 710 James Robertson Parkway, 10<sup>th</sup> FL  
 tammy.billington@tn.gov

The Contractor:

Jorge L Cardona  
 Wisconsin Center for Educational Research  
 1025 West Johnson St. MD#23

Telephone: 608-265-6240  
 Fax#: 608-263-3733  
 Email [Address: jcardona@wisc.edu](mailto:jcardona@wisc.edu)

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 ventures, 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 test, 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. For clarity, except as otherwise expressly set forth in this Section, Contractor's indemnification obligations and other remedies available under this Contract are subject to the limitations on liability set forth in this Section.
- 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.

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

- D.20. HIPAA Compliance. The State and Contractor shall comply with obligations under the Health Insurance Portability and Accountability Act of 1996 (“HIPAA”), Health Information Technology for Economic and Clinical Health (“HITECH”) Act and any other relevant laws and regulations regarding privacy (collectively the “Privacy Rules”). The obligations set forth in this Section shall survive the termination of this Contract.
- a. Contractor warrants to the State that it is familiar with the requirements of the Privacy Rules, and will comply with all applicable requirements in the course of this Contract.
  - b. Contractor warrants that it will cooperate with the State, including cooperation and coordination with State privacy officials and other compliance officers required by the Privacy Rules, in the course of performance of the Contract so that both parties will be in compliance with the Privacy Rules.
  - c. The State and the Contractor will sign documents, including but not limited to business associate agreements, as required by the Privacy Rules and that are reasonably necessary to keep the State and Contractor in compliance with the Privacy Rules. This provision shall not apply if information received or delivered by the parties under this Contract is NOT “protected health information” as defined by the Privacy Rules, or if the Privacy Rules permit the parties to receive or deliver the information without entering into a business associate agreement or signing another document.
  - d. The Contractor will indemnify the State and hold it harmless for any violation by the Contractor or its subcontractors of the Privacy Rules. This includes the costs of responding to a breach of protected health information, the costs of responding to a government enforcement action related to the breach, and any fines, penalties, or damages paid by the State because of the violation.
- D.21. Tennessee Consolidated Retirement System. Subject to statutory exceptions contained in Tenn. Code Ann. §§ 8-36-801, *et seq.*, the law governing the Tennessee Consolidated Retirement System (“TCRS”), provides that if a retired member of TCRS, or of any superseded system administered by TCRS, or of any local retirement fund established under Tenn. Code Ann. §§ 8-35-101, *et seq.*, accepts State employment, the member's retirement allowance is suspended during the period of the employment. Accordingly and notwithstanding any provision of this Contract to the contrary, the Contractor agrees that if it is later determined that the true nature of the working relationship between the Contractor and the State under this Contract is that of “employee/employer” and not that of an independent contractor, the Contractor, if a retired member of TCRS, may be required to repay to TCRS the amount of retirement benefits the Contractor received from TCRS during the Term.
- D.22. Tennessee Department of Revenue Registration. The Contractor shall comply with all applicable registration requirements contained in Tenn. Code Ann. §§ 67-6-601 – 608. Compliance with applicable registration requirements is a material requirement of this Contract.
- D.23. Debarment and Suspension. The Contractor certifies, to the best of its knowledge and belief, that it, its current and future principals, its current and future subcontractors and their principals:
- a. are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any federal or state department or agency;
  - b. have not within a three (3) year period preceding this Contract been convicted of, or had a civil judgment rendered against them from commission of fraud, or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, state, or local) transaction or grant under a public transaction; violation of federal or state antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification, or destruction of records, making false statements, or receiving stolen property;

- c. are not presently indicted or otherwise criminally or civilly charged by a government entity (federal, state, or local) with commission of any of the offenses detailed in section b. of this certification; and
- d. have not within a three (3) year period preceding this Contract had one or more public transactions (federal, state, or local) terminated for cause or default.

The Contractor shall provide immediate written notice to the State if at any time it learns that there was an earlier failure to disclose information or that due to changed circumstances, its principals or the principals of its subcontractors are excluded, disqualified, or presently fall under any of the prohibitions of sections a-d.

- D.24. Force Majeure. "Force Majeure Event" means fire, flood, earthquake, elements of nature or acts of God, wars, riots, civil disorders, rebellions or revolutions, acts of terrorism or any other similar cause beyond the reasonable control of the Party except to the extent that the non-performing Party is at fault in failing to prevent or causing the default or delay, and provided that the default or delay cannot reasonably be circumvented by the non-performing Party through the use of alternate sources, workaround plans or other means. A strike, lockout or labor dispute shall not excuse either Party from its obligations under this Contract. Except as set forth in this Section, any failure or delay by a Party in the performance of its obligations under this Contract arising from a Force Majeure Event is not a default under this Contract or grounds for termination. The non-performing Party will be excused from performing those obligations directly affected by the Force Majeure Event, and only for as long as the Force Majeure Event continues, provided that the Party continues to use diligent, good faith efforts to resume performance without delay. The occurrence of a Force Majeure Event affecting Contractor's representatives, suppliers, subcontractors, customers or business apart from this Contract is not a Force Majeure Event under this Contract. Contractor will promptly notify the State of any delay caused by a Force Majeure Event (to be confirmed in a written notice to the State within one (1) day of the inception of the delay) that a Force Majeure Event has occurred, and will describe in reasonable detail the nature of the Force Majeure Event. If any Force Majeure Event results in a delay in Contractor's performance longer than forty-eight (48) hours, the State may, upon notice to Contractor: (a) cease payment of the fees 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 Attachment A;
  - c. any clarifications of or addenda to the Contractor's proposal seeking this Contract;
  - d. the State solicitation, as may be amended, requesting responses in competition for this Contract;
  - e. any technical specifications provided to proposers during the procurement process to award this Contract; and
  - f. the Contractor's response seeking this Contract.
- D.31. Iran Divestment Act. The requirements of Tenn. Code Ann. § 12-12-101, *et seq.*, addressing contracting with persons as defined at 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 State reserves the right to amend or require additional insurance coverage, coverage amounts, and endorsements required under this Contract. Contractor's failure to maintain or submit evidence of insurance coverage, as required, is a material breach of this Contract. If Contractor loses insurance coverage, fails to renew coverage, or for any reason becomes uninsured during the Term, Contractor shall immediately notify the State. All insurance companies providing coverage must be: (a) acceptable to the State; (b) authorized by the Tennessee Department of Commerce and Insurance ("TDCI"); and (c) rated A- / VII or better by A.M. Best. All coverage must be on a primary basis and noncontributory with any other insurance or self-insurance carried by the State. Contractor agrees to name the State as an additional insured on any insurance policy with the exception of workers' compensation (employer liability) and professional liability (errors and omissions) insurance. All policies must contain an endorsement for a waiver of subrogation in favor of the State. Any deductible or self insured retention ("SIR") over fifty thousand dollars (\$50,000) must be approved by the State. The deductible or 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 be accompanied by an endorsement at least as broad as the Insurance Services Office, Inc. (also known as "ISO") "Noncontributory—Other Insurance Condition" endorsement or shall be written on a policy form that addresses both the primary and noncontributory basis of the umbrella policy if the State is otherwise named as an additional insured.

Contractor shall provide the State a certificate of insurance ("COI") evidencing the coverages and amounts specified in this Section. The COI must be on a form approved by the TDCI (standard ACORD form preferred). The COI must list each insurer's National Association of Insurance

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

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: (1)—all the insurance coverage and policy limits carried by the Contractor; or (2)—the minimum insurance coverage requirements and policy limits shown in this Contract; whichever is greater. Any insurance proceeds in excess of or broader than the minimum required coverage and minimum required policy limits, which are applicable to a given loss, shall be available to the State. 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, at a minimum, 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 single 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. Professional Liability Insurance
- 1) Professional liability insurance shall be written on an occurrence basis or on a claims-made basis. If this coverage is written on a claims-made basis, then:
    - i. The retroactive date must be shown, and must be on or before the earlier of the Effective Date of the Contract or the beginning of Contract work or provision of goods and services;
    - ii. Insurance must be maintained and evidence of insurance must be provided for at least five (5) full years from the date of the final Contract payment; and
    - iii. If coverage is canceled or non-renewed, and not replaced with another claims-made policy form with a retroactive date on or prior to the Contract Effective Date, the Contractor must purchase "extended reporting" or "tail coverage" for a minimum of five (5) full years from the date of the final Contract payment.
  - 2) Any professional liability insurance policy shall have a limit not less than one million dollars (\$1,000,000) per claim and two million dollars (\$2,000,000) in the aggregate.
- e. 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 ten million dollars (\$10,000,000) per occurrence or claim and ten million dollars (\$10,000,000) annual aggregate, covering all acts, claims,

errors, omissions, negligence, infringement of intellectual property (including copyright, patent 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, and penalties.

- 2) Such coverage shall include data breach response expenses, in an amount not less than ten million dollars (\$10,000,000) and payable whether incurred by the State or Contractor, including but not limited to consumer notification, whether or not required by law, computer forensic investigations, public relations and crisis management firm fees, credit file or identity monitoring or remediation services and expenses in the performance of services for the State or on behalf of the State hereunder.

f. Crime Insurance

- 1) The Contractor shall maintain crime insurance, which shall be written on a "loss sustained form" or "loss discovered form" providing coverage for third party fidelity, including cyber theft and extortion. The policy must allow for reporting of circumstances or incidents that may give rise to future claims, include an extended reporting period of no less than two (2) years with respect to events which occurred but were not reported during the term of the policy, 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 and 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 two (2) years 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. 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.
- E.3. Software License Warranty. Contractor grants a license to the State to use all software provided under this Contract in the course of the State's business and purposes.
- E.4. Software Support and Maintenance Warranty. Contractor shall provide to the State all software upgrades, modifications, bug fixes, or other improvements in its software that it makes generally available to its customers.
- E.5. 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.6. 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.

The Contractor shall report to the State any instances of unauthorized access to or potential disclosure of PII in the custody or control of Contractor ("Unauthorized Disclosure") that come to the Contractor's attention. Any such report shall be made by the Contractor within twenty-four

(24) hours after the Unauthorized Disclosure has come to the attention of the Contractor. Contractor shall take all necessary measures to halt any further Unauthorized Disclosures. The Contractor, at the sole discretion of the State, shall provide no cost credit monitoring services for individuals whose PII was affected by the Unauthorized Disclosure. The Contractor shall bear the cost of notification to all individuals affected by the Unauthorized Disclosure, including individual letters and public notice. The remedies set forth in this Section are not exclusive and are in addition to any claims or remedies available to this State under this Contract or otherwise available at law. The obligations set forth in this Section shall survive the termination of this Contract.

#### E.7. 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 SOC audit control objectives. 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 to the Contractor or Subcontractor. The Contractor shall submit corrective action plans to the State for any issues included in the audit report within 30 days after the CPA firm provides the audit report to the Contractor or Subcontractor.

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 Penetration Tests and Vulnerability Tests 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 computer system, with the purpose of discovering security weaknesses which have the potential to gain access to the Processing Environment's features and data. The "Vulnerability Test" shall be designed and executed to define, identify, and classify the security holes

(vulnerabilities) in the Processing Environment. The Contractor shall allow the State, at its option, to perform Penetration Tests and Vulnerability Tests on 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 determined by the State
- (6) Upon termination of this Contract and in consultation with the State, the Contractor shall destroy all Confidential State Data it holds (including any copies such as backups) in accordance with the current version of National Institute of Standards and Technology ("NIST") Special Publication 800-88. The Contractor shall provide a written confirmation of destruction to the State within ten (10) business days after destruction.

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 as amended periodically. 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>.
- (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 Application to ensure that security vulnerabilities are not introduced.

c. Comptroller Audit Requirements

Upon reasonable notice and at any reasonable time, the Contractor and Subcontractor(s) agree to allow the State, the Comptroller of the Treasury, or their duly appointed representatives to perform information technology control audits of the Contractor and all Subcontractors used by the Contractor. Contractor will maintain and cause its Subcontractors to maintain a complete audit trail of all transactions and activities in connection with this Contract. Contractor will provide to the State, the Comptroller of the Treasury, or their duly appointed representatives access to Contractor and Subcontractor(s) personnel for the purpose of performing the information technology control audit.

The information technology control audit may include a review of general controls and application 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. Application controls are directly related to the application and help ensure that transactions are complete, accurate, valid, confidential, and available. 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:
- (1) “Disaster Recovery Capabilities” refer to the actions the Contractor takes to meet the Recovery Point and Recovery Time Objectives defined below. Disaster Recovery Capabilities shall meet the following objectives:
    - i. Recovery Point Objective (“RPO”). The RPO is defined as the maximum targeted period in which data might be lost from an IT service due to a major incident: **24 hours**
    - ii. Recovery Time Objective (“RTO”). The RTO is defined as the targeted duration of time and a service level within which a business process must be restored after a disaster (or disruption) in order to avoid unacceptable consequences associated with a break in business continuity: **6 hours**
  - (2) 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.8. 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, the State will sign it. 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,**

**BOARD OF REGENTS OF THE UNIVERSITY OF WISCONSIN SYSTEM:**

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**CONTRACTOR SIGNATURE**

**DATE**

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

**DEPARTMENT OF EDUCATION**

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**DR. PENNY SCHWINN, COMMISSIONER**

**DATE**

**ATTACHMENT A****ATTESTATION RE PERSONNEL USED IN CONTRACT PERFORMANCE**

<b>SUBJECT CONTRACT NUMBER:</b>	67477
<b>CONTRACTOR LEGAL ENTITY NAME:</b>	Board of Regents of the University of Wisconsin System on behalf of the University of Wisconsin – Madison's WCER
<b>EDISON VENDOR IDENTIFICATION NUMBER:</b>	0000024340

**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.**

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**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.

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**PRINTED NAME AND TITLE OF SIGNATORY**

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**DATE OF ATTESTATION**