



**BILL LEE**  
GOVERNOR

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

**PENNY SCHWINN**  
COMMISSIONER

Fiscal Review Committee  
Contract #: 44748  
Tracking #: 33135-00215

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**PENNY SCHWINN**  
COMMISSIONER

**SUBMITTED VIA ELECTRONIC MAIL**

TO: Fiscal Review Committee

FROM: Penny Schwinn, Commissioner

Date: November 15, 2019

RE: Request to appear before the fiscal review committee regarding the sole-source contract for agency tracking  
#: 33135-00215

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Thank you for your consideration of the enclosed request for a non-competitive amendment with Colyar Consulting Group, Inc. The vendor provides the Tennessee Meals, Accounting, and Claiming System (TMAC), an internet-based system that provides counting, claiming and review functionality for the Tennessee Department of Education's (TDOE) School Nutrition Program. School districts throughout Tennessee, as well as the department, have used TMAC since it was selected via RFP in 2010 in order to ensure that children have healthy meals in accordance with state law and federal United States Department of Agriculture (USDA) regulations.

The department's current contract with Colyar Consulting Group, Inc. is expiring after a 60-month term, and an amendment is needed to continue these services for one additional year. The proposed amendment will result in a maximum liability of \$5,092,368, 100% federally funded, and a term length of 72 months. This amendment will ensure that there is no lapse in services to the department and Tennessee school districts as the department issues a Request for Proposal (RFP). Potentially transitioning to a new vendor would require set-up and implementation, as well as the training of 202 School Authorities that manage the programs. As this system has been in place for over a decade, users have extensive familiarity with it and would need to be trained on any new system. Additionally, the system contains confidential information, and we will need time to ensure secure transfer of this data if we change systems. Additional time will also allow us to solicit feedback from stakeholders and build a sufficient runway to set a new vendor up for success. Any lapse in services would put the department and school districts at risk of non-compliance with federal USDA requirements, which could jeopardize current and future federal funding. As a result, this amendment is in the best interest of Tennessee.

Thank you for your consideration.

Supplemental Documentation Required for  
Fiscal Review Committee

*Contact Name:	Joanna Collins	*Contact Phone:	615-770-3869		
*Presenter's name(s):	Joanna Collins, Joshua Nunnally, Aleah Guthrie, Jay Klein, Sandy Dawes, Jasmine Taylor, and Chris Crutcher.				
Edison Contract Number: <i>(if applicable)</i>	44748	RFS Number: <i>(if applicable)</i>	33135-00215		
*Original or Proposed Contract Begin Date:	July 1, 2015	*Current or Proposed End Date:	Current: June 30, 2020 Renewing through June 30, 2021		
Current Request Amendment Number: <i>(if applicable)</i>	01				
Proposed Amendment Effective Date: <i>(if applicable)</i>	June 30, 2020				
*Department Submitting:	TN Department of Education (TDOE)				
*Division:	School Nutrition				
*Date Submitted:	November 15, 2019				
*Submitted Within Sixty (60) days:	Yes				
<i>If not, explain:</i>	N/A				
*Contract Vendor Name:	Colyar Consulting Group, Inc.				
*Current or Proposed Maximum Liability:	Current maximum liability: \$4,674,408.00; increase to \$5,092,368.00				
*Estimated Total Spend for Commodities:	N/A				
<b>*Current or Proposed Contract Allocation by Fiscal Year: (as Shown on Most Current Fully Executed Contract Summary Sheet)</b>					
FY:2016	FY:2017	FY:2018	FY:2019	FY2020	FY2021
\$1,912,568	\$1,507,960	\$417,960	\$417,960	\$417,960	\$417,960
<b>*Current Total Expenditures by Fiscal Year of Contract: (attach backup documentation from Edison)</b>					
FY:2016	FY:2017	FY:2018	FY:2019	FY:2020	FY
\$1,141,454.90	\$1,396,445.10	\$574,250	\$493,800	\$255,000	\$
<b>IF</b> Contract Allocation has been greater than Contract Expenditures, please give the reasons and explain where surplus funds were spent:		N/A			
<b>IF</b> surplus funds have been carried forward, please give the reasons and provide the authority for the carry forward provision:		N/A			
<b>IF</b> Contract Expenditures exceeded Contract Allocation, please give the reasons and explain how funding was acquired to pay the overage:		FY 2018 and FY 2019 exceeded contract allocation due to invoices being sent in late by vendor.			
<b>*Contract Funding Source/Amount:</b>					

Supplemental Documentation Required for  
Fiscal Review Committee

State:		Federal:	\$4,674,408; increasing to \$5,092,368
<i>Interdepartmental:</i>		<i>Other:</i>	
If “ <i>other</i> ” please define:		N/A	
If “ <i>interdepartmental</i> ” please define:		N/A	
Dates of All Previous Amendments or Revisions: <i>(if applicable)</i>	Brief Description of Actions in Previous Amendments or Revisions: <i>(if applicable)</i>		
Method of Original Award: <i>(if applicable)</i>	Original award was via RFP in 2010; this contract was approved via sole source procurement in 2015.		
*What were the projected costs of the service for the entire term of the contract prior to contract award? How was this cost determined?	<p>\$4,674,408 Base maintenance, upgrades, promotional resources and modifications as required by the United States Department of Agriculture (USDA)</p> <p>The projected costs for this renewal are based on the same pricing.</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>The TDOE is aware of at least one other potential vendor in this space (although, total potential costs of transitioning to a new vendor are unknown at this time) and will be issuing an RFP. However, Colyar Consulting Group, Inc., is the creator and manufacturer of the current system in place and has exclusive rights to furnish the items requested. As such, a sole source procurement is imperative to ensure that there is no lapse in service while the RFP is being completed. A full one year renewal through June 30, 2021, is needed to ensure that any potential transition to a new vendor does not occur during the school year and disrupt school district operations. Any lapse in services would put the department and school districts at risk of non-compliance with federal USDA requirements, which could jeopardize current and future federal funding. As a result, this amendment is in the best interest of Tennessee.</p>		



# Rule Exception Request

Use this document to request changes to Central Procurement Office templates, policies, or other procurement documents or to modify the “necessary contract clauses” identified in Tenn. Comp. R. & Reg. 0690-03-01-.17 (“CPO Rule 17”). Complete this document in conformity with CPO Rule 17, which is available [here](#). Upload the completed document and route for approvals by selecting the appropriate RER e-Form in Edison. For additional guidance, please see the e-Forms Job Aid available online at the following: <https://www.teamtn.gov/cpo/learning-development/cpo-job-aids.html>. All Rule Exception Requests are subject to review and approval by the Chief Procurement Officer. Rule Exception Requests that propose to modify any of CPO Rule 17’s necessary contract clauses shall be subject to review and approval by the Comptroller of the Treasury. Note: If the requested changes involve contracts under a delegation, please use the RER for the DA or DGA templates. Also, any change to the template language regarding the Limitation of Contractor’s Liability shall be submitted using the Limitation of Contractor’s Liability Request.

<p><b>APPROVED</b></p> <p><b>[Upload this RER to e-Forms in Edison. Approval will be captured in Edison Workflow.]</b></p> <hr/> <p>CHIEF PROCUREMENT OFFICER</p>	<p><b>APPROVED</b></p> <p><b>[Upload this RER to e-Forms in Edison. Approval will be captured in Edison Workflow.]</b></p> <hr/> <p>COMPTROLLER OF THE TREASURY</p>
<b>Agency request tracking #</b>	33135-00215
<b>1. Procuring Agency</b>	TN Department of Education (TDOE), School Nutrition
<b>2. Edison contract ID #</b>	44748
<b>3. Please select Procurement or Contract Type.</b> (This will be the RER e-Form for routing purposes.)	<input type="checkbox"/> Grant Contract – for contracts involving Grants <input checked="" type="checkbox"/> Technology - for contracts involving technology <input type="checkbox"/> Risk Management - for changes to insurance or indemnification <input type="checkbox"/> Standard – Agency Term Contract or Statewide Contract (use for non-technology contracts for goods or services)
<b>4. Contractor or Grantee</b>	Colyar Consulting Group, Inc.
<b>5. Contract’s Effective Date</b>	July 1, 2015
<b>6. Contract or grant contract’s Term</b> (with ALL options to extend exercised)	72 months
<b>7. Contract’s Maximum Liability</b> (with ALL options to extend exercised)	\$5,092,368
<b>8. Citation and explanation of the rule(s)</b> for which the exception is requested	
<p>The Procuring Agency request an exception to the 60 month contract term limitation, as outlined in the rule below. This is needed in order to ensure there is no disruption of services as the TDOE completes a new RFP.</p> <p>0690-03-01-14 CONTRACT TYPE (2) Term Contract – General  (c ) The requirement of a multi-year contract shall be stated in the solicitation, and any multi-year contract shall be awarded pursuant to these Rules and shall not be for a period longer than sixty (60) months unless approved by the Chief Procurement Officer as being in the best interests of the State.</p>	
<b>Description of requested changes</b> If adding new provisions or modifying existing provisions, insert the new or modified provisions in their entirety. Please provide red-lines or track changes to highlight any deviations from template language.	

**B. TERM OF CONTRACT:**

B.1. This Contract shall be effective for the period beginning on July 1, 2015 ("Effective Date") and ending on June 30, 2020 ("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 **one (1)** renewal options under the same terms and conditions for a period not to exceed twelve (12) months each by the State, at the State's sole option. In no event, however, shall the maximum Term, including all renewals or extensions, exceed a total of **seventy-two (72)** months.

**1. Scope of Goods or Services Caption:** Enhancements, maintenance and support for the Tennessee Meals, Accounting, and Claiming System

**2. Justification** Contractor provides the Tennessee Meals, Accounting, & Claiming System (TMAC), an internet-based system that provides counting, claiming and review functionality for the TDOE's School Nutrition Program. School districts throughout Tennessee, as well as the State, have used TMAC since it was selected via RFP in 2010 in order to ensure that children have healthy meals in accordance with state law and federal United States Department of Agriculture (USDA) regulations. The programs/applications being presently operated and maintained are National School Lunch Program, School Breakfast Program, Afterschool Snack Program, Seamless Summer Program, Special Milk Program, and Fresh Fruit and Vegetable Program (FFVP). The TDOE is responsible for consulting, monitoring, auditing, training, and administering these USDA programs within compliance of state and federal regulations. Districts utilize this system to upload documents and financial data for compliance, submit claims for all program reimbursements, and utilize the menu planning software. This system helps districts with record keeping ensuring compliance with federal, USDA, and State regulations, laws, and guidelines

The TDOE currently intends to complete a new RFP for these services, and this is currently in development. However, in order to seamlessly complete an RFP and any potential transition to a new vendor, the TDOE is seeking to renew this contract for one additional year.

Transitioning to a new vendor would require set-up and implementation, as well as the training of 202 School Authorities that manage the programs. As this system has been in place for over a decade, users have extensive familiarity with it and would need to be trained on any new system. Additionally, the system contains confidential information, and we will need time to ensure secure transfer of this data if we change systems. Additional time will also allow us to solicit feedback from stakeholders and build a sufficient runway to set a new vendor up for success. With RFP's taking up to one year, we risk having a lapse in service if we do not extend the existing contract, which expires 6/30/2020.

We consulted with CPO and they agreed that there are many risks associated with allowing insufficient time for an RFP (which could ultimately impact the end-user-districts), and this renewal of the existing contract would mitigate against those risks.

**Signature of Agency head or designee and date**

**[Upload this RER to e-Forms in Edison. Approval will be captured in Edison Workflow.]**

**From:** [Joshua Nunnally](#)  
**To:** [Josh Nunnally](#)  
**Subject:** [EXTERNAL] Fwd: [Form Approval] Form 313 (RER\_TECH) has been Approved  
**Date:** Saturday, September 14, 2019 9:24:00 AM

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**\*\*\* This is an EXTERNAL email. Please exercise caution. DO NOT open attachments or click links from unknown senders or unexpected email - STS-Security. \*\*\***

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----- Forwarded message -----

From: <[edison.erp@tn.gov](mailto:edison.erp@tn.gov)>  
Date: Fri, Sep 13, 2019 at 3:37 PM  
Subject: [Form Approval] Form 313 (RER\_TECH) has been Approved  
To: <[Josh.E.Nunnally@gmail.com](mailto:Josh.E.Nunnally@gmail.com)>

Form 313 (RER\_TECH) has been approved. Details are shown below:

Subject: 33101-Enhancements, maintenance and support for the Tennessee Meals, Accounting, and Claiming System  
Priority: 3  
Due Date:  
Requester: JOSHE0213001

Click on the URL to access the form:

[https://sso.edison.tn.gov/psp/paprd/EMPLOYEE/ERP/c/MANAGE\\_FORM.FORM\\_ADD.GBL?Page=FORM&Action=U&SEQ\\_NBR=313](https://sso.edison.tn.gov/psp/paprd/EMPLOYEE/ERP/c/MANAGE_FORM.FORM_ADD.GBL?Page=FORM&Action=U&SEQ_NBR=313)

(This message was automatically generated by Form and Approval Builder on 2019-09-13 at 15.37.15.000000. Please do not reply to this email.)

# Amendment Request

Pending final approval

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

**APPROVED**

CHIEF PROCUREMENT OFFICER

DATE

<b>Agency request tracking #</b>	<b>33135-00215</b>	
<b>1. Procuring Agency</b>	<b>TN Department of Education (TDOE), School Nutrition</b>	
<b>2. Contractor</b>	<b>Colyar Consulting Group, Inc.</b>	
<b>3. Edison contract ID #</b>	<b>44748</b>	
<b>4. Proposed amendment #</b>	<b>01</b>	
<b>5. Contract's Original Effective Date</b>	<b>July 1, 2015</b>	
<b>6. Current end date</b>	<b>June 30, 2020</b>	
<b>7. Proposed end date</b>	<b>June 30, 2021</b>	
<b>8. Current Maximum Liability or Estimated Liability</b>	<b>\$ 4,674,408</b>	
<b>9. Proposed Maximum Liability or Estimated Liability</b>	<b>\$ 5,092,368</b>	
<b>10. Strategic Technology Solutions Pre-Approval Endorsement Request</b> <i>– information technology service (N/A to THDA)</i>	<input type="checkbox"/> Not Applicable <input checked="" type="checkbox"/> Attached	
<b>11. eHealth Pre-Approval Endorsement Request</b> <i>– health-related professional, pharmaceutical, laboratory, or imaging</i>	<input checked="" type="checkbox"/> Not Applicable <input type="checkbox"/> Attached	
<b>12. Human Resources Pre-Approval Endorsement Request</b> <i>– state employee training service</i>	<input checked="" type="checkbox"/> Not Applicable <input type="checkbox"/> Attached	
<b>13. Explain why the proposed amendment is needed</b>		
<p>An amendment is needed to add a renewal clause, renew the contract for one year while the TDOE completes an RFP, increase the maximum liability, add a transition assistance provision to ensure a smooth transition if a new vendor wins the RFP, and update the terms and conditions with requirements that have been added to, or updated in, the state template since 2015, including: Iran Divestment, Equal Opportunity, Contractor Hosted Services Confidential Data, Audit, and Other Requirements, and FERPA.</p> <p>Contractor provides the Tennessee Meals, Accounting, &amp; Claiming System (TMAC), an internet-based system that provides counting, claiming and review functionality for the TDOE's School Nutrition Program.</p>		

<b>Agency request tracking #</b>	<b>33135-00215</b>
<p>School districts throughout Tennessee, as well as the State, have used TMAC since it was selected via RFP in 2010 in order to ensure that children have healthy meals in accordance with state law and federal United States Department of Agriculture (USDA) regulations. The programs/applications being presently operated and maintained are National School Lunch Program, School Breakfast Program, Afterschool Snack Program, Seamless Summer Program, Special Milk Program, and Fresh Fruit and Vegetable Program (FFVP). The TDOE is responsible for consulting, monitoring, auditing, training, and administering these USDA programs within compliance of state and federal regulations. Districts utilize this system to upload documents and financial data for compliance, submit claims for all program reimbursements, and utilize the menu planning software. This system helps districts with record keeping ensuring compliance with federal, USDA, and State regulations, laws, and guidelines</p> <p>The TDOE currently intends to complete a new RFP for these services, and this is currently in development. However, in order to seamlessly complete an RFP and any potential transition to a new vendor, the TDOE is seeking to renew this contract for one additional year.</p> <p>Transitioning to a new vendor would require set-up and implementation, as well as the training of 202 School Authorities that manage the programs. As this system has been in place for over a decade, users have extensive familiarity with it and would need to be trained on any new system. Additionally, the system contains confidential information, and we will need time to ensure secure transfer of this data if we change systems. Additional time will also allow us to solicit feedback from stakeholders and build a sufficient runway to set a new vendor up for success. With RFP's taking up to one year, we risk having a lapse in service if we do not extend the existing contract, which expires 6/30/2020.</p> <p>We consulted with CPO and they agreed that there are many risks associated with allowing insufficient time for an RFP (which could ultimately impact the end-user-districts), and this renewal of the existing contract would mitigate against those risks.</p>	
<p><b>14. If the amendment involves a change in Scope, describe efforts to identify reasonable, competitive, procurement alternatives to amending the contract.</b></p> <p>The only scope change is to add transition assistance language requiring the vendor to cooperate in transitioning services and data to the State or new contractor in the event that a new vendor is selected via RFP.</p>	
<p><b>Signature of Agency head or authorized designee, title of signatory, and date</b> (the authorized designee may sign his or her own name if indicated on the Signature Certification and Authorization document)</p>	

Pending final approval



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

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

**FROM :** Joshua Nunnally  
E-mail : [Josh.Nunnally@tn.gov](mailto:Josh.Nunnally@tn.gov)

**DATE :** 09/23/2019

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

**Applicable RFS # 33135-00215**

### State Security Confidential Information Applicability

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

- Applicable  
 Not Applicable

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

- Applicable  
 Not Applicable

### STS Endorsement Signature & Date:

**Chief Information Officer**

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

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

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

<b>Applicable RFS # 33135-00215</b>	
<b>Contracting Agency</b>	<b>TN Department of Education (TDOE), School Nutrition</b>
<b>Agency Contact</b> (name, phone, e-mail)	<b>Joshua Nunnally, 615-532-0395, josh.nunnally@tn.gov</b>
<p><b>Attachments Supporting Request</b> (mark all applicable)</p> <p>Note: The complete draft procurement document and the applicable documents listed below must accompany this request when submitted to STS. Special Contract Requests and Amendment Requests without Agency Head signature are acceptable. STS is aware that these documents will not have CPO signature when submitted with this request.</p> <p> <input type="checkbox"/> Solicitation Document  <input type="checkbox"/> Special Contract Request  <input checked="" type="checkbox"/> Amendment Request  <input checked="" type="checkbox"/> Proposed Contract/Grant or Amendment  <input checked="" type="checkbox"/> Original Contract/Grant and Previous Amendments (if any) </p>	
<p><b>Information Systems Plan (ISP) Project Applicability</b></p> <p>To avoid delay of STS pre-approval, the applicability of an ISP project to the procurement must be confirmed with agency IT staff prior to submitting this request to STS. If necessary, agency IT staff should contact STS Planning with questions concerning the need for an ISP project.</p> <p>IT Director/Staff Name Confirming (required):</p> <p> <input type="checkbox"/> Applicable – Approved ISP Project#  <input checked="" type="checkbox"/> Not Applicable </p>	
<p><b>Subject Information Technology Service Description</b></p> <p>Provide a brief summary of the information technology services involved. Clearly identify included technologies such as system development/maintenance, security, networking, etc. As applicable, identify the contract or solicitation sections related to the IT services.</p> <p>The Tennessee Meals, Accounting, and Claiming System provides multiple USDA Child Nutrition Programs across our state with a web-based system that facilitates the management and improvement of Child Nutrition Programs. The System provides school districts with an electronic method to submit claims for federal reimbursements. It also provides an efficient means to upload, store, and review school agreements, menus, nutrition information, audit findings, and monitoring activities which reduces time spent on all aspects of the Administrative Reviews. The System provides a workflow, help system/tech support, and rules that guide system users so errors are minimized.</p>	

**CONTRACT**

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

<b>Begin Date</b> July 1, 2015	<b>End Date</b> June 30, 2020	<b>Agency Tracking #</b> 33135-00215	<b>Edison Record ID</b> 44748		
<b>Contractor Legal Entity Name</b> Colyar Consulting Group, Inc.				<b>Edison Vendor ID</b> 0000127514	
<b>Goods or Services Caption (one line only)</b> Enhancements, maintenance and support the Tennessee Meals, Accounting, & Claiming System					
<b>Subrecipient or Contractor</b> <input type="checkbox"/> Subrecipient <input checked="" type="checkbox"/> Contractor		<b>CFDA #</b> 10.560			
<b>Funding —</b>					
<b>FY</b>	<b>State</b>	<b>Federal</b>	<b>Interdepartmental</b>	<b>Other</b>	<b>TOTAL Contract Amount</b>
2016	\$0.00	\$1,912,568.00	\$0.00	\$0.00	\$1,912,568.00
2017	\$0.00	\$1,507,960.00	\$0.00	\$0.00	\$1,507,960.00
2018	\$0.00	\$417,960.00	\$0.00	\$0.00	\$417,960.00
2019	\$0.00	\$417,960.00	\$0.00	\$0.00	\$417,960.00
2020	\$0.00	\$417,960.00	\$0.00	\$0.00	\$417,960.00
<b>TOTAL:</b>	<b>\$0.00</b>	<b>\$4,674,408.00</b>	<b>\$0.00</b>	<b>\$0.00</b>	<b>\$4,674,408.00</b>
<b>Contractor Ownership Characteristics:</b>					
<input type="checkbox"/> Minority Business Enterprise (MBE): African American, Asian American, Hispanic American, Native American					
<input type="checkbox"/> Woman Business Enterprise (WBE)					
<input type="checkbox"/> Tennessee Service Disabled Veteran Enterprise (SDVBE)					
<input type="checkbox"/> Tennessee Small Business Enterprise (SBE): \$10,000,000.00 averaged over a three (3) year period or employs no more than ninety-nine (99) employees.					
<input checked="" type="checkbox"/> Other:					
<b>Selection Method &amp; Process Summary (mark the correct response to confirm the associated summary)</b>					
<input type="checkbox"/> Competitive Selection		Describe the competitive selection process used			
<input checked="" type="checkbox"/> Other		Sole Source			
<b>Budget Officer Confirmation:</b> There is a balance in the appropriation from which obligations hereunder are required to be paid that is not already encumbered to pay other obligations. 2/27/15					
					
<b>Speed Chart (optional)</b> ED00000038		<b>Account Code (optional)</b> 70803000			

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

**RFS Number**

33135-00215

**Edison ID**

44748

<b>Fiscal Year</b>	<b>Department ID</b>	<b>Speedchart Number</b>	<b>Program Code</b>	<b>Account Code</b>	<b>Fund</b>	<b>Project/ Grant Code</b>	<b>CFDA #</b>	<b>Amount</b>
2016	3313500000	ED00000970	577000	70803000	25000	ED0000HM12AAX12	10.560	\$13,071.50
2016	3313500000	ED00000970	577000	70899000	25000	ED0000HM12AAX12	10.560	\$986,928.50
2016	3313500000	ED00000038	577000	70803000	25000	ED0000HB15AAX15	10.560	\$11,928.50
2016	3313500000	ED00000038	577000	70899000	25000	ED0000HB15AAX15	10.560	\$900,639.50
2017	3313500000	ED00000970	577000	70803000	25000	ED0000HM13AAX13	10.560	\$16,578.75
2017	3313500000	ED00000970	577000	70899000	25000	ED0000HM13AAX13	10.560	\$983,421.25
2017	3313500000	ED00000038	577000	70803000	25000	n/a	10.560	\$8,421.25
2017	3313500000	ED00000038	577000	70899000	25000	n/a	10.560	\$499,538.75
2018	3313500000	ED00000038	577000	70803000	25000	n/a	10.560	\$25,000.00
2018	3313500000	ED00000038	577000	70809000	25000	n/a	10.560	\$392,960.00
2019	3313500000	ED00000038	577000	70803000	25000	n/a	10.560	\$25,000.00
2019	3313500000	ED00000038	577000	70809000	25000	n/a	10.560	\$392,960.00
2020	3313500000	ED00000038	577000	70803000	25000	n/a	10.560	\$25,000.00
2020	3313500000	ED00000038	577000	70809000	25000	n/a	10.560	\$392,960.00
<b>TOTAL -</b>								<b>\$4,674,408.00</b>

**CONTRACT  
BETWEEN THE STATE OF TENNESSEE,  
DEPARTMENT OF EDUCATION  
AND  
COLYAR CONSULTING GROUP, INC.**

This Contract, by and between the State of Tennessee, Department of Education ("State") and Colyar Consulting Group, Inc. ("Contractor"), is for the provision of enhancements, maintenance and support of the Tennessee Meals, Accounting and Claiming (TMAC) System, 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 For-Profit Corporation.

Contractor Place of Incorporation or Organization: Phoenix, AZ

Contractor Edison Registration ID # 127514

**A. SCOPE:**

- A.1. The Contractor shall provide all goods or services and deliverables as required, described, and detailed below and shall meet all service and delivery timelines as specified by this Contract.
- A.2. Definitions:
- a. Administrative Review (AR) – The monitoring of program requirements under the National School Lunch Program, School Breakfast Program, and other federal school nutrition programs.
  - b. Afterschool Snack Program (ASP) - Program that is designed to provide snacks to students after the regular lunch day.
  - c. Centers of Regional Excellence (CORE) –Centers that provide LEAs with the support to create regional collaborative relationships, differentiated professional development and evidence based best practice sharing. By establishing an agreed upon set of norms, CORE staff work closely with LEA staff in doing work to improve student learning. The State has eight regional offices throughout the state staffed with an executive director and support staff that includes academic specialists, fiscal and consolidated planning consultants.
  - d. Community Eligibility Provision (CEP)-USDA sponsored program that provides an alternative approach for offering school meals at no cost to local educational agencies (LEAs) and schools in low income areas, instead of collecting individual applications for free and reduced price meals.
  - e. Continuing Education Credits (CEUs)- a currency that measures a person's participation in a formal, non-credit continuing nutrition education program, such as a workshop, seminar, tutorial, or self-study course.
  - f. Corrective Action Document (CAD)-Documentation provided to SFAs after the AR that helps identify areas of improvement in order to reduce or eliminate deficiencies in School Nutrition Program operations.
  - g. Direct Certification (DC)-the process of determining meal eligibility based on whether a child receives SNAP/Food Stamp benefits through data matching.
  - h. Fresh Fruits and Vegetables Program (FFVP) –A competitive federal grant that provides fresh fruits and vegetables to students at times other than the school lunch and breakfast programs.
  - i. Healthy Hunger Free Kids Act of 2010 (HHFKA)-Authorizes funding for federal school meal and school nutrition programs and increases access to healthy food for low-income children.
  - j. Independent Review- This is the process used with SFAs/LEAs that do not have an electronically approved application approval system.
  - k. Local Education Agency (LEA) - A school district or school system that is the financial and administrative agency for school(s) in a certain region of the State.
  - l. National School Lunch Program (NSLP)-Governed by 7CFR Part 210-provides lunches to students in public, private, and residential school.
  - m. Point of Sale (POS)-the location where students receive their nutrition benefits.
  - n. Products – Technology software designed, installed, and maintained by the Contractor.
  - o. Residential Child Care Institution (RCCI) - A not-for-profit institution that has students who remain at a specific facility overnight and are on the school lunch and/or school breakfast programs.

- p. School Breakfast Program (SBP)-Governed by 7CFRPart 220-provides breakfasts to students in public, private and residential schools.
  - q. School Food Authority (SFA) -As defined in National School Lunch Program regulation 7 CFR 210.2: The governing body which is responsible for the administration of one or more schools; and has the legal authority to operate child nutrition programs therein or be otherwise approved by USDA to operate the Program.
  - r. School Nutrition Programs (SNP) - Programs operated by the State Office of School Nutrition in Tennessee, such as the National School Lunch Program, School Breakfast Program, Fresh Fruit and Vegetable Program, Afterschool Snack Program and Seamless Summer Option.
  - s. Seamless Summer Option (SSO) –Part of NSLP which allows students to eat throughout the entire year.
  - t. Special Milk Program (SMP)-Provides milk for school and camps where a lunch program and/or breakfast program is not available.
  - u. Sponsors- Organizations that may manage School Nutrition Programs.
  - v. State – State agency division that supervises and administers the USDA's nutrition programs.
  - w. State Administrative Expense (SAE) Section 201- USDA 201 Fund is provided to each State agency funding for its administrative expenses in supervising and giving technical assistance to local schools, LEAS, and institutions in their conduct of Child Nutrition Programs. State agencies that administer the distribution of USDA Foods to schools and child or adult care institutions are also provided with SAE funds.
  - x. Tennessee Meals, Counting and Claiming (TMAC) –The comprehensive internet based system that is used by the State School Nutrition Program Staff, LEAs, and SFAs to complete their counting, claiming, and other review efforts to be in compliance with state and federal law.
  - y. United States Department of Agriculture (USDA) –A cabinet-level agency that oversees the American farming industry. USDA duties range from helping farmers with price support subsidies, to inspecting food to ensure the safety of the American public.
  - z. Verification Method-The process used by SFAs to confirm selected students' eligibility for free and reduced price meals in the NSLP and SBP.
- A.3. The Contractor shall prepare, for State approval, an annual work plan no later than July 1 of each year. The initial work plan is due no later than 30 days after the execution of this contract and must include the following:
- a. Development schedules, including initiation and completion dates, and task responsibilities for the enhancements detailed in A.6 of this Contract.
  - b. Detailed, standardized security procedures. The procedures must include:
    - (1) A secure architecture to protect processing, storing, and reporting environments from network-based attacks.
    - (2) Procedures and safeguards to ensure that electronic files and data are developed, used, and maintained in a secure manner.
    - (3) Procedures and safeguards to ensure the security of the items, and all ancillary materials during development, production, field testing, calibration, printing, and reporting. The procedures shall ensure day-to-day security to prohibit unauthorized personnel access to prohibited information through deliberate or unintentional actions.
    - (4) Encryption to ensure security of all director/supervisor/school/system information entered through all online programs.
    - (5) The Contractor is held responsible for the actions of its team and must guard against a breach of security.
  - c. Detailed, standardized, quality control procedures. The procedures must include the following:
    - (1) Field testing, forms development, administration, processing, and reporting.
    - (2) Errors in work products arising from activities that are the responsibility of the Contractor including print errors and program functions. Such corrections may involve activities that include the following:
      - i. Conduct analyses to identify the cause and extent of errors
      - ii. Edit, revise, and/or reprogram forms.
      - iii. Reprint and/or reproduce products or other materials.
      - iv. Provide additional training to Contractor support staff, State staff and LEA personnel as needed via training materials, webinars and/or regional meetings.
      - v. Replace and/or correct data files.
      - vi. Reproduce reports

- (3) The State will conduct a rigorous acceptance test of the system prior to initial installation. The Contractor shall support this testing effort as required by the State.

All subsequent work plans shall include the following:

- a. An outline, by task and due date, each activity to be performed under this Contract. A description of all activities related to the development and implementation of desktop and web-based support processes, training materials, reports, including each stage of production. It shall provide due dates for each activity and indicate areas of responsibility for the Contractor and the State. The work plan will serve as a monitoring document to be used by the State to assure timely completion of tasks as scheduled.
  - b. The Contractor shall establish secure share point or file transfer protocol (FTP) website for use in maintaining the work plan and other communications, including posting materials, and training materials. Materials shall be considered delivered and final after written notification is given to the Contractor via email or other electronic methods by the State contact. The work plan shall be delivered in Microsoft Project and shall be maintained as a fluid, ongoing project document for each test administration. Both the State and the Contractor shall have access to and the ability to edit and update the work plan as needed. All changes must be approved by the State. The Contractor shall conduct a work plan review between the State and the Contractor for planning, materials development, and report approval, as needed. The State, in consultation with the Contractor, shall make selection of the meeting site and dates. Meeting participants shall include the key project staff, including project coordinators and their supervisors from both organizations.
  - c. The work plan shall be reviewed annually to incorporate changes required by additional USDA, federal, and/or state laws, regulations, mandates.
- A.4. The Contractor shall provide the following maintenance and support to the TMAC System:
- a. Software updates related to USDA regulatory changes that impact existing software forms and reports. These updates include modification to all existing software, forms, screens and reports that are related to USDA regulation changes. USDA regulation changes that require the development of a new series of forms, new module, etc. are not included.
  - b. Corrections of software anomalies
  - c. Software releases
  - d. Quarterly UAT database environment refresh
  - e. The all-inclusive AR maintenance package covers broad changes requested by the State to the AR module, in addition to USDA regulatory updates to the Administrative Review process.
- A.5. The Contractor shall award up to one-thousand dollars (\$1000.00) to each school based on criteria developed by the State. The award may be used by each school to access within TMAC, the following services for school year 2015-2016 and 2016-2017: promotional resources, nutrient analysis, production records, and menu planning products utilizing USDA Section 201 Funds. This plan has been authorized by the regional USDA Southeast Regional Office (SERO) and will allow the school systems to choose from the following options.
- a. Menu boards software maintenance
  - b. Smarter lunchroom training by Cornell University
  - c. Software for Nutrient Analysis
  - d. Software for Menu Planning and Production Records
  - e. Software for Recipe Development
- A.6. The Contractor shall provide the following enhancements to the TMAC System:
- a. Addition of a menu planning and production management integration tool. This tool shall provide the State integration capabilities to USDA-certified Menu Planning data by providing a mechanism for SFAs to upload electronic, pre-defined menu-related information data into the TMAC Administrative Review (AR) module. This tool shall be accessed by any SFA in Tennessee

who has menu planning and nutrient analysis software from a USDA-certified menu planning vendor. The tool's integration process shall work as follows:

- (1) An upload feature allows LEAs to upload menu and nutrition data to the State. This includes the "Week of Review" menu information which is used with the contractor's existing AR software. This includes the ability to upload menus by site, menus by meal type, menus by age group, and menus by service line.
- b. Addition of a menu and related nutrient analysis upload tool. This tool shall provide SFAs the ability to upload menus and nutrient analysis results generated by USDA-approved software into the TMAC system and will allow the State to provide feedback to the school without affecting the original menu plan. The tool shall:
- (1) State validation for compliance with the Healthy Hunger-Free Kids Act of 2010 (HHFKA).
  - (2) Include a repository of uploaded menus which can be shared with SFAs (i.e., an exemplary "Farm to School" menu).
  - (3) Give the State access to individual SFA menu plans, nutrient analysis, and production records.
  - (4) Provide feedback and menu recommendations to SFAs without changing the original menu plan.
  - (5) Validate certification data for additional reimbursement (performance-based certification).
  - (6) Provide reporting capabilities.

The goal is to reduce the time spent by SFAs transferring this type of data to the State, resulting in an overall quicker and more efficient process for sharing information.

The contractor will be a resource for schools requiring nutrition-planning software and provide a solution. SFAs can acquire a solution for menu planning, nutritional analysis and production records via the contractor with funds provided from the State via the State Administrative Expense (SAE) Fund 201. There is a realization that an undue burden may arise on both the State and SFAs when SFAs use menu planning tools without the ability to easily share their data with the State. The goal of the integration, therefore, is to reduce any unnecessary burden by providing SFAs with a platform that would allow the SFA to upload menu information into the AR software, providing the State direct online access to the information for the review process from within TMAC. This will eliminate the submission of paper menus, production records, and nutrient analysis.

- c. Addition of a production planning records upload tool. The tool will allow for SFAs to upload electronic, pre-defined production records into the TMAC AR module. The tool shall allow for the following:
- (1) Upload production records.
  - (2) Upload production records for a specified time (i.e., one day of production records, a week, or a month).
  - (3) Allow SFAs to share records with the State in a single location within the TMAC system.
  - (4) Reporting.
- d. Addition of a technical assistance module-This module shall track technical assistance that the State provides throughout the year and is accessible from outside of the SNP compliance submodule. The data collected within this module will provide the State the ability to identify areas where SFA/LEAs have questions, determine ways to improve training and communication with the Sponsors, as well as manage how much staff time is spent in this capacity. The areas and focuses for which the State would like to monitor are entirely defined and managed by authorized State staff via the Maintenance and Configuration modules. For example, areas may include: Applications, Claims, Compliance, and Verification Reporting; focuses may include CEP, Claim uploads and USDA reporting. This module shall have the capability to turn the statewide data

collected into written reports, as well as graphical charts identifying major areas of assistance provided for a specific SFA/LEA.

- e. **Addition of a potential SFA/LEA module-**This module shall provide a customized web-based "intelligent" questionnaire for access by potential new SFA/LEAs that may be private schools, RCCIs, or day care programs, eliminating manual tracking of phone call and email inquiries about the School Nutrition Programs. The questionnaire shall be accessible from the homepage of TMAC, since potential SFA/LEAs do not have access to the internal, password-protected areas of TMAC, and issues a series of questions regarding potential eligibility for the SNP. Questions will be generated and displayed by the TMAC system based on the previous series of questions, eliminating the potential that an irrelevant or non-applicable question is asked (e.g., question regarding 501(c)(3) status is asked only if the SFA/LEA has identified themselves as non-profit). After a questionnaire is completed, the State will access a "back office" module that provides full functionality to assign and track all inquiries, potential SFA/LEA applications, key dates, and final determination of status (i.e., denied from participating in the programs or accepted into the programs). A summary of the "back-office" features are below:
- (1) Summary of applications that result in a potential eligibility to enroll in the program.
  - (2) Summary of applications that result in an application not eligible for the program.
  - (3) Summary of applications assigned to specialists.
  - (4) Comprehensive searching across all applications based on dates, analysts, SFA/LEA information, contact information, and status.
  - (5) Detailed information screens that contain all application data including SFA/LEA information, questions that they answered in the pre-screen questionnaire, eligibility questions that the state validates, approval fields and comments for the state.
  - (6) Ability to track documents received by name, date, and approval date, as well as the capability to upload the documents.
  - (7) Email generation via a single click.
- f. **Wellness Policy Enhancement-**This enhancement provides SFAs with a single, on-line place where they can store pertinent documentation related to their Wellness Policy. The State shall have access to SFAs' Wellness Policy and related documentation in order to verify that the SFA is meeting the implementation requirements of its Local School Wellness Policy, prior to an on-site visit.
- g. **Professional Standards Management Module-** This enhancement will allow the State to implement the Professional Standards for State and Local School Nutrition Programs (7CFR Parts 210 and 235). The rule establishes minimum professional standards for school nutrition personnel who manage and operate the National School Lunch and School Breakfast Programs. This would require all State staff and SFAs to complete annual training / continuing education; 15 hours for state personnel and 18 hours for school food authorities per year, as of the current rule. The rule also requires that State agencies maintain a recordkeeping system which would allow them to document annual compliance with the professional standard requirements for all State Directors of school nutrition programs. This module will assist with SFAs need to track their staff's training throughout the year to ensure that they have accurate records for the State during administrative reviews. The Professional Standards Management module would provide the ability for the State to manage courses offering CEU credits, offer online and classroom courses, track who has completed the required trainings, when training was completed, and the number of CEUs achieved. In addition, the SFA will be able to keep track of the courses they have registered for and completed, and the respective CEUs achieved.
- The Professional Standards Management module will provide:
- (1) SFAs with TMAC User IDs, as well as users associated with a SFA, but do not have a TMAC User ID, the ability to access course lists and register for a course.
  - (2) A list of training courses offered by the State, along with description and details.
  - (3) SFAs the ability to register for a course.

- (4) If a classroom course, identification by the system that the registrant is being waitlisted if a course is full, as well as automatic enrollment of the registrant if space availability arises.
  - (5) For online courses, SFA access to videos, recorded webinars, and desktop training materials either developed by the State or created by the contractor.
  - (6) For classroom training, automatic creation of rosters and registrants contact information.
  - (7) Tracking of all staff associated with a SFA that has registered and completed training.
  - (8) Ability for the State to define the number of CEUs associated with a course and the total number of CEUs completed by a SFAs staff person for a specific year.
  - (9) Ability for the SFA to complete a course evaluation form.
  - (10) Ability for the SFA to log courses completed that were not offered by the State.
  - (11) Reports related to data collected via the Professional Standards Management module.
  - (12) Track when trainings are completed.
  - (13) Ability to upload/import master roster information including email addresses.
  - (14) Ability to create a state trainer report identifying staff compliance with training standards.
- h. My Dashboard Module- Upon login, the SFA/LEA and State users are now taken to a customized screen that displays the most current application, claim, and submission information (e.g., Verification Report, Food Safety Inspections, etc.) related to them. With this module for State users, the display will include a clear list of assigned workload as well as communications received from their designated SFA/LEAs.
- In addition, the dashboard will offer a notification message center whereby automated messages sent by TMAC (e.g., application packet has been returned, CEP data is due, off-site assessment is available for data entry, etc.) will be displayed on the dashboard for easy viewing. An internal message that is generated can appear on the dashboard to give the user a quick reference to messages that may be in their queue. An example of an internal system message that could be generated is when a financial form is returned to the SFA/LEA, a message could appear that informs the SFA/LEA.
- i. Community Eligibility Provision (CEP) Updates- Updates are proposed for the component that will assist the State in managing the CEP process. This module update includes anticipated updates to the process as well as reporting to include the identification of who is performing district level CEP. Additional enhancements are required related to the CEP, including the need to report how many systems, schools, and percentage of SFAs that utilize 100% use of the provision. Finally, modifications related to Verification Reporting and ARs are required related to CEP. The update includes the automatic population of annual data collection based on March claim data.
- j. Disbursement of Funds Separate from Claims Process- This enhancement will allow the State a software process for distributing funds that are not specifically from claiming. A method for distributing "State Match" funds already exists. A more robust feature is proposed that will allow flexibility and ease in distributing funds to the SFA/LEAs. The feature will require the identification of account codes to allow payments to be allocated correctly via the accounting system.
- k. Seamless Summer Option Updates (SSO)-To ensure improved data collection quality, as well as incorporate expanded data requested for qualification and review of SSO eligibility, updates are proposed to the current SSO site application. Examples include incorporating additional data collection on sites that qualify via School data and Census data, incorporating the five (5) year eligibility cycle, adding information collected regarding adjacent sites, as well as enhancing data related to Restricted and Closed sites. These updates would reduce the time the State currently spends confirming qualifying SSO Sites outside of the system, as well as allow the State to add an explanation for why an SFA is restricting attendance, a feature that is not currently available for the State within the software.

- I. **Administrative Review (AR) Enhancements-** Enhanced software features will offer the State the opportunity to customize the AR software based on additional State-specific needs. These features relate to helping the State manage the AR process. The following list identifies the enhancements that the contractor will incorporate into the base AR software:
- (1) SFA/LEA Access includes auto-generated emails when off-site forms are made available for online entry by SFA/LEA and auto-generated emails when CAD is made available for online entry by SFA/LEA.
  - (2) Team Reviews includes scheduling of team reviews, identification of reviewer by form group (e.g., 100, 200, etc.), reviewers assigned to a specific site(s) as well as bulk assignment of multiple sections to a specific reviewer.
  - (3) Time Tracking includes dedicated screen to track time based on individual and activity. State can define activities to track time using a maintenance screen. Example of activities may include: review preparation, off-site review, travel, on-site review, findings preparation, CAD review.
  - (4) Enhanced Technical Assistance (TA) Tracking includes dedicated screens to track TA provided as part of the AR process, including the ability for the State to enter AR-specific TA, the ability for the SFA/LEA to respond to TA provided, graphical representation of assistance provided, and related reports.
  - (5) Tracking Correspondences dedicated screen to track key correspondences between the State and the SFA/LEA. State can define correspondences to track using a maintenance screen. Example of documents may include: Introductory Letter, Finding Letter, Closure Letter, etc.
  - (6) Letter Generations to include a generation of four State-specific letters such as an Introductory Letter, Finding Letter, Payback / Appeal Letter and Closure Letter.
  - (7) Bulk Review Scheduling and Bulk Review Assignment available from a single screen which provides the State the ability to schedule or re-schedule a series of reviews.
  - (8) State-wide Dashboards include an online summary and drill-down business analytics to help manage the overall AR process at a State-level, an at a glance summary of how many reviews are at which point in the review process (e.g., scheduled, off-site, on-site, CAD response, closed), and drill-down data by review milestone, reviewer, SFA/LEA, region, etc.
  - (9) Single CAD Response will be available when multiple sites have the same finding. The system will allow the SFA the ability to provide a single CAD response and associate it with multiple site findings, eliminating the need for the SFA/LEA to enter, and the State to review, the same CAD response multiple times.
  - (10) Technical Assistance Review is a specific review form set that allows for the State to identify a TA review type. The review type is defined and tracked within the Compliance module and provides for the State to record compliance-related assistance provided outside of the AR cycle.
- m. **Student Eligibility/Benefit Issuance Module-** During the AR process, the State must review and compare a statistical sample of eligibility certification documents (i.e. household applications, direct certification, and other categorically eligible student documentation) to the benefit issuance document(s) used at the point of service. This is done to ensure that students that are receiving free or reduced benefits are in fact entitled to receive such benefits. Currently, during the AR process, the State must manually select (e.g., "pull applications") a statistical sample size of applications to review and then manually compare the application student eligibility/benefit issuance to what they observe at the point of service (i.e.; free or reduced meals). The contractor will ensure that the Student Eligibility/Benefit Issuance Validation enhancement will automate the State's process for validating Student Eligibility/Benefit Issuance by:

- (1) Providing the SFA ability to upload student applications data from their Point of Sale (POS) system
  - (2) Providing the State ability to run a statistical sample for validation of benefit data
  - (3) Providing the State ability to identify results of application review of sample
  - (4) Automatically logging any deviations (i.e. mis-categorized applications) directly into the appropriate USDA AR worksheet (e.g., SFA-1 in 2014-15).
- n. Direct Certification (DC) Enhancement-Enhancements to the existing direct certification screens are required due to the nature of the data sensitivity and security of that data. This will allow a more robust tracking method of who downloads data, including tracking of IP addresses, login ID's, etc. The new process will incorporate the use of the SQL server and the encryption of data inside tables versus storing flat files on the web server. SFAs will have the ability to export information in either excel or CSV formats. The contractor will ensure that the State is able to share DC data matching files across state lines and allow the State the ability to control the access of DC data matching files to specific entities that are responsible for the ongoing operation of CNPs. The State will have the ability to properly assess quantitatively the number of students impacted by this DC process.
- o. Application Enhancements-Over the next five years, there will be enhancements required for the State to meet specific requirements that are needed each year. An example is a known need to capture additional information on the applications regarding which nutrient analysis product is used. Another known required enhancement is the ability to capture additional data for users that are applying for the Healthier U.S. Schools opportunity.

(1) Two specific examples of applications enhancements that will be required are related to the two following items. It is anticipated that multiple changes will be required every year.

i. Flexibility in regards to the effective date of eligibility. The contractor will provide the agency with a streamlined process to work with SFAs who choose to implement the flexibility provided by the USDA in determining the effective date of Free or Reduced price meal applications. This specifically relates to the USDA memo SP 11-2014, "Effective Date of Free or Reduced Price Meal Eligibility Determinations" (December 3, 2013). In this memo, the USDA extends flexibility to SFAs for establishing the effective date of eligibility for children certified for free or reduced price meals in the NSLP, SBP, and SMP based on the date of submission of a household application as the "effective date" of eligibility, rather than the date the official approved the application. This also extends to Direct Certification (DC).

SFAs who choose to implement this flexibility are required to notify the State. The State is then required to retain records of SFAs using the abovementioned flexibility. The enhancement would provide both SFAs and the State with features to facilitate the completion of these requirements in order to help ensure a proper and consistent implementation of the flexibilities by SFAs across the state.

ii. Free or Reduced Vendor Selection. The State needs to have specific data available in regards to the software used by SFAs for free or reduced price meal applications. This data includes the type and name of software used by the SFA. As part of this enhancement, the contractor will update the current SFA questions to include questions regarding the type of free or reduced software used. Selections will include USDA approved vendors and an option for the SFA to select "Other." Additionally, the State would be able to generate a report for SFAs using a free or reduced software, including the type of software used and a report of SFAs who do not currently use free or reduced software.

- p. **Email Notifications** -This enhancement will allow for more advanced email communications between the State and SFAs. The goal is to provide better feedback and automated email notification alerts to both the State and SFAs when specific actions have been completed within the software and/or specific items are ready for review.
- q. **Fresh Fruit and Vegetable Program (FFVP) Enhancements**-This enhancement will allow the SFAs to complete the annual FFVP application as part of the annual application process. This gives the State a more robust process to review and approve the FFVP program as well as determine which sites will be able to participate.
- r. **Additional Reporting**-In order to maintain the ability to easily provide legislatures and USDA personnel with additional information, the system will incorporate up to 12 new reports per year, as requested by the State.
- s. **Data Analytics** -The data analytics software will allow the State to examine the data collected within the SNP system and apply meaningful business intelligence to that data to produce important data outputs and conclusions. Sophisticated business intelligence allows for data mining and exploration of fundamental SNP data. The outputs that are possible will provide meaningful views of information that are quick, immediate, and important. Data Analytics will also include up to 10 additional queries to assist the State with specific or unanticipated data requests. Information is provided via graphical charts as well as available for exporting to Microsoft Excel for further data manipulation or distribution. Examples of data that could be analyzed by the system and made available to the State includes:
- Top 10% of the SFA/LEAs with largest increase from prior year claims to current year claim reimbursement amounts.
  - Number of SFA/LEAs that are required to perform an Independent Review and submit a completed FNS-742A.
  - Number of sites participating in CEP for a specific year and compared to prior year.
  - Number of SFA/LEAs that utilized the incorrect Verification Method.
  - Number of SFA/LEAs that did not select the correct number of applications for Verification.
  - Number of Sites participating in each of the SNP sub-programs (e.g., SBP, SMP, ASCP, FFVP) compared to prior year.
- t. **e-Training** - e-Training will allow flexible, interactive, on-line instructional lessons for SFAs. The goal in providing the e-Learning Training module is two-fold. First, is to reduce the time and costs endured by the State in developing training tools for SFAs, and second, to provide SFAs with access to web-based, e-Learning training where content is accessible anywhere and anytime via the web. Each module will include the appropriate CEUs that will be tracked in the Professional Standards Management Module. Examples of e-Learning training include: Menu Planning and Nutrient Analysis, Production Planning and Records, and the completion of free and reduced applications. This contract includes up to 10 e-Learning training webinars, as requested by the State.
- u. **e-Learning Videos**- The development of e-Learning mini-training videos would aid SFAs in understanding how to more effectively use the TMAC system to complete their program requirements. These videos are short, easy-to-understand, and may also be stored in a repository where they will be easily available to the SFA at any time and from anywhere via the web. An example would be a mini e-Learning video that explains how to complete the off-site assessment of the AR process as a SFA. Additional examples may include: completing the off-site assessment, uploading claims through the Point Of Sale function, completing an SNP Application Packet, and School Nutrition-specific videos for menu planning in support of the HHFKA, etc. This contract includes the production of up to 10 videos annually.

- A.7. The Contractor shall provide hosting services that provide the technology infrastructure and environment to run the Contractor's software platform. The hosting environment consists of a UAT web/database server and a production web/database server and associated licenses, to be used for UAT and production, respectively. Servers shall be monitored 24 hours a day, every day of the year, in 5-second intervals. A blend of third party products, in house developed solutions, and 24 x 7 x 365 staff shall monitor a multitude of performance-related services, including CPU and memory usage, and other items to ensure the stability and reliability of the network, servers, and websites. Contractor's hosting services include:
- a. Corrective maintenance: Activities associated with the maintenance of the technology environment including hardware, operating system, and connectivity.
  - b. Software licensing: Contractor will provide all software licensing specific to the application including [REDACTED] Server Database licensing.
  - c. Application monitoring: Contractor will monitor the environment, including network activity, database and website.
  - d. Management of Software Deployments: When updates or enhancements are approved to be implemented onto the UAT and Production environments, Contractor will be responsible for managing and installing the upgraded software.
  - e. All software licenses, including [REDACTED]
  - f. Access to the application through a T1 bandwidth connection.
  - g. Secure Socket Layer (SSL) technology and firewall protection on the test and production web servers to provide security for communications over the network.
  - h. Intrusion penetration and detection (IPS/IDS) network probes to identify and eradicate network problems and resolve vulnerabilities, including real-time detection of attempted intrusion.
  - i. Nightly backups of the system.
  - j. 24 x 7 x 365 system availability (excluding scheduled maintenance windows), comprising a greater than 99.86% availability not counting scheduled outages.
  - k. Industry Standard Server Configuration to maximize hardware reliability.
  - l. Patch management as issued by software and hardware vendors.
  - m. Server hardware and software support and monitoring of the environments.
  - n. Management of all software deployments to the test and production environment.
- A.8. The Contractor shall provide training to State staff via on-site, webinar, and/or written materials. Training hours are not to exceed 20 hours per year.
- A.9. Ownership and License of Data and Software

The term "computer program" shall mean a series of instructions for operation of a computer or manipulation of data stored in electronic form. A computer program may be written or stored in human or machine readable form, in any format, form or medium, and may be expressed in binary or any higher level language, including but not limited to flow charts showing the desired order and logical relation of operations. "Documentation" shall mean any information about a computer program, including but not limited to manuals, notes, operating instructions, or help notes, in any format, form or medium. A computer program and any documentation relating to that computer program together constitute "Software." "Data" shall mean any information that is either input for a computer program or output from a computer program.

All Data collected by the State of Tennessee DOE, or furnished by the State of Tennessee DOE, to Contractor, in the course of the performance of work under this Agreement shall be and remain the property of the State of Tennessee DOE, and Contractor shall neither have nor acquire any rights or licenses therein by virtue of this Agreement, excepting only a limited license to use the Data for purposes reasonably required for the performance of duties under this Agreement and subject to confidentiality requirements with respect to the data.

All Software provided by Contractor to the State of Tennessee DOE, pursuant to this Agreement shall be and remain the property of Contractor (or the entity from whom Contractor has a license) and the State of Tennessee DOE shall neither have nor acquire any rights or licenses therein by

virtue of this Agreement, excepting only the license granted to State of Tennessee DOE, under this amendment.

Contractor hereby grants to State of Tennessee DOE a license, in perpetuity, to use, modify, and prepare derivative works from, any Software provided by Contractor to the State of Tennessee DOE, pursuant to this Agreement, for the lawful purposes of the State of Tennessee DOE, within the geographic area over which the State of Tennessee DOE has statutory or regulatory jurisdiction. The license granted in this section includes the right to make any copies reasonably necessary for any permitted purpose, but does not include the right to sublicense or distribute the software to other governmental agencies outside the geographic jurisdiction of the State of Tennessee DOE, or to any private person or entity.

**B. TERM OF CONTRACT:**

This Contract shall be effective on July 1, 2015 ("Effective Date") and extend for a period of 60 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 four million six hundred seventy four thousand four hundred eight dollars and no cents (\$4,674,408) ("Maximum Liability"). This Contract does not grant the Contractor any exclusive rights. The State does not guarantee that it will buy any minimum quantity of goods or services under this Contract. Subject to the terms and conditions of this Contract, the Contractor will only be paid for goods or services provided under this Contract after a purchase order is issued to Contractor by the State or as otherwise specified by this Contract.
- C.2. Compensation Firm. The payment methodology in Section C.3. of this Contract shall constitute the entire compensation due the Contractor for all goods or services provided under this Contract regardless of the difficulty, materials or equipment required. The payment methodology includes all applicable taxes, fees, overhead, and all other direct and indirect costs incurred or to be incurred by the Contractor.
- C.3. Payment Methodology. The Contractor shall be compensated based on the payment methodology for goods or services authorized by the State in a total amount as set forth in Section C.1.
- a. The Contractor's compensation shall be contingent upon the satisfactory provision of goods or services as set forth in Section A.
  - b. The Contractor shall be compensated based upon the following payment methodology:

Goods or Services Description	Amount (per compensable increment)
<b>Software Maintenance</b>	
-School Nutrition Program Maintenance; A.4.	\$75,000/year
-Administrative Review Maintenance (including all regulatory enhancements); A.6.l	\$54,000/year
<b>Enhancements</b>	
Menu Planning and Production Record Management Integration; A.6.a	\$1,000,000/ per year (payable year 1 and year 2 only)
-Technical Assistance Module; A.6.d	\$54,000/upon completion

-Potential SFA/LEA Module; A.6.e	\$65,500 /upon completion
-Wellness Policy Enhancements; A.6.f	\$32,000/upon completion
-Professional Standards Management; A.6.g	\$58,000 / upon completion
-My Dashboard; A.6.h	\$14,500 /upon completion
-CEP Enhancements; A.6.i	\$15,200 /upon completion
-Disbursement of Funds; A.6.j	\$27,500 /upon completion
-Seamless Summer Option Enhancement; A.6.k	\$10,400 /upon completion
-Management Review Enhancements; A.6.l	\$64,100 /upon completion
-Student Eligibility/Benefit Issuance; A.6.m	\$38,000/year
-Direct Certification; A.6.n	\$22,000 initial cost (one time)
-Application Enhancements; A.6.o	\$45,000/year
-Email Notifications; A.6.p	\$6,800/year
-FFVP Enhancements; A.6.q	\$14,500/year 1 \$6,500/years 2-5
-Reports; A.6.r	\$22,200/ per year
-Data Analytics (single license); A.6.s	\$43,000/per year
-e-Training Modules; A.6.t	\$995/ per training module
-e-Learning Videos ; A.6.u	\$3,500/per video
<b>Hosting</b>	
Hosting; A.7	\$48,000.00/ per year
<b>Training</b>	
Training; A.8	\$87.00/ per hour

C.4. Travel Compensation. The Contractor shall not be compensated or reimbursed for travel time, travel expenses, meals, or lodging.

C.5. Invoice Requirements. The Contractor shall invoice the State only for goods delivered and accepted by the State or services satisfactorily provided at the amounts stipulated in Section C.3., above. Contractor shall submit invoices and necessary supporting documentation, no more frequently than once a month, and no later than thirty (30) days after goods or services have been provided to the following address:

Sarah White, Executive State Director  
School Nutrition Program  
1240 Foster Avenue  
Nashville, TN 37243-0389  
[Sarah.C.White@tn.gov](mailto:Sarah.C.White@tn.gov)  
Telephone: 615-532-4714  
Fax: 615-532-0362

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: State of Tennessee, Department of Education, School Nutrition Program;
- (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 an "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, all payments to the Contractor, under this or any other contract the Contractor has with the State of Tennessee, shall be made by automated clearing house.
  - b. The Contractor shall complete, sign, and present to the State a "Substitute W-9 Form" provided by the State. The taxpayer identification number in the Substitute W-9 Form

must be the same as the Contractor's Federal Employer Identification Number or Tennessee Edison Registration ID.

**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:

Sarah White, Executive State Director  
 School Nutrition Program  
 1240 Foster Avenue  
 Nashville, TN 37243-0389  
[Sarah.C.White@tn.gov](mailto:Sarah.C.White@tn.gov)  
 Telephone: 615-532-4714  
 Fax: 615-532-0362

The Contractor:

Jeff Colyar, President  
 Colyar Consulting Group, Inc.  
 22420 N. 18<sup>th</sup> Drive  
 Phoenix, AZ 85037  
[jeff.colyar@ccglink.com](mailto:jeff.colyar@ccglink.com)  
 Telephone: 623-207-1717  
 Fax: 623-209-1718

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

- D.3. Modification and Amendment. This Contract may be modified only by a written amendment signed by all Parties and approved by all applicable State officials.
- D.4. Subject to Funds Availability. The Contract is subject to the appropriation and availability of State or federal funds. In the event that the funds are not appropriated or are otherwise unavailable, the State reserves the right to terminate this Contract upon written notice to the Contractor. The State's exercise of its right to terminate this Contract shall not constitute a breach of Contract by the State. Upon receipt of the written notice, the Contractor shall cease all work associated with the Contract. If the State terminates this Contract due to lack of funds availability, the Contractor shall be entitled to compensation for all conforming goods requested and accepted by the State and for all satisfactory and authorized services completed as of the termination date. Should the State exercise its right to terminate this Contract due to unavailability of funds, the Contractor shall have no right to recover from the State any actual, general, special, incidental, consequential, or any other damages of any description or amount.

- D.5. Termination for Convenience. The State may terminate this Contract for convenience without cause and for any reason. The State shall give the Contractor at least thirty (30) days written notice before the termination date. The Contractor shall be entitled to compensation for all conforming goods delivered and accepted by the State or for satisfactory, authorized services completed as of the termination date. In no event shall the State be liable to the Contractor for compensation for any goods neither requested nor accepted by the State or for any services neither requested by the State nor satisfactorily performed by the Contractor. In no event shall the State's exercise of its right to terminate this Contract for convenience relieve the Contractor of any liability to the State for any damages or claims arising under this Contract.
- D.6. Termination for Cause. If the Contractor fails to properly perform its obligations under this Contract in a timely or proper manner, or if the Contractor materially violates any terms of this Contract ("Breach Condition"), the State shall have the right to immediately terminate the Contract and withhold payments in excess of compensation for completed services or provided goods. Notwithstanding the above, the Contractor shall not be relieved of liability to the State for damages sustained by virtue of any Breach Condition and the State may seek other remedies allowed at law or in equity for breach of this Contract.
- D.7. Assignment and Subcontracting. The Contractor shall not assign this Contract or enter into a subcontract for any of the goods or services provided under this Contract without the prior written approval of the State. Notwithstanding any use of the approved subcontractors, the Contractor shall be the prime contractor and responsible for compliance with all terms and conditions of this Contract. The State reserves the right to request additional information or impose additional terms and conditions before approving an assignment of this Contract in whole or in part or the use of subcontractors in fulfilling the Contractor's obligations under this Contract.
- D.8. Conflicts of Interest. The Contractor warrants that no part of the Contractor's compensation shall be paid directly or indirectly to an employee or official of the State of Tennessee as wages, compensation, or gifts in exchange for acting as an officer, agent, employee, subcontractor, or consultant to the Contractor in connection with any work contemplated or performed under this Contract.

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

- D.9. Nondiscrimination. The Contractor hereby agrees, warrants, and assures that no person shall be excluded from participation in, be denied benefits of, or be otherwise subjected to discrimination in the performance of this Contract or in the employment practices of the Contractor on the grounds of handicap or disability, age, race, creed, color, religion, sex, national origin, or any other classification protected by federal or state law. The Contractor shall, upon request, show proof of nondiscrimination and shall post in conspicuous places, available to all employees and applicants, notices of nondiscrimination.
- D.10. Prohibition of Illegal Immigrants. The requirements of Tenn. Code Ann. § 12-3-309 addressing the use of illegal immigrants in the performance of any contract to supply goods or services to the state of Tennessee, shall be a material provision of this Contract, a breach of which shall be grounds for monetary and other penalties, up to and including termination of this Contract.
- a. The Contractor agrees that the Contractor shall not knowingly utilize the services of an illegal immigrant in the performance of this Contract and shall not knowingly utilize the services of any subcontractor who will utilize the services of an illegal immigrant in the performance of this Contract. The Contractor shall reaffirm this attestation, in writing, by submitting to the State a completed and signed copy of the document at Attachment A, semi-annually during the Term. If the Contractor is a party to more than one contract with the State, the Contractor may submit one attestation that applies to all contracts with the State. All Contractor attestations shall be maintained by the Contractor and made available to State officials upon request.

- b. Prior to the use of any subcontractor in the performance of this Contract, and semi-annually thereafter, during the Term, the Contractor shall obtain and retain a current, written attestation that the subcontractor shall not knowingly utilize the services of an illegal immigrant to perform work under this Contract and shall not knowingly utilize the services of any subcontractor who will utilize the services of an illegal immigrant to perform work under this Contract. Attestations obtained from subcontractors shall be maintained by the Contractor and made available to State officials upon request.
  - c. The Contractor shall maintain records for all personnel used in the performance of this Contract. Contractor's records shall be subject to review and random inspection at any reasonable time upon reasonable notice by the State.
  - d. The Contractor understands and agrees that failure to comply with this section will be subject to the sanctions of Tenn. Code Ann. § 12-3-309 for acts or omissions occurring after its effective date.
  - e. For purposes of this Contract, "illegal immigrant" shall be defined as any person who is not: (i) a United States citizen; (ii) a Lawful Permanent Resident; (iii) a person whose physical presence in the United States is authorized; (iv) allowed by the federal Department of Homeland Security and who, under federal immigration laws or regulations, is authorized to be employed in the U.S.; or (v) is otherwise authorized to provide services under the Contract.
- D.11. Records. The Contractor shall maintain documentation for all charges under this Contract. The books, records, and documents of the Contractor, for work performed or money received under this Contract, shall be maintained for a period of five (5) full years from the date of the final payment and shall be subject to audit at any reasonable time and upon reasonable notice by the State, the Comptroller of the Treasury, or their duly appointed representatives. The financial statements shall be prepared in accordance with generally accepted accounting principles.
- D.12. Monitoring. The Contractor's activities conducted and records maintained pursuant to this Contract shall be subject to monitoring and evaluation by the State, the Comptroller of the Treasury, or their duly appointed representatives.
- D.13. Progress Reports. The Contractor shall submit brief, periodic, progress reports to the State as requested.
- D.14. Strict Performance. Failure by any Party to this Contract to require, in any one or more cases, the strict performance of any of the terms, covenants, conditions, or provisions of this Contract shall not be construed as a waiver or relinquishment of any term, covenant, condition, or provision. No term or condition of this Contract shall be held to be waived, modified, or deleted except by a written amendment signed by the Parties.
- D.15. Independent Contractor. The Parties shall not act as employees, partners, joint venturers, or associates of one another. The Parties are independent contracting entities. Nothing in this Contract shall be construed to create an employer/employee relationship or to allow either Party to exercise control or direction over the manner or method by which the other transacts its business affairs or provides its usual services. The employees or agents of one Party are not employees or agents of the other Party.
- D.16. Patient Protection and Affordable Care Act. The Contractor agrees that it will be responsible for compliance with the Patient Protection and Affordable Care Act ("PPACA") with respect to itself and its employees, including any obligation to report health insurance coverage, provide health insurance coverage, or pay any financial assessment, tax, or penalty for not providing health insurance. The Contractor shall indemnify the State and hold it harmless 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. Limitation of Contractor's Liability. In accordance with Tenn. Code Ann. § 12-3-701, the Contractor's liability for all claims arising under this Contract shall be limited to an amount equal to two (2) times the Maximum Liability amount detailed in Section C.1. and as may be amended, PROVIDED THAT in no event shall this Section limit the liability of the Contractor for intentional torts, criminal acts, fraudulent conduct, or omissions that result in personal injuries or death.
- D.19. Hold Harmless. The Contractor agrees to indemnify and hold harmless the State of Tennessee as well as its officers, agents, and employees from and against any and all claims, liabilities, losses, and causes of action which may arise, accrue, or result to any person, firm, corporation, or other entity which may be injured or damaged as a result of acts, omissions, or negligence on the part of the Contractor, its employees, or any person acting for or on its or their behalf relating to this Contract. The Contractor further agrees it shall be liable for the reasonable cost of attorneys for the State to enforce the terms of this Contract.

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

- D.20. HIPAA Compliance. The State and Contractor shall comply with obligations under the Health Insurance Portability and Accountability Act of 1996 ("HIPAA"), Health Information Technology for Economic and Clinical Health ("HITECH") Act and any other relevant laws and regulations regarding privacy (collectively the "Privacy Rules"). The obligations set forth in this Section shall survive the termination of this Contract.
- a. Contractor warrants to the State that it is familiar with the requirements of the Privacy Rules, and will comply with all applicable requirements in the course of this Contract.
  - b. Contractor warrants that it will cooperate with the State, including cooperation and coordination with State privacy officials and other compliance officers required by the Privacy Rules, in the course of performance of the Contract so that both parties will be in compliance with the Privacy Rules.
  - c. The State and the Contractor will sign documents, including but not limited to business associate agreements, as required by the Privacy Rules and that are reasonably necessary to keep the State and Contractor in compliance with the Privacy Rules. This provision shall not apply if information received or delivered by the parties under this Contract is NOT "protected health information" as defined by the Privacy Rules, or if the Privacy Rules permit the parties to receive or deliver the information without entering into a business associate agreement or signing another document.
  - d. The Contractor will indemnify the State and hold it harmless for any violation by the Contractor or its subcontractors of the Privacy Rules. This includes the costs of responding to a breach of protected health information, the costs of responding to a government enforcement action related to the breach, and any fines, penalties, or damages paid by the State because of the violation.

- D.21. Tennessee Consolidated Retirement System. Subject to statutory exceptions contained in Tenn. Code Ann. §§ 8-36-801, *et seq.*, the law governing the Tennessee Consolidated Retirement System ("TCRS"), provides that if a retired member of TCRS, or of any superseded system administered by TCRS, or of any local retirement fund established under Tenn. Code Ann. §§ 8-35-101, *et seq.*, accepts State employment, the member's retirement allowance is suspended during the period of the employment. Accordingly and notwithstanding any provision of this Contract to the contrary, the Contractor agrees that if it is later determined that the true nature of the working relationship between the Contractor and the State under this Contract is that of "employee/employer" and not that of an independent contractor, the Contractor, if a retired member of TCRS, may be required to repay to TCRS the amount of retirement benefits the Contractor received from TCRS during the Term.
- D.22 Tennessee Department of Revenue Registration. The Contractor shall comply with all applicable registration requirements contained in Tenn. Code Ann. §§ 6-6-601 – 608. Compliance with applicable registration requirements is a material requirement of this Contract.
- D.23. Debarment and Suspension. The Contractor certifies, to the best of its knowledge and belief, that it, its current and future principals, its current and future subcontractors and their principals:
- a. are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any federal or state department or agency;
  - b. have not within a three (3) year period preceding this Contract been convicted of, or had a civil judgment rendered against them from commission of fraud, or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, state, or local) transaction or grant under a public transaction; violation of federal or state antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification, or destruction of records, making false statements, or receiving stolen property;
  - c. are not presently indicted or otherwise criminally or civilly charged by a government entity (federal, state, or local) with commission of any of the offenses detailed in section b. of this certification; and
  - d. have not within a three (3) year period preceding this Contract had one or more public transactions (federal, state, or local) terminated for cause or default.

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

- D.24. Force Majeure. "Force Majeure Event" means fire, flood, earthquake, elements of nature or acts of God, wars, riots, civil disorders, rebellions or revolutions, acts of terrorism or any other similar cause beyond the reasonable control of the Party except to the extent that the non-performing Party is at fault in failing to prevent or causing the default or delay, and provided that the default or delay cannot reasonably be circumvented by the non-performing Party through the use of alternate sources, workarounds plans or other means. A strike, lockout or labor dispute shall not excuse either Party from its obligations under this Contract. Except as set forth in this Section, any failure or delay by a Party in the performance of its obligations under this Contract arising from a Force Majeure Event is not a default under this Contract or grounds for termination. The non-performing Party will be excused from performing those obligations directly affected by the Force Majeure Event, and only for as long as the Force Majeure Event continues, provided that the Party continues to use diligent, good faith efforts to resume performance without delay. The occurrence of a Force Majeure Event affecting Contractor's representatives, suppliers, subcontractors, customers or business apart from this Contract is not a Force Majeure Event under this Contract. Contractor will promptly notify the State of any delay caused by a Force Majeure Event (to be confirmed in a written notice to the State within one (1) day of the inception of the delay) that a Force Majeure Event has occurred, and will describe in reasonable detail the nature of the Force Majeure Event. If any Force Majeure Event results in a delay in Contractor's

performance longer than forty-eight (48) hours, the State may, upon notice to Contractor: (a) cease payment of the fees until Contractor resumes performance of the affected obligations; or (b) immediately terminate this Contract or any purchase order, in whole or in part, without further payment except for fees then due and payable. Contractor will not increase its charges under this Contract or charge the State any fees other than those provided for in this Contract as the result of a Force Majeure Event.

- D.25. State and Federal Compliance. The Contractor shall comply with all applicable state and federal laws and regulations in the performance of this Contract.
- D.26. Governing Law. This Contract shall be governed by and construed in accordance with the laws of the State of Tennessee. The Tennessee Claims Commission or the state or federal courts in Tennessee shall be the venue for all claims, disputes, or disagreements arising under this Contract. The Contractor acknowledges and agrees that any rights, claims, or remedies against the State of Tennessee or its employees arising under this Contract shall be subject to and limited to those rights and remedies available under Tenn. Code Ann. §§ 9-8-101 - 407.
- D.27. Entire Agreement. This Contract is complete and contains the entire understanding between the Parties relating to its subject matter, including all the terms and conditions of the Parties' agreement. This Contract supersedes any and all prior understandings, representations, negotiations, and agreements between the Parties, whether written or oral.
- D.28. Severability. If any terms and conditions of this Contract are held to be invalid or unenforceable as a matter of law, the other terms and conditions of this Contract shall not be affected and shall remain in full force and effect. The terms and conditions of this Contract are severable.
- D.29. Headings. Section headings of this Contract are for reference purposes only and shall not be construed as part of this Contract.
- D.30. Incorporation of Additional Documents. Each of the following documents is included as a part of this Contract by reference. In the event of a discrepancy or ambiguity regarding the Contractor's duties, responsibilities, and performance under this Contract, these items shall govern in order of precedence below:
- a. any amendment to this Contract, with the latter in time controlling over any earlier amendments;
  - b. this Contract with any attachments or exhibits (excluding the items listed at subsections c. through f., below);
  - 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. Insurance. The Contractor shall carry adequate liability and other appropriate forms of insurance.
- a. The Contractor shall maintain, at minimum, the following insurance coverage:
    - (1) Workers' Compensation/ Employers' Liability (including all states coverage) with a limit not less than the relevant statutory amount or one million dollars (\$1,000,000) per occurrence for employers' liability whichever is greater.

- (2) Comprehensive Commercial General Liability (including personal injury & property damage, premises/operations, independent contractor, contractual liability and completed operations/products) with a bodily injury/property damage combined single limit not less than one million dollars (\$1,000,000) per occurrence and two million dollars (\$2,000,000) aggregate.
- (3) Automobile Coverage (including owned, leased, hired, and non-owned vehicles) with a bodily injury/property damage combined single limit not less than one million dollars (\$1,000,000) per occurrence.
- (4) Errors and Omission Coverage with a limit of not less than one million dollars (\$1,000,000) per claim and two million dollars (\$2,000,000) aggregate.

b. The Contractor shall provide a valid Certificate of Insurance naming the State as an additional insured and detailing Coverage Description; Insurance Company & Policy Number; Exceptions and Exclusions; Policy Effective Date; Policy Expiration Date; Limit(s) of Liability; and Name and Address of Insured. Contractor shall obtain from Contractor's insurance carrier(s) and will deliver to the State waivers of the subrogation rights under the respective policies. Failure to provide required evidence of insurance coverage shall be a material breach of this Contract.

E.3. Confidentiality of Records. Strict standards of confidentiality of records and information shall be maintained in accordance with applicable state and federal law. All material and information, regardless of form, medium or method of communication, provided to the Contractor by the State or acquired by the Contractor on behalf of the State that is regarded as confidential under state or federal law shall be regarded as "Confidential Information." Nothing in this Section shall permit Contractor to disclose any Confidential Information, regardless of whether it has been disclosed or made available to the Contractor due to intentional or negligent actions or inactions of agents of the State or third parties. Confidential Information shall not be disclosed except as required or permitted under state or federal law. Contractor shall take all necessary steps to safeguard the confidentiality of such material or information in conformance with applicable state and federal law.

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

E.4. Printing Authorization. The Contractor agrees that no publication coming within the jurisdiction of Tenn. Code Ann. §§ 12-7-101, *et. seq.*, shall be printed pursuant to this Contract unless a printing authorization number has been obtained and affixed as required by Tenn. Code Ann. § 12-7-103 (d).

E.5. Ownership of Software and Work Products.

a. Definitions.

- (1) "Contractor-Owned Software," shall mean commercially available software the rights to which are owned by Contractor, including but not limited to commercial "off-the-shelf" software which is not developed using State's money or resources.
- (2) "Custom-Developed Application Software," shall mean customized application software developed by Contractor solely for State.
- (3) "Rights Transfer Application Software," shall mean any pre-existing application software owned by Contractor or a third party, provided to State and to which Contractor will grant and assign, or will facilitate the granting and assignment of, all rights, including the source code, to State.
- (4) "Third-Party Software," shall mean software not owned by the State or the Contractor.

- (5) "Work Product," shall mean all deliverables exclusive of hardware, such as software, software source code, documentation, planning, etc., that are created, designed, developed, or documented by the Contractor exclusively for the State during the course of the project using State's money or resources, including Custom-Developed Application Software. If the deliverables under this Contract include Rights Transfer Application Software, the definition of Work Product shall also include such software. Work Product shall not include Contractor-Owned Software or Third-Party Software.

b. Rights and Title to the Software

- (1) All right, title and interest in and to the Contractor-Owned Software shall at all times remain with Contractor, subject to any license granted under this Contract.
- (2) All right, title and interest in and to the Work Product, and to modifications thereof made by State, including without limitation all copyrights, patents, trade secrets and other intellectual property and other proprietary rights embodied by and arising out of the Work Product, shall belong to State. To the extent such rights do not automatically belong to State, Contractor hereby assigns, transfers, and conveys all right, title and interest in and to the Work Product, including without limitation the copyrights, patents, trade secrets, and other intellectual property rights arising out of or embodied by the Work Product. Contractor and its employees, agents, contractors or representatives shall execute any other documents that State or its counsel deem necessary or desirable to document this transfer or allow State to register its claims and rights to such intellectual property rights or enforce them against third parties.
- (3) All right, title and interest in and to the Third-Party Software shall at all times remain with the third party, subject to any license granted under this Contract.

- c. The Contractor may use for its own purposes the general knowledge, skills, experience, ideas, concepts, know-how, and techniques obtained and used during the course of performing under this Contract. The Contractor may develop for itself, or for others, materials which are similar to or competitive with those that are produced under this Contract.

E.6. Prohibited Advertising or Marketing. The Contractor shall not suggest or imply in advertising or marketing materials that Contractor's goods or services are endorsed by the State. The restrictions on Contractor advertising or marketing materials under this Section shall survive the termination of this Contract.

E.7. Public Accountability. If the Contractor is subject to Tenn. Code Ann. §§ 8-4-401, *et seq.*, or if this Contract involves the provision of services to citizens by the Contractor on behalf of the State, the Contractor agrees to establish a system through which recipients of services may present grievances about Contractor's operation of the service program. The Contractor shall also display in a prominent place, located near the passageway through which the public enters in order to receive contract-supported services, a sign at least eleven inches (11") in height and seventeen inches (17") in width stating the following:

NOTICE: THIS AGENCY IS A RECIPIENT OF TAXPAYER FUNDING. IF YOU OBSERVE AN AGENCY DIRECTOR OR EMPLOYEE ENGAGING IN ANY ACTIVITY THAT YOU CONSIDER TO BE ILLEGAL, IMPROPER, OR WASTEFUL, PLEASE CALL THE STATE COMPTROLLER'S TOLL-FREE HOTLINE: 1-800-232-5454

The sign shall be of the form prescribed by the Comptroller of the Treasury. The contracting state agency shall request copies of the sign from the Comptroller of the Treasury and provide signs to contractors.

E.8. Lobbying. The Contractor certifies, to the best of its knowledge and belief, that:

- a. No federally appropriated funds have been paid or will be paid, by or on behalf of the Contractor, to any person for influencing or attempting to influence an officer or employee of an agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.
- b. If any funds other than federally appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with any contract, grant, loan, or cooperative agreement, the Contractor shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
- c. The Contractor shall require that the language of this certification be included in the award documents for all sub-awards at all tiers (including subcontracts, sub-grants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into and is a prerequisite for making or entering into this transaction imposed by 31 U.S.C. § 1352.

- E.9. Intellectual Property. The Contractor agrees to indemnify and hold harmless the State of Tennessee as well as its officers, agents, and employees from and against any and all claims or suits which may be brought against the State concerning or arising out of any claim of an alleged patent, copyright, trade secret or other Intellectual property infringement. In any such claim or action brought against the State, the Contractor shall satisfy and indemnify the State for the amount of any settlement or final judgment, and the Contractor shall be responsible for all legal or other fees or expenses incurred by the State arising from any such claim. The State shall give the Contractor notice of any such claim or suit and full right and opportunity to conduct the Contractor's own defense thereof, however, the failure of the State to give such notice shall only relieve Contractor of its obligations under this Section to the extent Contractor can demonstrate actual prejudice arising from the State's failure to give notice. This Section shall not grant the Contractor, through its attorneys, the right to represent the State of Tennessee in any legal matter, as provided in Tenn. Code Ann. § 8-6-106.
- E.10. Partial Takeover of Contract. The State may, at its convenience and without cause, exercise a partial takeover of any service that the Contractor is obligated to perform under this Contract, including any service which is the subject of a subcontract between Contractor and a third party (a "Partial Takeover"). A Partial Takeover of this Contract by the State shall not be deemed a breach of contract. The Contractor shall be given at least thirty (30) days prior written notice of a Partial Takeover. The notice shall specify the areas of service the State will assume and the date the State will be assuming. The State's exercise of a Partial Takeover shall not alter the Contractor's other duties and responsibilities under this Contract. The State reserves the right to withhold from the Contractor any amounts the Contractor would have been paid but for the State's exercise of a Partial Takeover. The amounts shall be withheld effective as of the date the State exercises its right to a Partial Takeover. The State's exercise of its right to a Partial Takeover of this Contract shall not entitle the Contractor to any actual, general, special, incidental, consequential, or any other damages irrespective of any description or amount.
- E.11. Personally Identifiable Information. While performing its obligations under this Contract, Contractor may have access to Personally Identifiable Information held by the State ("PII"). For the purposes of this Contract, "PII" includes "Nonpublic Personal Information" as that term is defined in Title V of the Gramm-Leach-Bliley Act of 1999 or any successor federal statute, and the rules and regulations thereunder, all as may be amended or supplemented from time to time ("GLBA") and personally identifiable information and other data protected under any other

applicable laws, rule or regulation of any jurisdiction relating to disclosure or use of personal information ("Privacy Laws"). Contractor agrees it shall not do or omit to do anything which would cause the State to be in breach of any Privacy Laws. Contractor shall, and shall cause its employees, agents and representatives to: (i) keep PII confidential and may use and disclose PII only as necessary to carry out those specific aspects of the purpose for which the PII was disclosed to Contractor and in accordance with this Contract, GLBA and Privacy Laws; and (ii) implement and maintain appropriate technical and organizational measures regarding information security to: (A) ensure the security and confidentiality of PII; (B) protect against any threats or hazards to the security or integrity of PII; and (C) prevent unauthorized access to or use of PII. Contractor shall immediately notify State: (1) of any disclosure or use of any PII by Contractor or any of its employees, agents and representatives in breach of this Contract; and (2) of any disclosure of any PII to Contractor or its employees, agents and representatives where the purpose of such disclosure is not known to Contractor or its employees, agents and representatives. The State reserves the right to review Contractor's policies and procedures used to maintain the security and confidentiality of PII and Contractor shall, and cause its employees, agents and representatives to, comply with all reasonable requests or directions from the State to enable the State to verify and/or procure that Contractor is in full compliance with its obligations under this Contract in relation to PII. Upon termination or expiration of the Contract or at the State's direction at any time in its sole discretion, whichever is earlier, Contractor shall immediately return to the State any and all PII which it has received under this Contract and shall destroy all records of such PII.

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

- E.12. Federal Funding Accountability and Transparency Act (FFATA). This Contract requires the Contractor to provide supplies or services that are funded in whole or in part by federal funds that are subject to FFATA. The Contractor is responsible for ensuring that all applicable requirements, including but not limited to those set forth herein, of FFATA are met and that the Contractor provides information to the State as required.

The Contractor shall comply with the following:

- a. Reporting of Total Compensation of the Contractor's Executives.
  - (1) The Contractor shall report the names and total compensation of each of its five most highly compensated executives for the Contractor's preceding completed fiscal year, if in the Contractor's preceding fiscal year it received:
    - i. 80 percent or more of the Contractor's annual gross revenues from federal procurement contracts and federal financial assistance subject to the Transparency Act, as defined at 2 CFR 170.320 (and subawards); and
    - ii. \$25,000,000 or more in annual gross revenues from federal procurement contracts (and subcontracts), and federal financial assistance subject to the Transparency Act (and subawards); and
    - iii. The public does not have access to information about the compensation of the executives through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(a), 78o(d)) or section 6104 of the Internal Revenue Code of 1986. (To determine if

the public has access to the compensation information, see the U.S. Security and Exchange Commission total compensation filings at <http://www.sec.gov/answers/execomp.htm>).

As defined in 2 C.F.R. § 170.315, "Executive" means officers, managing partners, or any other employees in management positions.

- (2) Total compensation means the cash and noncash dollar value earned by the executive during the Contractor's preceding fiscal year and includes the following (for more information see 17 C.F.R. § 229.402(c)(2)):
- i. Salary and bonus.
  - ii. Awards of stock, stock options, and stock appreciation rights. Use the dollar amount recognized for financial statement reporting purposes with respect to the fiscal year in accordance with the Statement of Financial Accounting Standards No. 123 (Revised 2004) (FAS 123R), Shared Based Payments.
  - iii. Earnings for services under non-equity incentive plans. This does not include group life, health, hospitalization or medical reimbursement plans that do not discriminate in favor of executives, and are available generally to all salaried employees.
  - iv. Change in pension value. This is the change in present value of defined benefit and actuarial pension plans.
  - v. Above-market earnings on deferred compensation which is not tax qualified.
  - vi. Other compensation, if the aggregate value of all such other compensation (e.g. severance, termination payments, value of life insurance paid on behalf of the employee, perquisites or property) for the executive exceeds \$10,000.
- b. The Contractor must report executive total compensation described above to the State by the end of the month during which this Contract is awarded.
- c. If this Contract is amended to extend the Term, the Contractor must submit an executive total compensation report to the State by the end of the month in which the term extension becomes effective.
- d. The Contractor will obtain a Data Universal Numbering System (DUNS) number and maintain its DUNS number for the term of this Contract. More information about obtaining a DUNS Number can be found at: <http://fedgov.dnb.com/webform/>

The Contractor's failure to comply with the above requirements is a material breach of this Contract for which the State may terminate this Contract for cause. The State will not be obligated to pay any outstanding invoice received from the Contractor unless and until the Contractor is in full compliance with the above requirements.

- E.13. FERPA Compliance. The State and Contractor shall comply with the Family Education Rights and Privacy Act of 1974 (20 U.S.C. § 1232g) (FERPA) and its accompanying regulations (34 C.F.R. 99). Contractor warrants that it is familiar with requirements of FERPA and its accompanying regulations and that it will comply with all applicable FERPA requirements in the performance of its duties in this contract. Contractor agrees to cooperate with the State as required by FERPA and its regulations in the performance of its duties in this contract. Contractor agrees to maintain the confidentiality of all education records and student information and use such records and information for the exclusive purpose of performing its duties in this contract. The Contractor shall reaffirm this attestation, in writing, by submitting to the State a completed and signed copy of the Authorization and Acknowledgement of Compliance document at Attachment B.
- E.14. Tennessee Data Accessibility, Transparency and Accountability Act (the "Act"). The State and Contractor shall comply with 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.15. Any instances of unauthorized disclosure of data containing personally identifiable information in violation of the laws cited above in sections E.13 and E.14 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.13 or E.14

IN WITNESS WHEREOF,

COLYAR CONSULTING GROUP, INC.:

*Jeffrey A. Colyar* *5-26-2015*  
 \_\_\_\_\_  
 CONTRACTOR SIGNATURE DATE

*Jeffrey A. COLYAR, President*  
 \_\_\_\_\_  
 PRINTED NAME AND TITLE OF CONTRACTOR SIGNATORY (above)

TENNESSEE DEPARTMENT OF EDUCATION:

*Condice McQueen* <sup>*OB*</sup> *6/1/15*  
 \_\_\_\_\_  
 NAME, COMMISSIONER DATE

## ATTACHMENT A

## ATTESTATION RE PERSONNEL USED IN CONTRACT PERFORMANCE

<b>SUBJECT CONTRACT NUMBER:</b>	44748
<b>CONTRACTOR LEGAL ENTITY NAME:</b>	Colyar Consulting Group, Inc.
<b>FEDERAL EMPLOYER IDENTIFICATION NUMBER:</b> (or Social Security Number or Edison Vendor ID)	127514

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.

*Jeffrey A. Colyar*

CONTRACTOR SIGNATURE

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

*Jeffrey A. COLYAR, President*

PRINTED NAME AND TITLE OF SIGNATORY

*5-26-2015*

DATE OF ATTESTATION

**ATTACHMENT B**  
**AUTHORIZATION AND ACKNOWLEDGEMENT OF FERPA COMPLIANCE**

**Whereas**, State has contracted with **Colyar Consulting Group, Inc.** on **July 1, 2015** through **June 30, 2020 (Agency Tracking #)**, for enhancements, maintenance and support the Tennessee Meals, Accounting, & Claiming System, and

**Whereas**, The above referenced contract may require the disclosure by the State to **Colyar Consulting Group, Inc.** 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 **Colyar Consulting Group, Inc.** hereby agree as follows:

1. **Colyar Consulting Group, Inc.** 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: name, social security number, birth date, address, case number, and parent/guardian.
2. **Colyar Consulting Group, Inc.** 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. **Colyar Consulting Group, Inc.** agrees to destroy all confidential student information when it is no longer needed for purposes of fulfilling its obligations under the above referenced contract.

*Jeffrey A. Coyle*  
 \_\_\_\_\_  
 COLYAR CONSULTING GROUP, INC.

*5-26-2015*  
 \_\_\_\_\_  
 DATE

*Candice McQueen CB*  
 \_\_\_\_\_  
 TENNESSEE DEPARTMENT OF EDUCATION

*6/1/15*  
 \_\_\_\_\_  
 DATE



**GENERAL ASSEMBLY OF THE STATE OF TENNESSEE  
FISCAL REVIEW COMMITTEE**

320 Sixth Avenue, North - 8<sup>th</sup> Floor  
NASHVILLE, TENNESSEE 37243-0057  
615-741-2564

**Rep. Mark White, Chairman  
Representatives**

Brenda Gilmore            Johnny Shaw  
Susan Lynn                David Shepard  
Pat Marsh                 Ron Travis  
Bill Sanderson            Tim Wirgau  
Charles Sargent, *ex officio*  
Speaker Beth Harwell, *ex officio*

**Sen. Bill Ketron, Vice-Chairman  
Senators**

Sara Kyle                    Reginald Tate  
Doug Overbey              Ken Yager  
Steve Southerland  
Randy McNally, *ex officio*  
Lt. Governor Ron Ramsey, *ex officio*

**M E M O R A N D U M**

**TO:** Mike Perry, Chief Procurement Officer  
Department of General Services

**FROM:** Representative Mark White, Chairman  
Senator Bill Ketron, Vice-Chairman

**DATE:** May 13, 2015

**SUBJECT:** Contract Comments  
(Fiscal Review Committee Meeting 5/12/2015)

MW  
BK

**RFS# 331.35-00215 (Edison # 44748)**

**Department: Education**

**Division: School Nutrition**

**Vendor: Colyar Consulting Group, Inc.**

**Summary: The proposed contract is for the provision of enhancements, maintenance, and support of the Tennessee Meals, Accounting, and Claiming (TMAC) System. The proposed contact has a term beginning July 1, 2015, and ending June 30, 2020.**

**Proposed maximum liability: \$600,000**

After review, the Fiscal Review Committee vote to recommend approval of the contract.

cc: The Honorable Candice McQueen, Commissioner



STATE OF TENNESSEE  
DEPARTMENT OF GENERAL SERVICES

BILL HASLAM  
GOVERNOR

ROBERT E. OGLESBY, AIA  
COMMISSIONER

**MEMORANDUM**

**TO:** Commissioners, Procurement and Fiscal Officers of all State Departments, Institutions, and Agencies

**FROM:** Michael F. Perry, Chief Procurement Officer *MPB*

**DATE:** February 4, 2015

**SUBJECT:** Cut-Off Dates for Fiscal Year (FY) 2015

The purpose of this memorandum is to provide agencies with year-end deadlines for reviews required by the Central Procurement Office. These deadlines allow for specification development, solicitation posting, receipt of responses, evaluation and award of the solicitation, as well as any required approval processes. Requisitions received after the dates indicated in the below guidelines **may not be complete prior to July 1, 2015. Please plan ahead.**

- Any RFP that results in a contract that must be established by July 1, 2015, must be received by the Central Procurement Office by **Monday, March 2, 2015**. Please continue to use the following email address when submitting documents: [agsprs.agsprs@tn.gov](mailto:agsprs.agsprs@tn.gov).
- Any contract that needs to be fully executed by July 1, 2015, must be received by the Central Procurement Office by **Monday, June 1, 2015**.
- Any Delegated Grant Authority or Delegated Authority that needs to be in place by July 1, 2015, must be received by the Central Procurement Office by **Wednesday, April 1, 2015**. Please continue to use the following email address when submitting documents: [agsprs.agsprs@tn.gov](mailto:agsprs.agsprs@tn.gov).
- The Central Procurement Office will attempt to award all FY15 requisitions prior to June 26, 2015. Any FY16 requisitions will be awarded on July 1, 2015, or later.

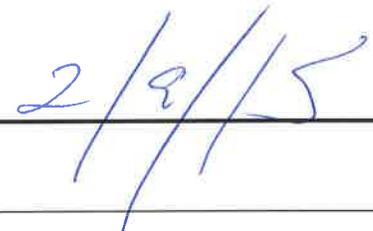
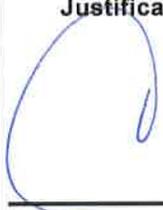
If you have any questions or concerns regarding these guidelines, please contact the Central Procurement Office at 615-741-1035.

CENTRAL PROCUREMENT OFFICE

312 ROSA L. PARKS AVENUE, 3RD FLOOR • NASHVILLE, TENNESSEE 37243  
(615) 741-1035 • FAX: (615) 741-0684 • [WWW.TN.GOV/GENERALSERV/](http://WWW.TN.GOV/GENERALSERV/)

# Contract Approval – Agency Legal Certification

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

1. Edison Contract ID #	44748 / 33135-00215
2. Contracting Agency Name	Department of Education
3. Contractor Name	Colyar Consulting Group, Inc.
4. Service Caption	Enhancements, maintenance and support the Tennessee Meals, Accounting, & Claiming System
5. Agency Contact (name, phone, e-mail)	Sarah White, 532-4714, <a href="mailto:Sarah.C.White@tn.gov">Sarah.C.White@tn.gov</a>
<b>6. Legal Certification</b> <p>By signing below, the department's legal staff certifies that:</p> <ol style="list-style-type: none"> <li>1) the contract as submitted includes only CPO template language (unless the agency has obtained an approved rule exception request);</li> <li>2) the contract is legally sufficient both in form and substance to protect the best interests of the State; and</li> <li>3) the contract does not contravene applicable law.</li> </ol> <p> </p> <hr/> <p>Agency Attorney Signature &amp; Date</p>	
<b>7. (Optional) Alternative to Legal Certification Request</b> <p><b>Note:</b> If there are extenuating circumstances and a department's legal staff is unable to certify to a contract in the above manner, you must provide a written explanation with Agency Head signature, in the space provided below. Once the explanation is received by the CPO, instructions will be provided to the department as to what will be needed in order to gain approval of the contract, e.g., providing a Microsoft Word version of the contract, etc. <u>Please keep in mind that this alternative will slow down the approval process and should be the exception, not the rule.</u></p> <p>Justification</p> <p></p> <hr/> <p>Agency Head Signature &amp; Date – contracting agency head or authorized signatory</p>	

# Special Contract Request

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

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

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

<p><b>APPROVED</b></p> <p style="font-size: 1.2em; margin-top: 20px;"><b>Michael F. Perry -AK</b></p> <p style="font-size: 0.8em; margin-top: 5px;">Digitally signed by Michael F. Perry -AK DN: cn=Michael F. Perry -AK, o=CPO, ou=CPO, email=andy.kidd@tn.gov, c=US Date: 2015.04.21 14:49:28 -05'00'</p>	<p><b>APPROVED</b></p> <div style="text-align: right; margin-top: 20px;"> <p style="margin: 0;">4/23/15</p> </div>
<p><b>CHIEF PROCUREMENT OFFICER</b> <span style="float: right;"><b>DATE</b></span></p>	<p><b>COMPTROLLER OF THE TREASURY</b> <span style="float: right;"><b>DATE</b></span></p>

<b>Request Tracking #</b>	<b>33135-00215</b>
<b>1. Contracting Agency</b>	<b>Education (TDOE)</b>
<b>2. Type of Contract or Procurement Method</b>	<input type="checkbox"/> No Cost <input type="checkbox"/> Revenue <input checked="" type="checkbox"/> Sole Source <input type="checkbox"/> Proprietary <input type="checkbox"/> Competitive Negotiation <input type="checkbox"/> Other _____
<b>3. Requestor Contact Information</b>	<b>Sarah White, School Nutrition, Tennessee Department of Education</b>
<b>4. Brief Goods or Services Caption</b>	<b>Tennessee Meals, Accounting, and Claiming (TMAC) enhancements, maintenance, and support.</b>

Request Tracking #	33135-00215
<p>5. Description of the Goods or Services to be Acquired</p>	<p>The contractor will provide maintenance and support to the TMAC System as well as the following enhancements that will allow school food authorities(SFAs), the State, and local education agencies (LEAs) to improve menu compliance with the United States Department of Agriculture's (USDA) new School Nutrition Program meal standards:</p> <ul style="list-style-type: none"> <li>• Provide promotional resources for schools to promote school nutrition meal options to students, teachers and administrators.</li> <li>• The ability to analyze meal nutrients and components.</li> <li>• Provide online food service production records for centralized accessibility.</li> <li>• Assist in menu planning in order for LEAs to be in compliance with federal regulations.</li> <li>• Maintain accuracy and timeliness of submitting production records for review. This ensures reporting is efficient and accurate which is critical for the State to assist SFAs and LEAs with mandated federal Administrative Reviews and all aspects of the federally funded USDA requirements for the National School Lunch Program (NSLP), School Breakfast Program (SBP), the Community Eligibility Provision (CEP), Afterschool Snack Program (ASP), Seamless Summer Option (SSO), Fresh Fruit and Vegetable Program (FFVP), and Special Milk Program (SMP).</li> </ul>
6. Proposed Contractor	Colyar Consulting Group, Inc.
7. Name & Address of the Contractor's principal owner(s) – NOT required for a TN state education institution	Jeff Colyar 22420 N. 18 <sup>th</sup> Drive Phoenix, AZ 85027
8. Proposed Contract Period – with ALL options to extend exercised The proposed contract start date shall follow the approval date of this request.	60 months
9. Office for Information Resources Pre-Approval Endorsement Request – information technology (N/A to THDA)	<input type="checkbox"/> Not Applicable <input checked="" type="checkbox"/> Attached
10. eHealth Pre-Approval Endorsement Request – health-related professional, pharmaceutical, laboratory, or imaging	<input checked="" type="checkbox"/> Not Applicable <input type="checkbox"/> Attached
11. Human Resources Pre-Approval Endorsement Request – state employee training	<input checked="" type="checkbox"/> Not Applicable <input type="checkbox"/> Attached

Request Tracking #	33135-00215
12. Are these goods or services currently available on a statewide contract? If YES, please explain why the current statewide contract is not being used for this procurement.	<input checked="" type="checkbox"/> NO <input type="checkbox"/> YES,
13. Maximum Contract Cost – with ALL options to extend exercised	\$4,674,408.00
14. Was there an initial government estimate? If so, what amount?	<input checked="" type="checkbox"/> NO <input type="checkbox"/> YES, \$
15. Cost Determination Used- How did agency arrive at the estimate of expected costs?	Projected costs per year based on Implementation of similar systems utilized by other states working with Colyar Consulting Group, Inc., added requested staff enhancements, Included \$1,000,000.00 in additional USDA Section 201 Funds for the first two years of Implementation.
16. Explanation of Fair and Reasonable Price- Explain how agency determined that price is fair and reasonable	Requested information from other states that are currently contracting with Colyar Consulting Group, no other product available like this one from any other vendor, costs are comparable to what other states are paying for additional enhancements. Note that majority of USDA 201 Funds will be utilized to grant school systems the ability to obtain the software
17. Documentation of Discussions with Contractor- How did agency document discussions with Contractor? Attach documentation to this request as applicable.	See attached maintenance proposal.
18. Explanation of Need for or requirement placed on the State to acquire the goods or services	The TDOE is required by Part 7 CFR 210.1 to uphold Section 2 of the National School Lunch Act (42 U.S.C. 1751) which mandates, "It is declared to be the policy of Congress, as a measure of national security, to safeguard the health and well-being of the Nation's children and to encourage the domestic consumption of nutritious agricultural commodities and other food, by assisting the States, through grants-in-aid and other means, in providing an adequate supply of food and other facilities for the establishment, maintenance, operation, and expansion of nonprofit school lunch programs."

Request Tracking #	33135-00215
19. Proposed contract impact on current State operations	Possible negative impacts: Project not completed on time, cost and time of securing another system in the event that it is not compatible with the software in place. Starting from scratch with a new contractor would not only be a huge and expensive learning curve for a new contractor, we would spend too many hours on training and implementation of a new system for State Agency staff, supervisors and other School Nutrition staff across the State of Tennessee who could be utilizing the time and resources to continue to serve healthy and nutrition meals to students.
20. Justification – Specifically explain why the goods or services should be acquired through the procurement method or contract type selected.	The TDOE procured the TMAC System through the RFP process in 2010. Colyar Consulting Group, Inc. is the creator and manufacturer of the TMAC system and possesses the exclusive rights to furnish the comprehensive Internet-based system for complete counting, claiming, reporting, and other review efforts as mandated by federal laws. (see attached sole source letter).
For No Cost and Revenue Contracts Only	
21. What costs will the State incur as a result of this contract? If any, please explain.	
22. What is the total estimated revenue that the State would receive as a result of this contract?	
23. Could the State also contract with other parties interested in entering substantially the same agreement? Please explain.	<input type="checkbox"/> NO <input type="checkbox"/> YES
24. Summary of State responsibilities under proposed contract	
For Sole Source and Proprietary Procurements Only	
25. Explanation of Need for or requirement placed on the State to acquire the goods or services	The TDOE is required by Part 7 CFR 210.1 to uphold Section 2 of the National School Lunch Act (42 U.S.C. 1751) which mandates, "It is declared to be the policy of Congress, as a measure of national security, to safeguard the health and well-being of the Nation's children and to encourage the domestic consumption of nutritious agricultural commodities and other food, by assisting the States, through grants-in-aid and other means, in providing an adequate supply of food and other facilities for the establishment, maintenance, operation, and expansion of nonprofit school lunch programs."

Request Tracking #	33135-00215
26. Evidence of Contractor's experience & length of experience providing the goods or services to be procured.	Colyar Consulting Group, Inc. has been developing child nutrition and food distribution programs for over eighteen years and has the qualified experience in the development of child nutrition management systems. Colyar Consulting Group, Inc. integrates emerging computer technologies with custom applications and system software to provide reliable, cost-effective, innovative and turn-key solutions. Colyar Consulting Group, Inc. has over 250 years of staff experience working with child nutrition programs and has implemented solutions in several school systems in the nation. Similar programs are currently operating in 24 states, including: California, Colorado, Connecticut, Delaware, Florida, Georgia, Idaho, Iowa, Kentucky, Missouri, Nebraska, Nevada, New York, North Carolina, Ohio, Pennsylvania, South Carolina, South Dakota, Tennessee, Texas, Vermont, Washington, West Virginia, and Wyoming.
27. Has the contracting agency procured the subject goods or services before? If yes, provide the method used to purchase the goods or services and the name and address of the contractor.	<input type="checkbox"/> NO <input checked="" type="checkbox"/> YES, Method: RFP Name/Address: Colyar Consulting Group, Inc. Jeff Colyar 22420 N. 18th Drive Phoenix, AZ 85027
28. Contractor selection process and efforts to identify reasonable, competitive, procurement alternatives	Colyar Consulting Group, Inc. was originally identified through the RFP process. No other efforts were made to identify a vendor to provide the enhancements, maintenance, and support.
Signature Required for all Special Contract Requests	

**Request Tracking #**

**33135-00215**

**Agency Head Signature and Date** - *MUST be signed by the ACTUAL agency head as detailed on the current Signature Certification. Signature by an authorized signatory is acceptable only in documented circumstances*

Signature: *Candice McInnis*

Date: *3/17/15*

## MAINTENANCE PROPOSAL

**Contacts at the State Agency and representatives from Colyar Consulting Group have been in constant contact via email, group calls and one on one phone calls. The dates of discussion for this contractor range from April 2014 to present. A summary of the topics of conversation pertaining to the nature of this request include:**

### ***Application Enhancements***

Over the next five years, there will be enhancements required for the State of Tennessee to meet specific requirements that are needed each year. An example is a known need to capture additional information on the applications regarding which nutrient analysis product is used. Another known required enhancement is the ability to capture additional data for users that are applying for Healthier U.S. Schools.

### ***Data Analytics***

The data analytics software will allow the State to examine the data collected within the Child Nutrition Program system and apply meaningful business intelligence to that data to produce important data outputs and conclusions. Sophisticated business intelligence allows for data mining and exploration of fundamental CNP data. The outputs that are possible will provide meaningful views of information that are quick, immediate, and important. Data Analytics will also include 10 additional queries to assist the agency with State-specific or unanticipated data requests.

Information is provided via graphical charts as well as available for exporting to Microsoft Excel for further data manipulation or distribution. Examples of data that could be analyzed by the system and made available to the State includes:

- Top 10% of the Sponsors with largest increase from prior year claims to current year claim reimbursement amounts.
- Number of Sponsors that are required to perform an Independent Review and submit a completed FNS-742A.
- Number of Sites participating in CEP for a specific year and compared to prior year.
- Number of Sponsors that utilized the incorrect Verification Method.
- Number of Sponsors that did not select the correct number of applications for Verification.
- Number of Sites participating in each of the SNP sub-programs (e.g., SBP, SMP, ASCP, FFVP) compared to prior year.

### ***Menu Planning and Production Management Integration***

The Menu Planning and Production Management feature provides the Tennessee Department of Education integration capabilities to USDA-certified Menu Planning data by providing a mechanism for SFAs to upload electronic, pre-defined menu-related information data into the TMAC Administrative Review module. The proposed Menu Planning and Production Integration tool could be used by any SFA in the State of Tennessee who has menu planning and nutrient analysis software from a USDA-certified Menu Planning vendor.

CCG realizes that an undue burden may arise on both the Department of Education and SFAs when SFAs use menu planning tools without the ability to easily share their data with the State. CCG's goal,

therefore, is to reduce any unnecessary burden by providing SFAs with a platform that would allow the SFA to upload menu information into the Administrative Review software, providing the Tennessee Department of Education direct online access to the information for the review process from within TMAC. This will eliminate the submission of paper menus, production records, and nutrient analysis.

### **Integration Process**

The Menu Planning and Production Management Integration enhancement works by using an upload feature which would allow districts to upload their menu and nutrition data to the State. This includes the "Week of Review" menu information which would be used with CCG's existing Administrative Review software. This includes the ability to upload:

- Menus by Site
- Menus by Meal Type
- Menus by Age Group
- Menus by Service Line

### **Menu and Related Nutrient Analysis Upload**

The proposed enhancement would allow districts to upload their menus and nutrient analysis results generated by USDA-approved software into the TMAC software. Currently, SFAs may use various vendors, with various outputs, to create and track menus and their respective production records and nutrient analysis results. The upload enhancement, would eliminate the extra steps and variances that exist across different schools when it comes time to share their menu and nutrient analysis results with the State.

The menu and nutrient analysis upload feature would also save State staff time during Administrative Reviews because the menu and nutrient analysis data they need from schools will be available within a single place in the CCG Administrative Review software. Additionally, once a school uploads their menu plan into the TMAC software, the State would be able to provide feedback to the school without affecting the original menu plan.

The goal is to reduce the time spent by SFAs transferring this type of data to the State, resulting in an overall quicker and more efficient process for sharing information.

Key benefits of the Menu and Related Nutrient Analysis Upload:

- State validation for compliance with the Healthy Hunger-Free Kids Act of 2010 (HHFKA).
- State can create a repository of uploaded menus which they can share with SFA's (i.e.; an exemplary "Farm to School" menu).
- State can access individual districts menu plans, nutrient analysis and production records.
- State can efficiently provide quality feedback and menu recommendations to districts without changing their original menu plan.
- Validation of certification data for additional reimbursement (Performance-Based Certification).
- Reporting capabilities.

CCG will be a resource for schools requiring nutrition-planning software and provide a solution. Schools can acquire a solution for Menu Planning, Nutritional Analysis and Production Records via CCG with funds provided from the State via 201.

### **Production Planning Records Upload**

The Production Planning Records upload works similarly to the Menu Planning upload Integration process. The School Food Authority would be provided with a mechanism to upload electronic, pre-defined production records into the TMAC Administrative Review module.

**Key benefits of the Production Planning Records Upload:**

- SFAs can upload production records to help meet Federal and State reporting requirements.
- SFAs can upload production records for a specified time (i.e.; one day of production records, a week, or a month).
- SFAs can easily share Production Planning Records with the State in a single location within TMAC.
- Reporting capabilities for the State.



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

**BILL HASLAM**  
GOVERNOR

**CANDICE MCQUEEN**  
COMMISSIONER

Memorandum

TO: Mr. Jeff Spalding, Director, Fiscal Review Committee

FROM: Dr. Candice McQueen, Commissioner *CM*

DATE: April 15, 2015

RE: Request to appear before fiscal review committee regarding non-competitive contract request RFS # 33135-00215

Please consider the enclosed request to enter into a new contract with Colyar Consulting Group, Inc. The current contract with Colyar Consulting Group, Inc. ends June 30, 2015. The services procured through this contract would provide additional software that will allow School Food Authorities (SFAs) and Local Education Agencies (LEAs) to improve menu compliance with the United States Department of Agriculture's (USDA) new School Nutrition Program Meal Standards, allow the ability to analyze meal nutrients and components, provide all entities complete online food service production records for centralized accessibility, assist in production records being in compliance with federal regulations, and to maintain accuracy and timeliness of submitting production records for review. This service will allow reporting to be more efficient and accurate for state agency representatives to assist SFA's and LEA's with mandated federal administrative reviews in order to improve school nutrition program integrity for LEAs.

Internally, we do not have the capacity to handle the constant updates and maintenance needs for this system as additional policy reforms mandated by the USDA occur on a regular basis. With previous experience and knowledge of the Healthy Hunger-Free Kids Acts of 2010 systemic requirements, it is in the best interest of the State to continue to allow Colyar Consulting Group, Inc. to provide this service and make the necessary modifications and updates to their system.

I respectfully request that the fiscal review committee approve the Tennessee Department of Education's request to enter into a new contract with Colyar Consulting Group, Inc.



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

**TO :** Mark Rampey, OIR Contracts  
Department of Finance & Administration  
E-mail : [Mark.Rampey@tn.gov](mailto:Mark.Rampey@tn.gov)

**FROM :** Jasmine Taylor  
E-mail : [Jasmine.Taylor@tn.gov](mailto:Jasmine.Taylor@tn.gov)

**DATE :** March 9, 2015

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

**Applicable RFS # 33135-00215**

**OIR Endorsement Signature & Date:**

*Mark Bengel (MIR)*  
\_\_\_\_\_  
**Chief Information Officer**

*3/30/15*

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

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

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

Contracting Agency	Education
Agency Contact (name, phone, e-mail)	Jasmine Taylor, 532-4747, <a href="mailto:Jasmine.Taylor@tn.gov">Jasmine.Taylor@tn.gov</a>
<b>Attachments Supporting Request</b> (mark all applicable) Note: The complete draft procurement document and the applicable documents listed below must accompany this request when submitted to OIR. Special Contract Requests and Amendment Requests without Agency Head signature are acceptable. OIR is aware that these documents will not have CPO signature when submitted with this request.	
<input type="checkbox"/> Solicitation Document <input type="checkbox"/> Special Contract Request <input type="checkbox"/> Amendment Request <input checked="" type="checkbox"/> Proposed Contract/Grant or Amendment <input type="checkbox"/> Original Contract/Grant and Previous Amendments (if any)	

**Applicable RFS # 33135-00215**

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

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

IT Director/Staff Name Confirming (required): Renee Koch

Applicable – Approved ISP Project# This contract has a project plan or CBA that will be in front of the IT-ABC on March 18<sup>th</sup>. It has not been entered into Planview.

Not Applicable

**Subject Information Technology Service Description**

Provide a brief summary of the information technology services involved. Clearly identify included technologies such as system development/maintenance, security, networking, etc. As applicable, identify the contract or solicitation sections related to the IT services.

Enhancements, maintenance and support the Tennessee Meals, Accounting, & Claiming System



## CONTRACT AMENDMENT COVER SHEET

<b>Agency Tracking #</b> 33135-00215	<b>Edison ID</b> 44748	<b>Contract #</b> 44748	<b>Amendment #</b> 01		
<b>Contractor Legal Entity Name</b> Colyar Consulting Group, Inc.			<b>Edison Vendor ID</b> 0000127514		
<b>Amendment Purpose &amp; Effect(s)</b> Renew Contract Term for one year, increase the contract maximum liability, add transition assistance provision, and update terms and conditions					
<b>Amendment Changes Contract End Date:</b> <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO		<b>End Date:</b> June 30, 2021			
<b>TOTAL Contract Amount INCREASE or DECREASE per this Amendment</b> (zero if N/A):			<b>+ \$ 417,960.00</b>		
<b>Funding —</b>					
<b>FY</b>	<b>State</b>	<b>Federal</b>	<b>Interdepartmental</b>	<b>Other</b>	<b>TOTAL Contract Amount</b>
2016		\$1,912,568.00			\$1,912,568.00
2017		\$1,507,960.00			\$1,507,960.00
2018		\$417,960.00			\$417,960.00
2019		\$417,960.00			\$417,960.00
2020		\$417,960.00			\$417,960.00
2021		\$417,960.00			\$417,960.00
<b>TOTAL:</b>		<b>\$5,092,368.00</b>			<b>\$5,092,368.00</b>
<b>Budget Officer Confirmation:</b> There is a balance in the appropriation from which obligations hereunder are required to be paid that is not already encumbered to pay other obligations.				<i>CPO USE</i>	
<b>Speed Chart</b> (optional) ED00000038		<b>Account Code</b> (optional) 70803000			

SUPPLEMENTAL SUMMARY SHEET								
RFS Number		33135-00215-1						
Edison ID		44748						
Fiscal Year	Department ID	Speedchart Number	Program Code	Account Code	Fund	Project/Grant Code	CFDA #	Amount
2016	331350000	ED00000970	577000	70803000	25000	ED0000HM12AAX12	10.560	13,071.50
2016	331350000	ED00000970	577000	70899000	25000	ED0000HM12AAX12	10.560	986,928.50
2016	331350000	ED00000038	577000	70803000	25000	ED0000HB15AAX15	10.560	11,928.50
2016	331350000	ED00000038	577000	70899000	25000	ED0000HB15AAX15	10.560	900,639.50
2017	331350000	ED00000971	577000	70803000	25000	ED0000HM13AAX13	10.560	16,578.75
2017	331350000	ED00000971	577000	70899000	25000	ED0000HM13AAX13	10.560	983,421.25
2017	331350000	ED00000038	577000	70803000	25000	ED0000HB16AAX16	10.560	8,421.25
2017	331350000	ED00000038	577000	70899000	25000	ED0000HB16AAX16	10.560	499,538.75
2018	331350000	ED00000038	577000	70803000	25000	ED0000HB17AAX17	10.560	25,000.00
2018	331350000	ED00000038	577000	70809000	25000	ED0000HB17AAX17	10.560	392,960.00
2019	331350000	ED00000038	577000	70803000	25000	ED0000HB18AAX18	10.560	25,000.00
2019	331350000	ED00000038	577000	70809000	25000	ED0000HB18AAX18	10.560	392,960.00
2020	331350000	ED00000038	577000	70803000	25000	ED0000HB19AAX19	10.560	25,000.00
2020	331350000	ED00000038	577000	70809000	25000	ED0000HB19AAX19	10.560	392,960.00
2021	331350000	ED00000038	577000	70803000	25000	ED0000HB20AAX20	10.560	25,000.00
2021	331350000	ED00000038	577000	70809000	25000	ED0000HB20AAX20	10.560	392,960.00
Total -								5,092,368.00

**AMENDMENT 1  
OF CONTRACT 44748**

This Amendment is made and entered by and between the State of Tennessee, Department of Education, hereinafter referred to as the "State" and Colyar Consulting Group, Inc., hereinafter referred to as the "Contractor." For good and valuable consideration, the sufficiency of which is hereby acknowledged, it is mutually understood and agreed by and between said, undersigned contracting parties that the subject contract is hereby amended as follows:

1. The following is added as Contract Section A.10. and all subsequent sections are renumbered accordingly:
  - A.10. Transition Assistance – If this contract is not renewed at the end of this term, if the contract is otherwise terminated before project completion, or if particular work on a project is terminated for any reason, Contractor shall provide transition assistance to facilitate the orderly transfer of such services to the State or its designees (i.e. a different vendor). The transition period shall begin upon notification by the State to the Contractor of either of the following, whichever may occur first: (1) the State's decision to terminate the Contract; (2) the State's decision to transition services, in whole or in part, to the State or its designees. The purpose of this assistance is to allow for the expired or terminated portion of the services to continue without interruption or adverse effect. The Contractor shall provide a transition plan, including essential data, materials, or other documentation a future contractor would need to implement similar responsibilities to those required of the Contractor under this Contract.
  
2. Contract section B. Term of Contract is deleted in its entirety and replaced with the following:
  - B.1. This Contract shall be effective for the period beginning on July 1, 2015 ("Effective Date") and ending on June 30, 2021 ("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 one (1) renewal options under the same terms and conditions for a period not to exceed twelve (12) months each by the State, at the State's sole option. In no event, however, shall the maximum Term, including all renewals or extensions, exceed a total of seventy-two (72) months.
  
3. Contract Section C.1. Maximum Liability 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 ninety two thousand three hundred sixty eight dollars and no cents (\$5,092,368.00) (Maximum Liability"). This Contract does not grant the Contractor any exclusive rights. The State does not guarantee that it will buy any minimum quantity of goods or services under this Contract. Subject to the terms and conditions of this Contract, the Contractor will only be paid for goods or services provided under this Contract after a purchase order is issued to Contractor by the State or as otherwise specified by the Contract.
  
4. The following is added as Contract Section D.31.
  - D.31. Iran Divestment Act. The requirements of Tenn. Code Ann. § 12-12-101, *et seq.*, addressing contracting with persons as defined at Tenn. Code Ann. §12-12-103(5) that engage in investment activities in Iran, shall be a material provision of this Contract. The Contractor certifies, under penalty of perjury, that to the best of its knowledge and belief that it is not on the list created pursuant to Tenn. Code Ann. § 12-12-106.

5. The following is added as Contract Section D.32.

D.32. Equal Opportunity. The Contractor agrees as follows:

- a. The Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. The Contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to the following:
- (1) Employment, upgrading, demotion, or transfer, recruitment or recruitment advertising;
  - (2) Layoff or termination;
  - (3) Rates of pay or other forms of compensation; and
  - (4) Selection for training, including apprenticeship.

The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting officer setting forth the provisions of this nondiscrimination clause.

- b. The Contractor will, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive considerations for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.
- c. If the State approves any subcontract, the subcontract shall include paragraphs (a) and (b) above.

In addition, to the extent applicable the Contractor agrees to comply with 41 C.F. R. § 60-1.4, as that section is amended from time to time during the term.

6. Contract Section E.13. is deleted in its entirety and replaced with the following:

E.13. Family Educational Rights and Privacy Act & Tennessee Data Accessibility, Transparency and Accountability Act. The Contractor shall comply with the Family Educational Rights and Privacy Act of 1974 (20 U.S.C. 1232(g)) and its accompanying regulations (34 C.F.R. § 99) ("FERPA"). The Contractor warrants that the Contractor is familiar with FERPA requirements and that it will comply with these requirements in the performance of its duties under this Contract. The Contractor agrees to cooperate with the State, as required by FERPA, in the performance of its duties under this Contract. The Contractor agrees to maintain the confidentiality of all education records and student information. The Contractor shall only use such records and information for the exclusive purpose of performing its duties under this Contract. The obligations set forth in this Section shall survive the termination of this Contract.

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

Any instances of unauthorized disclosure of data containing personally identifiable information in violation of FERPA or DATAA that come to the attention of the Contractor shall be reported to the State within twenty-four (24) hours. Contractor shall indemnify and hold harmless State, its employees, agents and representatives, from and against any and all claims, liabilities, losses, or

causes of action that may arise, accrue, or result to any person or entity that is injured or damaged as a result of Contractor's failure to comply with this section.

7. Contract Sections E.14. and E.15. are deleted in their entirety, and all subsequent sections are renumbered accordingly.
8. Attachment B is deleted in its entirety.
9. The following is added as Contract Section E.16.

E.16. Contractor Hosted Services Confidential Data, Audit, and Other Requirements

a. "Confidential State Data" is defined as data deemed confidential by State or Federal statute or regulation. The Contractor shall protect Confidential State Data as follows:

- (1) The Contractor shall ensure that all Confidential State Data is housed in the continental United States, inclusive of backup data.
- (2) The Contractor shall encrypt Confidential State Data at rest and in transit using the current version of Federal Information Processing Standard ("FIPS") 140-2 validated encryption technologies.
- (3) The Contractor and the Contractor's processing environment containing Confidential State Data shall either (1) be in accordance with at least one of the following security standards: (i) International Standards Organization ("ISO") 27001; (ii) Federal Risk and Authorization Management Program ("FedRAMP"); or (2) be subject to an annual engagement by a CPA firm in accordance with the standards of the American Institute of Certified Public Accountants ("AICPA") for a System and Organization Controls for service organizations ("SOC") Type II audit. The State shall approve the SOC audit control objectives. The Contractor shall provide proof of current ISO certification or FedRAMP authorization for the Contractor and Subcontractor(s), or provide the State with the Contractor's and Subcontractor's annual SOC Type II audit report within 30 days from when the CPA firm provides the audit report to the Contractor or Subcontractor. The Contractor shall submit corrective action plans to the State for any issues included in the audit report within 30 days after the CPA firm provides the audit report to the Contractor or Subcontractor.

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

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

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

“Vulnerability Assessment” shall be designed and executed to define, identify, and classify the security holes (vulnerabilities) in the Processing Environment. The Contractor shall allow the State, at its option, to perform Penetration Tests and Vulnerability Assessments on the Processing Environment.

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

b. Minimum Requirements

- (1) The Contractor and all data centers used by the Contractor to host State data, including those of all Subcontractors, must comply with the State’s Enterprise Information Security Policies as amended periodically. The State’s Enterprise Information Security Policies document is found at the following URL: <https://www.tn.gov/finance/strategic-technology-solutions/strategic-technology-solutions/sts-security-policies.html>.
- (2) The Contractor agrees to maintain the Application so that it will run on a current, manufacturer-supported Operating System. “Operating System” shall mean the software that supports a computer’s basic functions, such as scheduling tasks, executing applications, and controlling peripherals.
- (3) If the Application requires middleware or database software, Contractor shall maintain middleware and database software versions that are at all times fully compatible with current versions of the Operating System and Application to ensure that security vulnerabilities are not introduced.

c. Comptroller Audit Requirements

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

The information technology control audit may include a review of general controls and application controls. General controls are the policies and procedures that apply to all or a large segment of the Contractor’s or Subcontractor’s information systems and applications and include controls over security management, access controls, configuration management, segregation of duties, and contingency planning. Application controls are directly related to the application and help ensure that transactions are complete, accurate, valid, confidential, and available. The audit shall include the Contractor’s and Subcontractor’s compliance with the State’s Enterprise Information Security Policies and all applicable requirements, laws, regulations or policies.

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

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

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

- d. **Business Continuity Requirements.** The Contractor shall maintain set(s) of documents, instructions, and procedures which enable the Contractor to respond to accidents, disasters, emergencies, or threats without any stoppage or hindrance in its key operations (“Business Continuity Requirements”). Business Continuity Requirements shall include:
- (1) “Disaster Recovery Capabilities” refer to the actions the Contractor takes to meet the Recovery Point and Recovery Time Objectives defined below. Disaster Recovery Capabilities shall meet the following objectives:
    - i. **Recovery Point Objective (“RPO”).** The RPO is defined as the maximum targeted period in which data might be lost from an IT service due to a major incident: 4 hours
    - ii. **Recovery Time Objective (“RTO”).** The RTO is defined as the targeted duration of time and a service level within which a business process must be restored after a disaster (or disruption) in order to avoid unacceptable consequences associated with a break in business continuity: 24 hours

The Contractor and the Subcontractor(s) shall perform at least one Disaster Recovery Test every three hundred sixty-five (365) days. A “Disaster Recovery Test” shall mean the process of verifying the success of the restoration procedures that are executed after a critical IT failure or disruption occurs. The Disaster Recovery Test shall use actual State Data Sets that mirror production data, and success shall be defined as the Contractor verifying that the Contractor can meet the State’s RPO and RTO requirements. A “Data Set” is defined as a collection of related sets of information that is composed of separate elements but can be manipulated as a unit by a computer. The Contractor shall provide written confirmation to the State after each Disaster Recovery Test that its Disaster Recovery Capabilities meet the RPO and RTO requirements.

**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 once all required approvals are obtained. 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:**

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**SIGNATURE**

**DATE**

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

**TN DEPARTMENT OF EDUCATION:**

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**PENNY SCHWINN, COMMISSIONER**

**DATE**