

FISCAL REVIEW COMMITTEE SUBMISSION
Contract #47556, 33111-00616, Amendment #2

1. Summary letter
 2. Supplemental documentation form
 3. Edison query in Excel
 4. Approved amendment request (Amendment #2)
 5. Original contract
 6. Amendment #1
 7. Proposed amendment #2
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STATE OF TENNESSEE
DEPARTMENT OF EDUCATION

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

BILL HASLAM
GOVERNOR

CANDICE MCQUEEN
COMMISSIONER

TO: Executive Director, Fiscal Review Committee

FROM: Candice McQueen, Commissioner

DATE: March 26, 2018

RE: Request to appear before fiscal review committee regarding non-competitive contract amendment request RFS # 33111-00616

Please consider the enclosed request for a non-competitive contract amendment 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 (Title I of the Elementary and Secondary Education Act of 1965, as amended by the No Child Left Behind Act of 2001). The department's contract with WCER enables Tennessee to comply with these requirements through an annual administration of ACCESS for ELLs. The ACCESS for ELLs is approved by the U.S. Department of Education for assessing English Language proficiency and is aligned with the WIDA English Language Development Standards. Additionally, WIDA is the only entity that offers an alternate assessment for students with significant cognitive disabilities.

An amendment is needed to extend the contract for one year and add funding, for a total maximum liability of \$5,392,316.50, with no changes to the scope. 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 extend this contract.

Thank you for your consideration.

CM: tlb

cc: Mary Batiwalla, Assistant Commissioner, Assessment, Accountability & Data Governance
Heather Peltier, Chief Assessment Officer, Assessment Logistics

Supplemental Documentation Required for
Fiscal Review Committee

*Contact Name:	Joanna Collins	*Contact Phone:	615-770-3869		
*Presenter's name(s):	Mary Batiwalla, Jan Lanier, Joanna Collins, Elizabeth Fiveash, Annie Freeland				
Edison Contract Number: <i>(if applicable)</i>	47556	RFS Number: <i>(if applicable)</i>	33111-00616		
*Original or Proposed Contract Begin Date:	11/2/2015	*Current or Proposed End Date:	10/18/2019		
Current Request Amendment Number: <i>(if applicable)</i>	2				
Proposed Amendment Effective Date: <i>(if applicable)</i>	10/26/18				
*Department Submitting:	Department of Education				
*Division:	Assessment, Accountability Division				
*Date Submitted:	3/26/18				
*Submitted Within Sixty (60) days:	Yes				
<i>If not, explain:</i>	N/A				
*Contract Vendor Name:	Board of Regents Univ. of Wisconsin				
*Current or Proposed Maximum Liability:	\$ 5,392,316.50				
*Estimated Total Spend for Commodities:	N/A				
*Current or Proposed Contract Allocation by Fiscal Year: <i>(as Shown on Most Current Fully Executed Contract Summary Sheet)</i>					
FY: 2016	FY:2017	FY:2018	*FY2019		
\$1,012,629.10	\$1,356,533.90	\$1,518,950.00	\$1,504,203.50		
*Current Total Expenditures by Fiscal Year of Contract: <i>(attach backup documentation from Edison)</i>					
FY:2016	FY:2017	FY:2018	FY:	FY	FY
\$1,012,629.00	\$1,293,992.40	\$486,000.00	\$	\$	\$

Supplemental Documentation Required for
Fiscal Review Committee

<p>IF Contract Allocation has been greater than Contract Expenditures, please give the reasons and explain where surplus funds were spent:</p>	<p>In 2017, funds were allocated for a 14% increase of student population for that fiscal year. Actual student counts were less than the projected number. Unused funds could be used in 2018 for the anticipated growth of English Language Learner population and the type of WIDA test given (paper/on-line) in which price varies between the test administered.</p>
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Supplemental Documentation Required for
Fiscal Review Committee

IF surplus funds have been carried forward, please give the reasons and provide the authority for the carry forward provision:		N/A	
IF Contract Expenditures exceeded Contract Allocation, please give the reasons and explain how funding was acquired to pay the overage:		N/A	
*Contract Funding Source/Amount:			
State:	\$5,392,316.50	Federal:	
<i>Interdepartmental:</i>		<i>Other:</i>	
If "other" please define:			
If "interdepartmental" please define:			
Dates of All Previous Amendments or Revisions: <i>(if applicable)</i>	Brief Description of Actions in Previous Amendments or Revisions: <i>(if applicable)</i>		
Amendment 1 11/4/16	Increase maximum liability to accommodate growth of English Language Learners population in the State of TN.		
Method of Original Award: <i>(if applicable)</i>	Sole source		
*What were the projected costs of the service for the entire term of the contract prior to contract award? How was this cost determined?	The original projected costs for the contract were \$3,350,219.10. That cost was determined in accordance with pricing provided by the vendor and pricing they provide to other state education agencies.		

Supplemental Documentation Required for
Fiscal Review Committee

<p>*List number of other potential vendors who could provide this good or service; efforts to identify other competitive procurement alternatives; and the reason(s) a sole-source contract is in the best interest of the State.</p>	<p>A non-competitive amendment is necessary because the Board of Regents - University of Wisconsin - Madison WCER is the only vendor who offers an alternative assessment for students with significant cognitive disabilities. 36 U. S. State Education Agencies belong to the WIDA Consortium. The ACCESS for ELLs is approved by the U. S. Dept. of Education for accessing English Language proficiency. The only alternative for TN would be to develop and implement a custom assessment, the cost of which would be exponentially higher than the ACCESS for ELLs.</p>
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Amendment Request

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

<p>APPROVED Michael F. Perry, Chief Procurement Officer by T. L. Stuart CPO Attorney</p>	<p>Digitally signed by Michael F. Perry, Chief Procurement Officer by T. L. Stuart CPO Attorney DN: cn=Michael F. Perry, Chief Procurement Officer by T. L. Stuart CPO Attorney, o=Central Procurement Office, ou=DGS, email=toni.stuart@tn.gov, c=US Date: 2018.03.16 13:15:47 -05'00'</p>
CHIEF PROCUREMENT OFFICER	DATE

Agency request tracking #	33111-00616
1. Procuring Agency	Tennessee Department of Education-Assessment, Accountability & Data Governance
2. Contractor	Board of Regents of the University of Wisconsin System on behalf of the University of Wisconsin - Madison's WCER
3. Edison contract ID #	47556
4. Proposed amendment #	2
5. Contract's Original Effective Date	November 2, 2015
6. Current end date	October 30, 2018
7. Proposed end date	October 30, 2019
8. Current Maximum Liability or Estimated Liability	\$ 3,888,113.00
9. Proposed Maximum Liability or Estimated Liability (increase of \$1,504,203.50)	\$5,392,316.50
10. Strategic Technology Solutions Pre-Approval Endorsement Request <i>- information technology service (N/A to THDA)</i>	<input checked="" type="checkbox"/> Not Applicable <input type="checkbox"/> Attached
11. eHealth Pre-Approval Endorsement Request <i>- health-related professional, pharmaceutical, laboratory, or imaging</i>	<input checked="" type="checkbox"/> Not Applicable <input type="checkbox"/> Attached
12. Human Resources Pre-Approval Endorsement Request <i>- state employee training service</i>	<input checked="" type="checkbox"/> Not Applicable <input type="checkbox"/> Attached
13. Explain why the proposed amendment is needed	
<p>The purpose of the amendment is to extend the contract term, add the renewal/extension clause, and increase the maximum liability.</p> <p>An amendment is necessary due to the fact that WIDA is the only vendor who offers an alternate assessment for students with significant cognitive disabilities and the State is legally required under federal law to provide an annual assessment of English proficiency for all students with limited English proficiency in schools in the state (Title I of the</p>	

Agency request tracking #	33111-00616
Elementary and Secondary Education Act of 1965, as amended by the No Child Left Behind Act of 2001).	
14. If the amendment involves a change in Scope, describe efforts to identify reasonable, competitive, procurement alternatives to amending the contract. N/A	
Signature of Agency head or authorized designee, title of signatory, and date (the authorized designee may sign his or her own name if indicated on the Signature Certification and Authorization document) Candice McQueen_jc  Digitally signed by Candice McQueen_jc DN: cn=Candice McQueen_jc, o, ou=TN Department of Education, email=joanna.collins@tn.gov, c=US Date: 2018.03.13 15:30:57 -05'00'	

7-16-15 FA
MSH089549**CONTRACT**

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

Begin Date November 2, 2015	End Date October 30, 2018	Agency Tracking # 33111-00616	Edison Record ID 47556
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Contractor Legal Entity Name Board of Regents of the University of Wisconsin System on behalf of the University of Wisconsin – Madison's WCER	Edison Vendor ID 24340
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Goods or Services Caption (one line only)
WIDA Consortium Core Package

Contractor <input checked="" type="checkbox"/> Contractor	CFDA # n/a
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Funding FY	State	Federal	Interdepartmental	Other	TOTAL Contract Amount
2016	1,012,629.10	\$0.00	\$0.00	\$0.00	1,012,629.10
2017	1,117,620.00	\$0.00	\$0.00	\$0.00	1,117,620.00
2018	1,219,970.00	\$0.00	\$0.00	\$0.00	1,219,970.00
2019	0.00	\$0.00	\$0.00	\$0.00	0.00
TOTAL:	3,350,219.10	\$0.00	\$0.00	\$0.00	3,350,219.10

Contractor Ownership Characteristics:

Minority Business Enterprise (MBE): African American, Asian American, Hispanic American, Native American

Woman Business Enterprise (WBE)

Tennessee Service Disabled Veteran Enterprise (SDVBE)

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.

Other:

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

Competitive Selection

Other: WCER is the managing agency for the ACCESS for ELs assessment developed by the WIDA consortium in compliance with Federal regulations.

Budget Officer Confirmation: There is a balance in the appropriation from which obligations hereunder are required to be paid that is not already encumbered to pay other obligations.

Chris Fey 10/19/15

Speed Chart (optional) ED530	Account Code (optional) 708030000	Use location CF19105 due to move to AJ Tower from TP5
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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 CENTR FOR
EDUCATION RESEARCH (WCER)

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 public, nonprofit educational institution.
Contractor Place of Incorporation or Organization: Wisconsin
Contractor Edison Registration ID # 24340

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. WCER is the organizational home of the WIDA Consortium (WIDA), a multi-state coalition of state educational agencies (SEAs) that acts in collaboration to research, design and implement a standards-based educational system that promotes equitable educational opportunities for English language learners in pre-kindergarten through grade twelve. The WIDA English Language Development Standards form the base of this system. The 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. SEAs join the WIDA Consortium to obtain the WIDA Consortium Core Package for use by SEAs and local educational agencies (LEAs) within each of their states (see Attachment A, WIDA Consortium Board for definition of "Core Package").

Title I of the Federal Elementary and Secondary Education Act (The No Child Left Behind Act of 2001 or NCLB) requires LEAs to provide an annual assessment of English proficiency for all students with limited English proficiency in schools served by the SEA.

Title III of NCLB 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 limited English proficient 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.

WCER offers an annual academic assessment of English proficiency as part of the Core Package, on behalf of WIDA, under the brand name ACCESS for ELLs. ACCESS for ELLs is designed to assess 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 the State's and Tennessee's LEAs' Title I and III requirements.

The State wishes to become a WIDA Consortium member in order to access the Core Package, including the annual administration of ACCESS for ELLs and related services of WCER. WCER, as holder of the intellectual property rights to the Core Package and having obtained a vendor to provide the operational administration of ACCESS for ELLs, wishes to provide the State with the



intellectual property licenses, assessment administration and related services of the Core Package.

- A.3. WCER shall provide the professional services listed in paragraphs a through c. The professional services set forth below shall be performed: (i) using the requisite degree of skill, care and diligence; and (ii) in accordance with professional standards consistent with nationally recognized contractors performing similar professional services.
- a. WCER shall develop, administer and score the ACCESS for ELLs assessment for 2015-16 school year and future testing years covered by this Contract in accordance with the following:
- (1) The assessment shall be administered online, through a web-based test administration portal, unless the following exceptions apply: a student requires a printed version of the assessment as an accommodation or an LEA/school does not have the required IT infrastructure to administer the online version. In both these cases, the test will be administered through a paper version of the assessment.
 - (2) WCER shall coordinate/oversee the Printing, Distribution, Scoring, and Reporting ("PDSR") contractor. The PDSR contractor may include an additional 10% of printed test booklets in its distribution to LEAs in order to accommodate fluctuations in English Language Learner (ELL) populations in larger LEAs. In addition to the per student charge for the ACCESS for ELLs administration, the State shall be responsible for actual printing and distribution costs of unused tests printed and distributed in excess of 115% of the number of actual students tested.
 - (3) WCER, through the PDSR subcontractor, will provide error free printing, distribution, scoring and reporting of the ACCESS for ELLs assessment. WCER 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 and Tennessee's LEAs. WCER shall issue an errata sheet for all errors that do not materially affect the reliability or validity of the test at no cost to the State and Tennessee's LEAs.
 - (4) The State shall determine each year, through consultation with the PDSR contractor, the testing year window dates. The State shall be responsible for informing Tennessee's LEAs of the annual testing year window dates and the LEAs' corresponding task responsibilities, e.g. online ordering and corrections submissions.
 - (5) Printing, distribution, scoring, and reporting policies and procedures include the following:
 - i. Data Recognition Corporation (DRC) will provide a secure, web-based ordering system and administrative portal supported by toll-free customer service representatives (6:00am-8:00pm CST Monday-Friday from September through May and 6:00am-6:00pm CST Monday-Friday from June through August). LEAs may contact a customer service representative 24 hours per day via email at WIDA@datarecognitioncorp.com. DRC will provide the minimum web browser requirements for the administrative portal on the login page of the administrative portal.
 - ii. DRC will 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.
 - iii. DRC will consult with the State and share a preview of State specific ordering items in advance of LEA ordering to determine the appropriate file formats, ordering instructions and other related information.
 - iv. DRC will provide test materials in large-print format upon request at no additional cost.
 - v. DRC will provide test materials in Braille format upon request for a fee of \$160 per student.
 - vi. If a student requires additional accommodations, the State, DRC, and WCER shall determine the appropriate assessment options, if any.



- vii. Through the administrative portal, DRC will provide software downloads for the DRC INSIGHT secure browser, which will be used as the secure test administration platform for all students testing online.
 - viii. DRC will ship to each LEA test materials designated for either the LEA or individual schools.
 - ix. DRC will use United Parcel Service (UPS) for distribution to LEAs. Materials will be shipped to arrive two weeks prior to the opening of the assessment window in the state. Special arrangements can be made to provide material earlier to specific sites, if approved by the WCER. 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 holidays and breaks. DRC will 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 DRC, LEAs, and schools to track all shipments. DRC will provide all LEA and school specific return shipping labels and forms and will be responsible for all costs associated with the return of materials. DCR may include an additional 10% of test booklets in its distribution to LEAs in order to accommodate fluctuations in ELL populations in larger LEAs.
 - x. If an LEA requires additional materials, the contact person for the LEA has the option of ordering through the administrative portal, calling DRC's customer service staff, or emailing this information to DRC. DRC will 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 charges may apply.
 - xi. DRC will scan student booklets to capture each student's test data. Booklets that cannot be scanned due to damage or extenuating circumstances will be reported to the State.
 - xii. DRC will connect each student's data with a unique identification number.
 - xiii. Test scoring personnel will be overseen by the ACCESS for ELLs Scoring Director, housed at DRC. All test materials will be identified and scored using the unique identification number assigned during test data capture. Twenty percent of all items will be blind double-scored and the Scoring Director will monitor scorers daily to ensure inter-rater reliability of 70% or higher.
 - xiv. DRC shall provide electronic reports and data files to the State and the State's LEAs via the administrative portal, and printed score reports, as described below. Custom and specialized reports are available from DRC for additional charges.
 1. State – initial and final draft data in electronic format, including all demographic and student response data collected, raw, scale scores and proficiency levels are included in the file
 2. State LEAs – the LEAs will receive one copy of the following reports:
 - A District Frequency Report for the LEA,
 - A School Frequency Report,
 - A School Roster,
 - An Individual Student Report
- (6) LEAs shall return tests to DRC for scoring and reporting. Reports will be available six weeks after the receipt of all test materials by DRC.
- (7) WCER shall provide the WIDA Screener, currently the W-APT, for determining appropriate initial placement of ELLs for the length of the Contract. WCER will make the W-APT available as a paper and pencil assessment for five grade spans (kindergarten, 1–2, 3–5, 6–8, 9–12). The W-APT shall be implemented as an assessment that is locally administered and scored



by a test administrator. WCER 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. WCER will also provide LEAs and schools the option of purchasing a reproducible master copy of the W-APT.

- b. WCER shall provide technical assistance (TA) to and in consultation with the State.
- (1) 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's LEAs' Title I and III requirements.
 - (2) Up to eight hours per testing year of TA are included in the price of the ACCESS for ELLs assessment. 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. The State shall submit a purchase order to WCER to obtain additional TA.
 - (3) WCER shall produce a technical report on the ACCESS for ELLs assessments that, at a minimum, fulfills the requirements of the U.S. Office of English Language Acquisition regarding the technical quality of English language proficiency assessments. The non-confidential technical report shall be made available for download on WCER's website.
 - (4) WCER may create and provide the State with access to a comprehensive, longitudinally-based, online dashboard application comprising of aggregate ACCESS for ELLs assessment 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 data in accordance with Attachment B, Education Record Release and Data Use Agreement.
- c. WCER shall provide test administration training and professional learning services to the State and the State's LEAs in consultation with the State.
- (1) Test administration training
 - i. WCER shall provide separate training programs for online and paper-based ACCESS for ELLs administration.
 1. Both training programs will be delivered online from the password-protected area of the WIDA website. User accounts shall be set up according to the State in consultation with WCER. User accounts will include training certification and test administrator security agreements.
 2. Paper-based administration. Everyone who administers the paper-based ACCESS for ELLs test needs to 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. Everyone who administers 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 a 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. WCER shall provide technical support to the State and the State's LEAs test administrators through a 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 question. Technical questions concerning the test ordering platform or testing platform will be referred to the DRC 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), through the WIDA website (www.wida.us), or by toll free telephone (1-866-276-7735).



(2) 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 assessment and use and classroom implementation of the WIDA ELD Standards by Tennessee educators. The activities shall be geared toward helping the State and Tennessee's LEAs' meet their Title I and III requirements.
- ii. Fourteen PL Units per testing year are included in the price of the ACCESS for ELLs assessment. 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

- iii. PL Units can be used for a variety of professional learning services. WCER will 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 WCER customized professional learning services. The number of units for a customized service will be determined by WCER based on actual costs.
- iv. WCER will send electronic copies of all course materials for workshops to the State in advance of the training. The electronic materials will 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 shall submit a purchase order to WCER to obtain additional PL Units.
- vii. If the State cancels a jointly scheduled professional learning offering for which WCER has incurred non-cancelable costs, then the State may either reimburse WCER 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	\$500 + Travel costs + \$200 per Additional Day OR 1 Unit	50% of the total first day cancellation fees + additional day(s) cancellation fee OR
3 or less weeks prior to the event	\$2000 + Travel costs + \$700 per Additional Day OR Workshop Unit Cost	1 Unit

- 1. Travel will be booked no earlier than eight weeks prior to the event, and no penalty will be incurred for PL offerings cancelled more than eight weeks prior to the event



2. WIDA facilitators will make every effort to be on-site for workshops. In the event that WCER must cancel an event, the State will receive an additional PL Unit in addition to rescheduling the workshop.
 3. Cancellations due to weather will be rescheduled at no charge within the same academic year.
 - viii. WCER will provide ELD Standards training and other instructional resources online.
- A.4. WIDA will contract with the Center for Applied Linguistics (CAL) to perform a bridge study linking scores on Tennessee's previous English Language proficiency test to scores on ACCESS for ELLs®. This linking study is necessary to establish Annual Measurable Achievement Objectives (AMAOs).
- a. CAL will conduct an equipercentile linking study for Tennessee in the summer of 2015 to relate performances on the ACCESS for ELLs® assessment to performances on English Language Diagnostic Assessment (ELDA).
 - (1) Prior to conducting the linking study, CAL will use the state-provided materials described below to investigate the degree to which underlying assumptions for linking are met. These analyses will include:
 - i. Comparing how ELDA and ACCESS measure the construct of English language proficiency; and
 - ii. Investigating the stability in the demographics and performance of students across three school years.
 - (2) Four to six weeks after the ACCESS data are received, CAL will deliver to Tennessee crosswalk tables showing the link between results on ACCESS for ELLs® and ELDA, both for domain scores (reading, writing, speaking, and listening) and appropriate composite scores (comprehension and overall).
 - (3) Six to eight weeks following the delivery of the crosswalk tables, CAL will provide a written report detailing procedures and evidence that document to what extent the assumptions underlying equipercentile linking, namely that the two tests measure similar constructs, and that the characteristics of the population remain stable from year to year, are met.
 - b. To conduct this study, CAL will receive from Tennessee the following:
 - (1) Individual student results from the previous three years of testing using ELDA, including any scale scores and proficiency levels reported by the state for all four language domains (listening, reading, speaking, and writing) along with any composite scores calculated from the results;
 - (2) Individual demographic data for the students who took the ELDA test, including grade, ethnicity, gender and any other demographic data collected by the State;
 - (3) Technical manuals for ELDA; and
 - (4) Individual student results from the first year of ACCESS for ELLs® testing, including scale scores and proficiency levels for all four domains and the four composite scores, as well as demographic information including grade, ethnicity, gender and other demographic data.
 - c. All test results provided to CAL will be masked to remove individual students' names, along with other identifying information. Demographic data can be included in the same file as the student results, or in separate files, at the State's discretion. All data and materials will be transferred to CAL in text files via a secure, password-protected site belonging to the State, such as an ftp page or a Sharepoint site.
 - d. Upon execution of the agreement CAL will arrange a kickoff meeting with the State to discuss timelines, deliverables, required information, and project communication. A CAL Research Assistant will conduct a content analysis of ELDA to compare the characteristics of the test, focusing on the construct that the test measures, to the same from ACCESS for ELLs®. The data analysis will be conducted by a CAL Research Assistant and an intern from a graduate program in Educational Measurement working for the Psychometrics/Research (P/R) team at CAL. With oversight and guidance from CAL's professional psychometric staff, the intern will produce the crosswalk tables, which will be checked for quality control purposes by the Manager for P/R. The final report will be written by the summer intern and the Research Assistant, and will be reviewed by the Manager for P/R and the Project Director before submission to the state.



- A.5. Upon receipt of the State's ACCESS for ELLs test score data and scoring concordance tables resulting from a bridge study, WIDA shall provide statistical analysis to determine the number and percentage of ELLs demonstrating progress (growth) for AMAO one, as determined by the State's pre-established criteria, targets, and timelines.
- a. WIDA shall provide statistical analysis to determine the number and percentage of ELLs demonstrating attainment (proficiency) for AMAO two, as determined by the State's pre-established criteria, targets, and timelines.
 - b. After completion of the statistical analyses, WIDA shall create tables and graphs highlighting criteria and targets, as well as a percentile ranking of districts, with respect to AMAOs one and two. Furthermore, WIDA will host a webinar to present the findings to the State's stakeholders; and provide a detailed technical report to the State describing the statistical analysis process, results, and recommendations.

- A.6. Warranty. THE CONTRACTOR MAKES NO WARRANTIES, EXPRESSED OR IMPLIED, AS TO ANY MATTER WHATSOEVER, INCLUDING, WITHOUT LIMITATION, THE CONDITION OF THE RESULTS, WHETHER TANGIBLE OR INTANGIBLE, OR DEVELOPED UNDER THIS AGREEMENT; OR THE OWNERSHIP, MARKETABILITY, OR FITNESS FOR A PARTICULAR PURPOSE OF THE RESULTS. THE CONTRACTOR SHALL NOT BE LIABLE FOR ANY DIRECT, INDIRECT, CONSEQUENTIAL, SPECIAL OR OTHER DAMAGES SUFFERED BY ANY PERSON RESULTING FROM THIS AGREEMENT.

Contractor represents that the State is authorized to possess and use all equipment, materials, software, and deliverables provided under this Contract. Contractor grants, during the term of this Contract, a non-exclusive license to the State to use all software provided under this Contract solely for purposes consistent with this Contract.

Contractor represents 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.

- A.7. Intellectual Property Ownership and License

WCER 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 STATE. Because WCER makes these materials available to all WIDA Consortium member states, 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, STATE shall retain all rights in training and other materials developed by STATE. Any specific works that WCER develops and delivers solely for STATE shall be expressly agreed upon in writing and shall be on a work made for hire basis with STATE retaining ownership of the works.

The WIDA Works includes the following works:

1. ACCESS for ELLs 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 the paper-based assessment, "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.

WCER hereby grants 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:

STATE's license to use the 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 STATE elects to use the ACCESS for ELLs for State of Tennessee educational purposes. STATE acknowledges that ACCESS for ELLs is a secure test, as that term is defined in 37 C.F.R. § 202.20(b)(4). STATE shall implement statewide policies and procedures to ensure that the security of the test is maintained. STATE shall immediately notify WCER if it learns of any breach or threatened breach of test security. WCER will print and distribute the ACCESS for ELLs for 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 WCER and the appropriate security measures in place.

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

STATE's license to use the WIDA ELD Standards is not subject to any fee and shall remain in effect as long as STATE and/or the Tennessee State Board of Education elects to use the WIDA ELD Standards as the State's English language development Standards. WCER will make the WIDA ELD Standards available electronically in PDF format from the WIDA Consortium website. WCER will publically 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 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). WCER will publish or license to publish full color bound copies of the WIDA ELD Standards and make available to 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 publically displayed for electronic storage and retrieval in any manner without express written permission from WCER. However, linking to the WIDA Consortium website and stating the free availability of the WIDA ELD Standards is encouraged. WCER will grant additional permissions upon request but STATE acknowledges that WCER may include additional reasonable restrictions for quality control purposes depending on the nature of the request.

STATE's license to use the WIDA Language Standards is not subject to any fee and shall remain in effect as long as 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, STATE shall include any governmental agency of the State of Tennessee. WCER will make the



WIDA Language Standards available electronically in PDF format from the WIDA Consortium website. WCER will publically 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 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). WCER will publish or license to publish full color bound copies of the WIDA Language Standards and make available to STATE, LEAs, non-profits and other educators within the State of Tennessee at a lower WIDA Consortium member rate. The WIDA Language Standards shall not be modified or publically displayed for electronic storage and retrieval in any manner without express written permission from WCER 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. WCER will grant additional permissions upon request but STATE acknowledges that WCER may include additional reasonable restrictions for quality control purposes depending on the nature of the request.

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

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

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 STATE elects to use the ACCESS for ELLs. WCER will make the ACCESS for ELLs technical documents and research reports available electronically to 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. 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 publically displayed, including electronic storage and retrieval in any manner.

STATE shall remove as soon as practicable any WIDA Works that it publically displays, including electronic storage and retrieval systems, that WCER 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 WCER. STATE acknowledges that WCER 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 WCER services and products. Current WIDA guidelines will be posted on the WIDA website or provided to state as applicable. STATE shall assist WCER in implementing any trademark and copyright use guidelines for all uses by STATE, Tennessee's LEAs, and STATE Contractors (see below).

STATE may contract with third parties ("STATE Contractors") to provide services to LEAs and other educational agencies within the State of Tennessee or organizations operating under the authority of STATE that STATE would otherwise provide ("In-service Activities"). Contracts for In-service Activities shall be limited to a set geographic territory set by STATE ("In-service Area") and shall not authorize the provision of any WCER, WIDA or WIDA Consortium service, unless STATE receives prior written authorization from WCER to do so. STATE Contractors may charge a fee to cover the cost of providing In-service Activities. However, 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.

B. TERM OF CONTRACT:

This Contract shall be effective on November 2, 2015 ("Effective Date") and extend for a period of thirty-six (36) months after the Effective Date ("Term"). The State shall have no obligation for goods or services provided by the Contractor prior to the Effective Date.

C. PAYMENT TERMS AND CONDITIONS:

C.1. Maximum Liability. In no event shall the maximum liability of the State under this Contract exceed Three million, three-hundred fifty thousand, two-hundred nineteen dollars and ten cents (\$3,350,219.10) ("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 be paid for goods or services provided under this Contract below 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. All assessment (Online, Paper, Alternate) prices listed include assessment printing, distribution, scoring, reporting, as well as test administrator trainings, technical support and assistance, licensing, and professional learning as outlined in Section A.
- c. Tennessee's estimated test population for the 2015/16 testing year is 37,000 students. There will be an estimated 8,880 students taking the online version, and 27,750 students taking the paper version. The State agrees to pay the yearly ACCESS for ELLs costs as follows:

Testing Year	2015-16	2016-17	2017-18



Online Price	\$25.75	Not-to-Exceed \$27	Not-to-Exceed \$28
Paper Price	\$25.75	Not-to-Exceed \$29	Not-to-Exceed \$32
Alternate Price	\$75	Not-to-Exceed \$85	Not-to-Exceed \$95
Total Pop. Est.	37,000	39,000	41,000
Online Pop. Est.	8,880	19,110	30,340
Paper Pop. Est.	27,750	19,500	10,250
Alternate Pop. Est.	370	390	410
Online Cost Est.	\$228,660.00	515,970	\$849,520
Paper Cost Est.	\$714,562.50	\$565,500	\$328,000
Alternate Cost Est.	\$27,750	\$33,150	\$38,950
Bridge Study	\$22,000	-	-
AMAO Study	\$17,406.60	-	-
Total Cost Est.	\$1,010,379.10	\$1,114,620	\$1,216,470

- d. For testing year 2015/16, if more than 75,000 students are tested by the State, WCER 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.
- e. WCER shall invoice the State for test development and pre-operational costs of \$486,000 on or before December 1 and the State shall pay on or before January 1, and
- f. WCER 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 and the State shall pay within 30 calendar days.
- g. WCER will invoice the State for the printing and distribution costs of unused tests ordered, printed and distributed in excess of 115% of the number of actual students tested and STATE shall pay within 30 calendar days.
- h. WCER will invoice the State for the Bridge Study upon completion of the study and delivery of final report.
- i. WCER will invoice State for AMAO Study upon completion of the study, and the delivery and presentation of the final report.
- j. The Daily rate for additional TA or PL will be determined at the time of purchase based on current Consortium member state pricing.



- k. The rate for additional PL units is not-to-exceed: \$2,250 July 1, 2015 through June 30, 2016, not-to-exceed: \$3,000 July 1, 2016 through June 30, 2017, not-to-exceed: \$3,500 July 1, 2017 through June 30, 2018.

- C.4. Travel Compensation. Except as stated in the scope of work section, specifically, unilateral cancellation of scheduled professional learning by State, 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
Office of Assessment Logistics
Andrew Johnson Tower – 10th Floor
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: Tennessee Department of Education & Division of Data and Research;
 - (5) Customer account number (assigned by the Contractor to the above-referenced Customer);
 - (6) Contractor name;
 - (7) Contractor Tennessee Edison registration ID number;
 - (8) Contractor contact for invoice questions (name, phone, or email);
 - (9) Contractor remittance address;
 - (10) Description of delivered goods or services provided and invoiced, including identifying information as applicable;
 - (11) Number of delivered or completed units, increments, hours, or days as applicable, of each good or service invoiced;
 - (12) Applicable payment methodology (as stipulated in Section C.3.) of each good or service invoiced;
 - (13) Amount due for each compensable unit of good or service; and
 - (14) Total amount due for the invoice period.
- b. Contractor's invoices shall:
- (1) Only include charges for goods delivered or services provided as described in Section A and in accordance with payment terms and conditions set forth in Section C;
 - (2) Only be submitted for goods delivered or services completed and shall not include any charge for future goods to be delivered or services to be performed;
 - (3) Not include Contractor's taxes, which includes without limitation Contractor's sales and use tax, excise taxes, franchise taxes, real or personal property taxes, or income taxes; and
 - (4) Include shipping or delivery charges only as authorized in this Contract.
- c. The timeframe for payment (or any discounts) begins only when the State is in receipt of an invoice that meets the minimum requirements of this Section C.5.



- C.6. Payment of Invoice. A payment by the State shall not prejudice the State's right to object to or question any payment, invoice, or other matter. A payment by the State shall not be construed as acceptance of goods delivered, any part of the services provided, or as approval of any amount invoiced.
- C.7. Invoice Reductions. The Contractor's invoice shall be subject to reduction for amounts included in any invoice or payment that is determined by the State, on the basis of audits conducted in accordance with the terms of this Contract, to not constitute proper compensation for goods delivered or services provided
- C.8. Deductions. The State reserves the right to deduct from amounts, which are or shall become due and payable to the Contractor under this or any contract between the Contractor and the State of Tennessee, any amounts that are or shall become due and payable to the State of Tennessee by the Contractor.
- C.9. Prerequisite Documentation. The Contractor shall not invoice the State under this Contract until the State has received the following, properly completed documentation.
- a. The Contractor shall complete, sign, and present to the State the "Authorization Agreement for Automatic Deposit Form" provided by the State. By doing so, the Contractor acknowledges and agrees that, once this form is received by the State, payments to the Contractor, under this or any other contract the Contractor has with the State of Tennessee, may be made by ACH; and
 - b. The Contractor shall complete, sign, and return to the State the State-provided W-9 form. The taxpayer identification number on the W-9 form must be the same as the Contractor's Federal Employer Identification Number or Social Security Number referenced in the Contractor's Edison registration information.

D. MANDATORY TERMS AND CONDITIONS:

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

The State:

Deborah Sauberer, Executive Director
Office of Assessment Logistics
Tennessee Department of Education
Andrew Johnson Tower – 10th Floor
710 James Robertson Parkway
Nashville, TN 37243
deb.malone-sauberer@tn.gov
Telephone # 615.741.0720
FAX # 615.532.7510



The Contractor:

Adrian Herrera, Financial Specialist
Wisconsin Center for Education Research
1025 West Johnson St, MD#23
adrian.herrera@wisc.edu
Telephone # 608-265-6240
Fax # 608-263-3733

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 and all non-cancelable costs incurred by Contractor due to assessment booklet printing or the provision of professional learning workshops prior to receiving notice of termination. 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. Either Party may terminate this Contract without cause for any reason. A party's exercise of its right to terminate this Contract for convenience shall not be deemed a breach of contract by either Party. The terminating Party shall give the other Party at least thirty (30) days written notice before the termination date. The Contractor shall be entitled to compensation for all non-cancelable commitments due to assessment booklet printing or the provision of professional learning workshops, conforming goods delivered and accepted by the State or for satisfactory, authorized services completed as of the termination date, but in no event shall the State be liable to the Contractor for compensation for any good or service that has not been provided, nor shall the Contractor be relieved of any liability to the State for any damages or claims arising under this Contract.
- D.6. Termination for Cause. If a Party ("Breaching Party") fails to properly perform its obligations under this Contract, or if a Party materially violates any terms of this Contract ("Breach Condition"), the other Party ("Non-breaching Party") may provide written notice to the Breaching Party specifying the Breach Condition. If within thirty (30) days of notice, the Breaching Party has not cured the Breach Condition, the Non-breaching Party may terminate the Contract. In the event the Non-breaching Party is the State, the State may withhold payments in excess of compensation for completed services or provided goods. The Breaching Party shall not be relieved of liability to the Non-breaching Party for damages sustained by virtue of any breach of this Contract, and the Non-breaching Party 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 State has made the Contractor aware of the following: 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 C, 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 advance 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 during normal business hours. The financial statements shall be prepared in accordance with generally accepted accounting principles.
- D.12. Monitoring. The Contractor's activities conducted and records maintained pursuant to this Contract shall be subject to monitoring and evaluation by the State, the Comptroller of the Treasury, or their duly appointed representatives.
- D.13. Progress Reports. The Contractor shall submit brief, periodic, progress reports to the State as requested.
- D.14. Strict Performance. Failure by any Party to this Contract to require, in any one or more cases, the strict performance of any of the terms, covenants, conditions, or provisions of this Contract shall not be construed as a waiver or relinquishment of any term, covenant, condition, or provision. No term or condition of this Contract shall be held to be waived, modified, or deleted except by a written amendment signed by the Parties.
- D.15. Independent Contractor. The Parties shall not act as employees, partners, joint venturers, or associates of one another. The Parties are independent contracting entities. Nothing in this Contract shall be construed to create an employer/employee relationship or to allow either Party to exercise control or direction over the manner or method by which the other transacts its business affairs or provides its usual services. The employees or agents of one Party are not employees or agents of the other Party.
- D.16. Patient Protection and Affordable Care Act. The Contractor agrees that it will be responsible for compliance with the Patient Protection and Affordable Care Act ("PPACA") with respect to itself and its employees, including any obligation to report health insurance coverage, provide health insurance coverage, or pay any financial assessment, tax, or penalty for not providing health insurance. To the extent allowed under State of Wisconsin law, Contractor shall hold harmless the State for any costs to the State arising from Contractor's failure to fulfill its PPACA responsibilities for itself or its employees.
- D.17. Limitation of State's Liability. The State shall have no liability except as specifically provided in this Contract. In no event will the State be liable to the Contractor or any other party for any lost revenues, lost profits, loss of business, decrease in the value of any securities or cash position, time, money, 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. 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.19. 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 employed by WCER are excluded or disqualified.

- D.20. **Force Majeure.** "Force Majeure Event" means fire, flood, earthquake, elements of nature or acts of God, wars, riots, civil disorders, rebellions or revolutions, acts of terrorism or any other similar cause beyond the reasonable control of the Party except to the extent that the non-performing Party is at fault in failing to prevent or causing the default or delay, and provided that the default or delay cannot reasonably be circumvented by the non-performing Party through the use of alternate sources, workaround plans or other means. A strike, lockout or labor dispute shall not excuse either Party from its obligations under this Contract. Except as set forth in this Section, any failure or delay by a Party in the performance of its obligations under this Contract arising from a Force Majeure Event is not a default under this Contract or grounds for termination. The non-performing Party will be excused from performing those obligations directly affected by the Force Majeure Event, and only for as long as the Force Majeure Event continues, provided that the Party continues to use diligent, good faith efforts to resume performance without delay. The occurrence of a Force Majeure Event affecting Contractor's representatives, suppliers, subcontractors, customers or business apart from this Contract is not a Force Majeure Event under this Contract. Contractor will promptly notify the State of any delay caused by a Force Majeure Event (to be confirmed in a written notice to the State within one (1) day of the inception of the delay) that a Force Majeure Event has occurred, and will describe in reasonable detail the nature of the Force Majeure Event. If any Force Majeure Event results in a delay in Contractor's performance longer than forty-eight (48) hours, the State may, upon notice to Contractor: (a) cease payment of the fees until Contractor resumes performance of the affected obligations; or (b) immediately terminate this Contract or any purchase order, in whole or in part, without further payment except for fees then due and payable. Contractor will not increase its charges under this Contract or charge the State any fees other than those provided for in this Contract as the result of a Force Majeure Event.
- D.21. **State and Federal Compliance.** The Contractor shall comply with all applicable state and federal laws and regulations in the performance of this Contract.
- D.22. **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.23. **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.24. **Headings.** Section headings of this Contract are for reference purposes only and shall not be construed as part of this Contract.
- D.25. **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: WIDA Consortium Board, Attachment B: Education Record Release and Data Use Agreement, Attachment C: Attestation Re Personnel Used in Contract Performance, and Attachment D: Authorization and Acknowledgement of FERPA Compliance.
- 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.

E. SPECIAL TERMS AND CONDITIONS:

E.1. Conflicting Terms and Conditions. Should any of these special terms and conditions conflict with any other terms and conditions of this Contract, the special terms and conditions shall be subordinate to the Contract's other terms and conditions.

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

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

E.3. FERPA Compliance. The State and Contractor shall comply with the Family Education Rights and Privacy Act of 1974 (20 U.S.C. § 1232g) (FERPA) and its accompanying regulations (34 C.F.R. 99). Contractor represents that it is familiar with requirements of FERPA and its accompanying regulations and that it will comply with all applicable FERPA requirements in the performance of its duties in this contract. Contractor agrees to cooperate with the State as required by FERPA and its regulations in the performance of its duties in this contract. Contractor agrees to maintain the confidentiality of all education records and student information and use such records and information for the exclusive purpose of performing its duties in this contract. The Contractor shall reaffirm this attestation, in writing, by submitting to the State a completed and signed copy of the Authorization and Acknowledgement of Compliance document at Attachment D.

E.4. Tennessee Data Accessibility, Transparency and Accountability Act (the "Act"). The State and Contractor are aware of Sections 3-9 of Chapter 905 of the Tennessee Public Acts of 2014, known as the Data Accessibility, Transparency and Accountability Act, and any accompanying administrative rules or regulations. Contractor agrees to maintain the confidentiality of all records containing student and de-identified data in any databases, to which the State has granted Contractor access, and to only use such data for the exclusive purpose of performing its duties in this Contract.

E.6. Any instances of unauthorized disclosure of data containing personally identifiable information in violation of the laws cited above in sections E.3 and E.4 that come to the attention of the



Contractor shall be reported to the State within twenty-four (24) hours. Contractor shall indemnify and hold harmless State as well as its employees, agents and representatives from and against any and all claims, liabilities, losses, and causes of action which may arise, accrue, or result to any person or entity which may be injured or damaged as a result of Contractor's failure to comply with sections E.3 or E.4.

IN WITNESS WHEREOF,

BOARD OF REGENTS OF THE UNIVERSITY OF WISCONSIN SYSTEM:

9/3/2015

CONTRACTOR SIGNATURE	DATE
Robert Gratzl, Managing Officer, RSP	
PRINTED NAME AND TITLE OF CONTRACTOR SIGNATORY (above)	

TENNESSEE DEPARTMENT OF EDUCATION:

DR. CANDICE MCQUEEN, COMMISSIONER	DATE
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ATTACHMENT A
WIDA CONSORTIUM BOARD

1. Definitions.

- a. SEA – "SEA" means state educational agency and includes each state's education Superintendent.
- b. LEA – "LEA" means local educational agency and includes any educational agency within a WIDA Consortium Member state subject to the requirements of Titles I and III of NCLB.
- c. WCER– "WCER" means Wisconsin Center for Education Research at the University of Wisconsin-Madison.
- d. WIDA Consortium – "WIDA Consortium" means the operational unit of the Wisconsin Center for Education Research at the University of Wisconsin-Madison, which offers educational services related to English language learners and academic English language development for pre-kindergarten through grade 12.
- e. WIDA Consortium Member – "WIDA Consortium Member" means any state educational agency that approves and/or purchases the Core Package of WIDA Consortium educational services to satisfy the state and local educational agencies requirements of Title I and Title III of the Elementary and Secondary Education Act, as amended by the No Child Left Behind Act of 2001 (NCLB), which pertain to: the academic assessment of limited English proficient students; the academic assessment of English language proficiency; the development and meeting of annual measurable achievement objectives for limited English proficient students and the building and enhancement of capacity to offer programs that assist limited English proficient students in obtaining academic English language proficiency.
- f. WIDA Consortium Board Member – "WIDA Consortium Board Member" means any person appointed to the WIDA Consortium Board according to the Board Member Appointment subsection below, see sec. 3a.
- g. Core Package - "Core Package" means the multi-state copyright licenses and related educational services offered by WCER under the name WIDA Consortium to WIDA Consortium Members, namely: limited copyright licenses to certain WIDA assessments, including ACCESS for ELLs, Alternate ACCESS for ELLs, the WIDA Screener (currently the W-APT), 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 English language test; and educator and technical assistance and professional learning associated with administering and interpreting the ACCESS for ELLs English language test and test results. WIDA Consortium Members all receive the same Core Package of educational services. Individual member States may contract with WCER to obtain enhancements to the Core Package for additional charges.

2. Purpose.

- a. Advisory - The WIDA Consortium Board serves as an advisory board to the WIDA Consortium operational leadership. The WIDA Consortium leadership solicits input on and the WIDA Consortium Board offers guidance and support on the annual offering of the Core Package of WIDA Consortium educational services.
- b. Collaborative - The WIDA Consortium Board provides an organized opportunity for SEAs to associate and address common issues relating to English language learners, the academic English language development of pre-kindergarten through grade 12 students and other issues related to SEA and LEA requirements of Titles I and III of NCLB.

3. Structure.

- a. Board Member Appointment - Each WIDA Consortium Member should appoint one SEA representative to the WIDA Consortium Board.



- b. Term of WIDA Consortium Board Members – Each WIDA Consortium Board Member will serve until replaced by their respective SEA or until their SEA is no longer a WIDA Consortium Member.
 - c. Removal of WIDA Consortium Board Members - WIDA Consortium Board Members may only be removed by their respective SEA. An SEA will appoint a successor member to the WIDA Consortium Board if that SEA removes its appointed member.
 - d. Compensation – Members of the WIDA Consortium Board do not receive compensation.
4. Operations.
- a. General- WCER, through the WIDA Consortium will facilitate the activities of the WIDA Consortium Board. WCER will provide the necessary personnel to serve as a liaison between the WIDA Consortium Board Members and the WIDA Consortium.
 - b. Meetings – the WIDA Consortium will hold the following WIDA Consortium Board meetings:
 - i. Annual Meeting - WCER will conduct an annual gathering of the WIDA Consortium Board. The gathering will be held in late spring.
 - ii. Committee Meetings - WCER will conduct committee meetings of the WIDA Consortium Board as provide below in the Committees subsection below, see sec 5.c.
 - iii. Special Meetings – WCER will conduct special meetings concerning the ongoing development and review of the annual offering of the Core Package of WIDA Consortium educational services as necessary. WCER may hold special meetings either in person or via teleconference. Attendance at special meetings may be held to a limited number of WIDA Consortium Board Members
 - c. Communications
 - i. General - WCER will provide the necessary infrastructure to facilitate the WIDA Consortium Board activities.
 - ii. Meeting Summaries – WCER will maintain meeting notes and provide meeting summaries to the WIDA Consortium Board Members after any WIDA Consortium Board meeting.
 - d. Costs
 - i. General – WCER will pay the costs associated with operating the WIDA Consortium Board.
 - ii. Travel Expenses – WCER will pay for/reimburse WIDA Consortium Board Members' travel expenses incurred in connection with attending a WIDA Consortium meeting. If any SEA wants to bring additional people to a WIDA Consortium meeting, that SEA will be responsible for these peoples' travel expenses. In the first year an SEA becomes a WIDA Consortium Member WCER will pay for/reimburse the travel costs of one additional person from that state to attend the WIDA Consortium Board annual meeting. All travel expense reimbursements will be made in accordance with State of Wisconsin guidelines.
 - e. Fiscal Impact – The activities of the WIDA Consortium Board will have no direct fiscal impact on individual WIDA Consortium Members without an additional written agreement between the individual WIDA Consortium Members and WCER. If WIDA Consortium Board Members recommend and the WIDA Consortium adopts any changes to the Core Package of WIDA Consortium educational services that affect the price of the Core Package, then no price change will take effect until the individual WIDA Consortium Members execute written agreements with WCER that reflect these changes.
5. Activities.
- a. General – The activities of the WIDA Consortium Board include the following:
 - i. Attendance at the annual WIDA Consortium Board meeting;
 - ii. Participation on WIDA Consortium Board committees as determined by this section; and
 - iii. Participation at special meetings conducted by the WIDA Consortium
 - b. WIDA Consortium Board Meetings - WCER, through the WIDA Consortium will coordinate the meetings of the WIDA Consortium Board.



- i. Meeting Agendum – the WIDA Consortium will set the agenda for any WIDA Consortium Board meetings.
- ii. Meeting Activities
 1. Presentations – the WIDA Consortium will present updates on WIDA Consortium activities related to the implementation, research and development of the WIDA Consortium Core Package.
 2. Discussion and Review Groups - the WIDA Consortium will facilitate discussion groups on targeted topics related to the implementation, research and development of the WIDA Consortium Core Package. The discussion groups are an opportunity for WIDA Consortium Board Members to provide input to the WIDA Consortium and to interact and exchange ideas with other SEAs.
 3. Policy Orientation and Priority Setting – the WIDA Consortium may poll the WIDA Consortium Board in order to ascertain the position of WIDA Consortium Board members on issues related to the policy orientation and priorities of the implementation, research and development of the Core Package. Each WIDA Consortium Board Member present will receive one vote. The votes will be recorded by the WIDA Consortium.
- c. Committees
 - i. Executive Committee – The Executive Committee is a standing committee:
 1. Purpose – The purpose of the Executive Committee is
 - a. To provide input to WIDA Consortium on setting WIDA Consortium Board meeting agendum, and
 - b. To vet policy and priority issues related to the implementation, research and development of the WIDA Consortium Core Package in greater detail than the full WIDA Consortium Board.
 2. Makeup – Two SEA representatives from each of the four WIDA Consortium Member regions, one representing subgroup A states and one representing subgroup B states. One LEA representative will be appointed by the LEA Advisory Committee. SEA representatives from Wisconsin and Illinois will be permanent members.
 3. Term – SEA representatives will serve a two year term on a staggered rotation. 2014-16 Executive Committee members will continue their current terms, and new members will be appointed on the following schedule:
 - a. Subgroup A for all four Regional Groups
 - i. December 2015 – June 2017
 - ii. December 2017 – June 2019
 - iii. December 2019 – June 2021
 - b. Subgroup B for all four Regional Groups
 - i. December 2015 – June 2017
 - ii. December 2017 – June 2019
 - iii. December 2019 – June 2020
 - c. LEA representatives on the Executive Committee will serve a two year term
 - i. December 2013 – June 2016
 - ii. December 2016 – June 2019
 - iii. December 2019 – June 2022
 4. WIDA Consortium Member Regions – The WIDA Consortium Member regions are as followed:
 - a. Northeast Regional Group
 - i. Subgroup A –Delaware, District of Columbia, Maine, New Hampshire, Rhode Island, Vermont
 - ii. Subgroup B – Maryland, Massachusetts, New Jersey, Pennsylvania
 - b. Midwest Regional Group



- i. Subgroup A – North Dakota, South Dakota
- ii. Subgroup B – Illinois*, Indiana, Michigan, Minnesota, Missouri, Oklahoma, Wisconsin*,
- c. South Regional Group
 - i. Subgroup A – Alabama, Kentucky, Mississippi, Tennessee
 - ii. Subgroup B – Georgia, North Carolina, South Carolina, Virginia
- d. West Regional Group
 - i. Subgroup A – Alaska, Hawaii, Montana, N. Mariana Islands, Wyoming
 - ii. Subgroup B – Colorado, Nevada, New Mexico, Utah

*Wisconsin and Illinois appoint standing members on the Executive Committee and are not eligible to serve as regional representatives

5. Meetings – the Executive Committee will meet every year in late Fall at a place to be determined by the committee. The WIDA Consortium may request that the committee meet for a half day meeting the day before the annual WIDA Consortium Board meeting in late spring.
- ii. LEA Advisory Committee – The LEA Advisory Committee is a standing group:
 1. Purpose – The purpose of the LEA Advisory Board is
 - a. To raise and vet policy and priority issues related to the implementation, research and development of the WIDA Consortium Core Package with respect to issues effecting local education agencies
 2. Makeup – Two LEAs per region, one from Subgroup A and one representing Subgroup B, will be nominated by their SEA and approved by the regional group.
 3. Term – TBD
 - a. Subgroup A for all four Regional Groups
 - i. December 2015 – June 2017
 - ii. December 2017 – June 2019
 - iii. December 2019 – June 2021
 - b. Subgroup B for all four Regional Groups
 - i. December 2015 – June 2018
 - ii. December 2018 – June 2020
 - iii. December 2020 – June 2022
 4. Meetings – the LEA Committee will meet every year in the summer at a place to be determined by the committee.
- iii. Ad Hoc Committees – the WIDA Consortium and the WIDA Consortium Board may form ad hoc committees to address specific issues as necessary.



ATTACHMENT B
EDUCATION RECORD RELEASE AND DATA USE AGREEMENT

This educational record release and data use agreement is between the Tennessee Department of Education ("STATE") and The Board of Regents of the University of Wisconsin System, on behalf of the University of Wisconsin-Madison's Wisconsin Center for Education Research ("WCER").

Title I and Title III of the Federal Education and Early Development Act (The No Child Left Behind Act of 2001 or "NCLB") establish Federally-supported education programs and activities related to English language instruction, acquisition and achievement; require local educational agencies and institutions to evaluate and report the biennial progress made by limited English proficient children; and require State education agencies ("SEAs") to develop annual measurable achievement objectives for limited English proficient children that relate to these children's development and attainment of English proficiency while meeting challenging State academic content and student academic achievement standards.

The Family Education Rights and Privacy Act ("FERPA") allows educational agencies and institutions to disclose personally identifiable information ("Confidential Data") from the education records of students, without consent of students or parents, to authorized representatives of SEAs in order to evaluate and comply with these federal programs and legal requirements. 20 U.S.C. § 1232g(b)(1)(C) and (b)(3) and 34 C.F.R. § 99.31(a)(3) and § 99.35.

Concurrently with its entry into this educational record release and data use agreement, STATE and WCER are entering a contract to provide services relating to STATE's federal requirements under NCLB, including, but not limited to the administration and scoring of the ACCESS for ELLs English language proficiency assessment ("Evaluation Services").

The contract, by its terms, establishes WCER and its subcontractors as authorized representatives of STATE with respect to the Evaluation Services provided by WCER.

WCER wishes to obtain access to and collect personally identifiable information from the education records of students without the consent of the students or their parents during the performance of these Evaluation Services and STATE wishes to acquire these Evaluation Services, while protecting the privacy of students and parents within Tennessee.

The Parties therefore agree as follows:

1. Acknowledgment of Release of Confidential Data and Description of Use.

The parties acknowledge that STATE is releasing Confidential Data to WCER for the purposes outlined in Section 3(H) below, and that the release of STATE Confidential Data to WCER is necessary for the completion of Evaluation Services. The personally identifiable information to be disclosed is attached to this agreement as Exhibit A. WCER shall notify STATE and STATE shall provide written consent, if approved, of any changes to the list of disclosed information necessary for the provision of Evaluation Services.

WCER will use personally identifiable information from education records in order to facilitate the administration, scoring and reporting of individual student assessments and to connect student records from year to year in order to establish a longitudinal data set that can be used for the evaluation purposes described in this section. Once student records are connected, only de-identified data and/or aggregated data will be used for evaluation activities.

2. Designation of Authority.

STATE hereby designates WCER and its subcontractors as authorized representatives of STATE with respect to the provision of Evaluation Services and, specifically, the use of personally identifiable information disclosed under this agreement.

3. Receiving Institution Obligations.



...a undersigned receiving institution, WCER, agrees to abide by the following guidelines.

- A. WCER shall not share these Confidential Data with anyone, except those employees of WCER's WIDA Consortium and WCER's subcontractors, including Data Recognition Corporation. ("Authorized Users") that are directly involved and have a legitimate interest in providing Evaluation Services according to the terms of the contract.
- B. WCER shall require all Authorized Users to comply with FERPA and other applicable State of Wisconsin and federal student privacy law. WCER shall require and maintain confidentiality agreements with each Authorized User of Confidential Data. The terms of the Authorized User confidentiality agreements shall contain, at a minimum, the terms and conditions of this educational record release and data use agreement. A copy of the current WCER employee confidentiality agreement is attached to this agreement as Exhibit B.
- C. WCER shall protect Confidential Data in a manner that does not permit personal identification of students and their parents by anyone except those bound by this agreement and STATE. WCER shall store all Confidential Data on secure data servers, using current industry best practices. WCER shall notify STATE as soon as possible, but no later than by the closing of the next business day after a breach has been validated of any security breach to the server containing the Confidential Data or of any disclosure of Confidential Data to anyone other than WCER Authorized Users or the STATE officials authorized to receive Confidential Data. WCER shall cooperate and take all reasonable means prescribed by STATE to secure any breaches as soon as practicable.
- D. WCER shall not disclose STATE Confidential Data to any other party without the prior consent of the parent or eligible student.
- E. WCER certifies that it has the capacity to restrict access to Confidential Data solely to Authorized Users and ensure that the Confidential Data is accessed only for the purposes described in this agreement. A copy of WCER's Standard Security Policies and Procedures is attached to this agreement as Exhibit C.
- F. WCER shall destroy all Confidential Data within 45 days after it is no longer needed to perform the Evaluation Services described in this agreement, upon STATE's request or upon termination of this agreement, whichever occurs first or unless otherwise agreed upon in writing. WCER shall provide written verification of the data destruction to EA within 45 days after the data is destroyed.
- G. WCER shall permit STATE, at STATE's cost, to audit, upon reasonable request, that it is complying with the Standard Security Policies and Procedures in Exhibit C and/or that it has destroyed the data as verified.
- H. WCER shall collect and use these Confidential Data only for the purpose to help STATE carry out an audit or evaluation of Federal and State supported education programs and to comply with the Federal legal requirements related to the activities outlined in the contract, including but not limited to, activities related to the development, administration, scoring and reporting of the annual assessment of student English proficiency, activities related to the evaluation of Federally-supported education programs and activities related to English language instruction, acquisition, assessment and achievement; and the development of accountability measures and models for limited English proficient children that relate to these children's development and attainment of English proficiency while meeting challenging State academic content and student academic achievement standards.
- I. WCER shall obtain prior written approval from STATE before accessing Confidential Data for activities beyond the scope specified in Section H, above, but consistent with STATE's federal and state requirements. Any Confidential Data collected by WCER under activities approved by STATE under this section, which is not regularly collected within the scope of Section H, above, but is consistent with the activities of Section H, shall be subject to the terms and conditions of this agreement.



- J. WCER shall obtain from the University of Wisconsin-Madison Institutional Review Board either approval or a determination of exemption for all research conducted using Confidential Data where required by law and/or University policy.
- K. If WCER becomes legally compelled to disclose any Confidential Data (whether by judicial or administrative order, applicable law, rule or regulation, or otherwise), then WCER shall use all reasonable efforts to provide STATE with prior notice before disclosure so that STATE may seek a protective order or other appropriate remedy to prevent the disclosure; provided, however, that WCER will use all reasonable efforts to maintain the confidentiality of Confidential Data. If a protective order or other remedy is not obtained prior to when any legally compelled disclosure is required, WCER will only disclose that portion of Confidential Data that it is legally required to disclose.

4. Use of Aggregate Data.

In order to provide Consortium level data and analysis to WIDA consortium member states, WCER will aggregate State of Tennessee data with all other WIDA Consortium member states.

5. Permission to Use data.

STATE acknowledges that by entering this agreement it is approving, in writing, of WCER's use of these Confidential Data within the scope of purposes outlined in this agreement and Section 3H, above.

6. Transfer Protocol.

The parties shall work cooperatively to determine the proper medium and method for the transfer of Confidential Data between each other. The party receiving Confidential Data shall confirm the transfer of Confidential Data and notify the transferring party as soon as practicable of any discrepancies between the actual data transferred and the data described in this agreement.

7. Remedies.

WCER acknowledges that the breach of this Agreement on its part may result in irreparable and continuing damage to STATE for which money damages may not provide adequate relief. In the event of a breach or threatened breach of this Agreement by WCER, STATE, in addition to any other rights and remedies available to it at law or in equity, may be entitled to preliminary and permanent injunctions, enjoining and restraining the breach or threatened breach.

8. Binding Effect and Assignability.

The rights and obligations of each party under this Agreement shall inure to the benefit of and shall be binding upon that party and its respective successors and assigns.

9. Waiver.

The failure by one party to require performance of any provision shall not affect that party's right to require performance at any time thereafter, nor shall a waiver of any breach or default of this Agreement constitute a waiver of any subsequent breach or default or a waiver of the provision itself. No modification, amendment, waiver or release of any provision of this Agreement or of any right, obligation, claim or cause of action arising from this Agreement shall be valid or binding for any purpose unless in writing and duly executed by the party against whom they are asserted.

10. Severability.

Any provision of this Agreement that is declared invalid by a court of competent jurisdiction or by operation of law, shall not affect the validity or enforceability of any other provision of this Agreement.



... Term.

The term of this Agreement shall be the same as the term of the contract, unless terminated earlier by either party upon thirty (30) days advanced written notice.

12. Data Custodians.

The following individuals are the designated data custodians for their respective entities with respect to this educational record release and data use agreement:

For WCER – WIDA Consortium

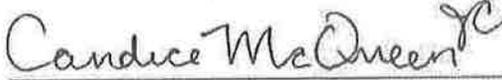
For Data Recognition Corporation,

H. Gary Cook
Research Director
1025. W Johnson St., MD#23
Madison, WI 53706
Phone: 608-890-0471
Email: hcook@wisc.edu

Karen Olsen
Sr. Director, Education Programs
13490 Bass Lake Road
Maple Grove, MN 55311
Phone: 763-268-2040
Email: kolsen@datarecognitioncorp.com

This educational record release and data use agreement will become effective once STATE and WCER both sign it. The date of this agreement shall be the date on which it is signed by the last party to sign it.

For Tennessee Department of Education



Dr. Candice McQueen Commissioner
Tennessee Department of Education

10/13/15

Date

For WCER



Robert Gratzl
Managing Officer, RSP
University of Wisconsin-Madison

September 3, 2015

Date



ATTESTATION RE PERSONNEL USED IN CONTRACT PERFORMANCE

SUBJECT CONTRACT NUMBER:	47558
CONTRACTOR LEGAL ENTITY NAME:	Board of Regents of the University of Wisconsin System on behalf of the University of Wisconsin Madison's WCER
FEDERAL EMPLOYER IDENTIFICATION NUMBER: (or Social Security Number)	[REDACTED]

The Contractor, identified above, does hereby attest, certify, warrant, and assure that the Contractor shall not knowingly utilize the services of an illegal immigrant in the performance of this Contract and shall not knowingly utilize the services of any subcontractor who will utilize the services of an illegal immigrant in the performance of this Contract.

CONTRACTOR SIGNATURE

NOTICE: This attestation MUST be signed by an individual empowered to contractually bind the Contractor. Attach evidence documenting the Individual's authority to contractually bind the Contractor, unless the signatory is the Contractor's chief executive or president.

Robert Gratzl

PRINTED NAME AND TITLE OF SIGNATORY

September 3, 2015

DATE OF ATTESTATION



AUTHORIZATION AND ACKNOWLEDGEMENT OF FERPA COMPLIANCE

Whereas, State has contracted with **Board of Regents of the University of Wisconsin System** on behalf of the University of Wisconsin Madison's WCER on **November 2, 2015 through October 30, 2018 (33111-00616)** , for **WIDA Consortium Core Package**, and

Whereas, The above referenced contract requires the disclosure by the State to **Board of Regents of the University of Wisconsin System on behalf of the University of Wisconsin Madison's WCER** of certain personally identifiable student information that is confidential under the Family Educational Rights and Privacy Act (FERPA), and

Whereas, 34 C.F.R. 99.31, authorizes an educational agency or institution to disclose personally identifiable information from an education record of a student without the consent required by Sec. 99.30 to a contractor, consultant, volunteer, or other party to whom an agency or institution has outsourced institutional services.

Therefore, the State and **Board of Regents of the University of Wisconsin System on behalf of the University of Wisconsin Madison's WCER** hereby agree as follows:

1. **Board of Regents of the University of Wisconsin System** on behalf of the University of Wisconsin Madison's WCER is authorized to maintain certain student information for the sole purpose of compliance with the requirements of the above referenced contract. This student information may include: demographic data and language acquisition data.
2. **Board of Regents of the University of Wisconsin System** on behalf of the University of Wisconsin Madison's WCER agrees to comply fully with FERPA by maintaining the confidentiality of all student information and to use the information solely to fulfill its obligations under the above referenced contract with the state.
3. **Board of Regents of the University of Wisconsin System** on behalf of the University of Wisconsin Madison's WCER agrees to destroy all confidential student information when it is no longer needed for purposes of fulfilling its obligations under the above referenced contract.

[Handwritten Signature]

9/3/2015

BOARD OF REGENTS OF THE UNIVERSITY OF WISCONSIN SYSTEM

DATE

Candice McQueen

10/13/15

TENNESSEE DEPARTMENT OF EDUCATION

DATE



CONTRACT AMENDMENT COVER SHEET

Agency Tracking # 33111-00616	Edlson ID 47556	Contract # 47556	Amendment # 1		
Contractor Legal Entity Name Board of Regents of the University of Wisconsin System on behalf of the University of Wisconsin - Madison's WCER			Edlson Vendor ID 24340		
Amendment Purpose & Effect(s) The purpose of this amendment is the increase the total contract amount due to the increase in EL student population in the State of Tennessee.					
Amendment Changes Contract End Date: <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO		End Date: 10/30/2018			
TOTAL Contract Amount INCREASE or DECREASE per this Amendment (zero if N/A):			\$ 537,893.90		
Funding --					
FY	State	Federal	Interdepartmental	Other	TOTAL Contract Amount
2016	\$1,012,629.10				\$1,012,629.10
2017	\$1,356,533.90				\$1,356,533.90
2018	\$1,518,950.00				\$1,518,950.00
TOTAL:					\$3,888,113.00
American Recovery and Reinvestment Act (ARRA) Funding: <input type="checkbox"/> YES <input type="checkbox"/> NO					
Budget Officer Confirmation: There is a balance in the appropriation from which obligations hereunder are required to be paid that is not already encumbered to pay other obligations.			CPO USE		
 11/2/16					
Speed Chart (optional) ED530		Account Code (optional) 70803000			



AMENDMENT 1
OF CONTRACT 33111-00616

This Amendment is made and entered by and between the State of Tennessee, Office of Data & Research hereinafter referred to as the "State" and Board of Regents of the University of Wisconsin System on behalf of the University of Wisconsin-Madison's WCER, hereinafter referred to as the "Contractor." For good and valuable consideration, the sufficiency of which is hereby acknowledged, it is mutually understood and agreed by and between said, undersigned contracting parties that the subject contract is hereby amended as follows:

Contract Section C.1. is deleted in its entirety and replaced with the following:

C.1. Maximum Liability. In no event shall the maximum liability of the State under this Contract exceed Three million, eight hundred eighty-eight thousand, one hundred and thirteen dollars. (\$3,888,113.00) ("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 be paid for goods and services provided under this Contract below after a purchase order is issued to Contractor by the State or as otherwise specified by this Contract.

Required Approvals. The State is not bound by this Amendment until it is signed by the contract parties and approved by appropriate officials in accordance with applicable Tennessee laws and regulations (depending upon the specifics of this contract, said officials may include, but are not limited to, the Commissioner of Finance and Administration, the Commissioner of Human Resources, and the Comptroller of the Treasury).

Amendment Effective Date. The revisions set forth herein shall be effective 12/1/16. All other terms and conditions of this Contract not expressly amended herein shall remain in full force and effect.

IN WITNESS WHEREOF,

CONTRACTOR LEGAL ENTITY NAME:

Richelle Martin 11/4/16
SIGNATURE DATE

Richelle Martin
Assistant Director, Office of Industrial Partnerships

PRINTED NAME AND TITLE OF SIGNATORY (above)

STATE AGENCY NAME:

Candice McQueen 11/14/16
AGENCY HEAD NAME & TITLE DATE

AGENCY HEAD NAME & TITLE

DATE



CONTRACT AMENDMENT COVER SHEET

Agency Tracking # 33111-00616	Edison ID 47556	Contract # 47556	Amendment # 2		
Contractor Legal Entity Name Board of Regents of the University of Wisconsin System on behalf of the University of Wisconsin – Madison's WCER			Edison Vendor ID 24340		
Amendment Purpose & Effect(s) To increase the maximum liability and extend the contract end date.					
Amendment Changes Contract End Date: <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO		End Date: October 30, 2019			
TOTAL Contract Amount INCREASE or DECREASE per this Amendment (zero if N/A): increase			\$1,504,203.50		
Funding —					
FY	State	Federal	Interdepartmental	Other	TOTAL Contract Amount
2016	\$1,012,629.10				\$1,012,629.10
2017	\$1,356,533.90				\$1,356,533.90
2018	\$1,518,950.00				\$1,518,950.00
2019	\$1,504,203.50				\$1,504,203.50
TOTAL:	\$5,392,316.50				\$5,392,316.50
American Recovery and Reinvestment Act (ARRA) Funding: <input type="checkbox"/> YES <input type="checkbox"/> NO					
Budget Officer Confirmation: There is a balance in the appropriation from which obligations hereunder are required to be paid that is not already encumbered to pay other obligations.			<i>CPO USE</i>		
Speed Chart (optional) ED00000530		Account Code (optional) 70803000			

**AMENDMENT 2
OF CONTRACT 47556**

This Amendment is made and entered by and between the State of Tennessee, **Department of Education**, hereinafter referred to as the "State" and **University of Wisconsin System on behalf of the University of Wisconsin-Madison's WCER**, hereinafter referred to as the "Contractor." For good and valuable consideration, the sufficiency of which is hereby acknowledged, it is mutually understood and agreed by and between said, undersigned contracting parties that the subject contract is hereby amended as follows:

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

B. TERM OF CONTRACT

- B.1. This contract shall be effective on November 2, 2015 ("Effective Date") and ending October 30, 2019 ("Term"). The State shall have no obligation for goods or services provided by the Contractor prior to the Effective Date.
- B.2. Renewal Options: This Contract may be renewed upon satisfactory completion of the Term. The State reserves the right to execute up to four (4) renewal options under the same terms and conditions for a period not to exceed twelve (12) months each by the State, as the State's sole option. In no event, however, shall the maximum Term, including all renewals or extensions, exceed a total of sixty (60) months.
- B.3. Term Extension: The State may extend the Term an additional period of time, not to exceed one hundred-eighty (180) days beyond the expiration date of the Contract, under the same terms and conditions, at the State's sole option. In no event, however, shall the maximum Term, including all renewals or extensions, exceed a total of sixty (60) months.

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

- C.1. Maximum Liability. In no event shall the maximum liability of the State under this Contract exceed five million three hundred ninety two thousand, three hundred and sixteen dollars and fifty cents (\$5,392,316.50) ("Maximum Liability"). This Contract does not grant the Contractor exclusive rights. The State does not guarantee that it will buy any minimum quantity of goods or services services under this Contract. Subject to the terms and conditions of this Contract, the Contractor will be paid for goods and services provided under this Contract below after a purchase order is issued to Contractor by the State or as otherwise specified by this Contract.

Required Approvals. The State is not bound by this Amendment until it is signed by the contract parties and approved by appropriate officials in accordance with applicable Tennessee laws and regulations (depending upon the specifics of this contract, said officials may include, but are not limited to, the Commissioner of Finance and Administration, the Commissioner of Human Resources, and the Comptroller of the Treasury).

Amendment Effective Date. The revisions set forth herein shall be effective **October 26, 2018**. All other terms and conditions of this Contract not expressly amended herein shall remain in full force and effect.

IN WITNESS WHEREOF,

BOARD OF REGENTS OF THE UNIVERSITY OF WISCONSIN SYSTEM:

SIGNATURE

DATE

PRINTED NAME AND TITLE OF SIGNATORY (above)

TN DEPARTMENT OF EDUCATION:

CANDICE MCQUEEN, COMMISIONER

DATE