



Department of
**Labor & Workforce
Development**

November 1, 2018

Fiscal Review Committee
The Honorable Ken Yager, Chair
The Honorable Mark White, Vice-Chair
8th Floor, Rachel Jackson Bldg.
320 Sixth Avenue North
Nashville, TN 37243

To the Distinguished Members of the Fiscal Review Committee,

The Tennessee Department of Labor & Workforce Development requests an amendment to its current contract with Educational Testing Service (ETS). The contract provides vouchers which help offset costs associated with the HiSET high school equivalency test. The HiSET exam is the state-offered test allowing qualified out-of-school youth and adults without a high school diploma to obtain their high school equivalency (HSE) credential, a critical gateway to employment, post-secondary opportunities, and economic self-sustainability. It is our continued commitment that eligible applicants should have the opportunity to earn their HSE diploma at no cost, and the voucher program is an important part of removing the financial barrier.

As of January 1, 2019, ETS will be adjusting their pricing to allow for the option of paper-based or computer-based exams and practice tests for the HiSET, along with other service improvements. The resulting change in fee structure necessitates an amendment to our contract's current payment methodology, in order to continue to ensure that applicants won't have to reach into their own pockets to cover any additional costs. We have determined no other changes to the contract are necessary at this time. We are confident that this adjustment will provide for the continued success of the state's equivalency testing program and allow even more of Tennessee's employable adults to demonstrate their base of skills and knowledge without the burden of additional expense.

Sincerely,

A handwritten signature in blue ink that reads "Burns P. Phillips III".

Burns P. Phillips III
Commissioner

Supplemental Documentation Required for
Fiscal Review Committee

*Contact Name:	William Kemmer william.kemmer@tn.gov	*Contact Phone:	615-313-4714		
*Presenter's name(s):	Ian White ian.white@tn.gov				
Edison Contract Number: <i>(if applicable)</i>	50100	RFS Number: <i>(if applicable)</i>	33709-11118		
*Original or Proposed Contract Begin Date:	07/01/2016	*Current or Proposed End Date:	06/30/2021		
Current Request Amendment Number: <i>(if applicable)</i>	1				
Proposed Amendment Effective Date: <i>(if applicable)</i>	01/01/2019				
*Department Submitting:	Labor & Workforce Development				
*Division:	Adult Education				
*Date Submitted:	11/2/2018				
*Submitted Within Sixty (60) days:	Yes				
<i>If not, explain:</i>	N/A				
*Contract Vendor Name:	Educational Testing Service (ETS)				
*Current or Proposed Maximum Liability:	\$3,425,000.00				
*Estimated Total Spend for Commodities:	N/A				
*Current or Proposed Contract Allocation by Fiscal Year: (as Shown on Most Current Fully Executed Contract Summary Sheet)					
FY: 17	FY: 18	FY: 19	FY: 20	FY: 21	FY
\$685,000	\$685,000	\$685,000	\$685,000	\$685,000	
*Current Total Expenditures by Fiscal Year of Contract: (attach backup documentation from Edison)					
FY: 17	FY: 18	FY: 19	FY: 20	FY: 21	FY
\$685,000	\$685,000	\$10,797.50	\$	\$	\$
IF Contract Allocation has been greater than Contract Expenditures, please give the reasons and explain where surplus funds were spent:			N/A		
IF surplus funds have been carried forward, please give the reasons and provide the authority for the carry forward provision:			N/A		
IF Contract Expenditures exceeded Contract Allocation, please give the reasons and explain how funding was acquired to pay the overage:			N/A		

Supplemental Documentation Required for
Fiscal Review Committee

*Contract Funding Source/Amount:			
State:	100%	Federal:	
<i>Interdepartmental:</i>		<i>Other:</i>	
If “ <i>other</i> ” please define:			
If “ <i>interdepartmental</i> ” please define:			
Dates of All Previous Amendments or Revisions: <i>(if applicable)</i>		Brief Description of Actions in Previous Amendments or Revisions: <i>(if applicable)</i>	
Method of Original Award: <i>(if applicable)</i>		Sole-Source Procurement	
*What were the projected costs of the service for the entire term of the contract prior to contract award? How was this cost determined?		\$3,425,000.00 We received pricing from the Vendor, based on fair market value.	
*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.		ETS is the sole provider of the HiSET high school equivalency exam. ETS is therefore the only provider capable of offering fee vouchers for those exams.	



CONTRACT

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

Begin Date 07/01/2016	End Date 06/30/2021	Agency Tracking # 33701-33709	Edison Record ID
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Contractor Legal Entity Name Educational Testing Service	Edison Vendor ID 0000012160
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Goods or Services Caption (one line only)
Testing voucher codes for HiSET Academy

Contractor <input checked="" type="checkbox"/> Contractor	CFDA #
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Funding —					
FY	State	Federal	Interdepartmental	Other	TOTAL Contract Amount
FY17	685,000.00				685,000.00
FY18	685,000.00				685,000.00
FY19	685,000.00				685,000.00
FY20	685,000.00				685,000.00
FY21	685,000.00				685,000.00
TOTAL:	3,425,000.00				3,425,000.00

Contractor Ownership Characteristics:

- Minority Business Enterprise (MBE): African American, Asian American, Hispanic American, Native American
- Woman Business Enterprise (WBE)
- Tennessee Service Disabled Veteran Enterprise (SDVBE)
- Tennessee Small Business Enterprise (SBE): \$10,000,000.00 averaged over a three (3) year period or employs no more than ninety-nine (99) employees.
- Other: Not for profit out-of-state organization

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

- Competitive Selection
- Other
Educational Testing Service is the only vendor who can provide the testing voucher codes for HiSET Academy, with whom we have a contract. They are the sole creator/owner for this service.

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

M.L. Butler / RW

Speed Chart (optional) LW00000116	Account Code (optional) 3370920000
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**CONTRACT
BETWEEN THE STATE OF TENNESSEE,
DEPARTMENT OF LABOR AND WORKFORCE DEVELOPMENT
AND
EDUCATIONAL TESTING SERVICE**

This Contract, by and between the State of Tennessee, Department of Labor and Workforce Development ("State") and Educational Testing Service ("Contractor"), is for the provision of Testing Vouchers for HiSET Academy, as further defined in the "SCOPE." State and Contractor may be referred to individually as a "Party" or collectively as the "Parties" to this Contract.

The Contractor is a private Non-Profit Organization.
Contractor Place of Incorporation or Organization: New Jersey
Contractor Edison Registration ID # 12160

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. Providing the ETS-owned voucher codes to be used to pay for HiSET Paper Based Testing (PBT) and Computer Based Testing (CBT). This is approved for Tennessee residents seeking an equivalency high school diploma.

(a) The Contractor shall deliver valid voucher codes, via email, to the Adult Education Division of the Tennessee Dept. of Labor.

(b) The Contractor shall provide Vouchers codes within 7 days of a written request.

- A.3. Warranty. Contractor represents and warrants that the term of the warranty ("Warranty Period") shall be the greater of the Term of this Contract or any other warranty general offered by Contractor, its suppliers, or manufacturers to customers of its goods or services. The goods or services provided under this Contract shall conform to the terms and conditions of this Contract throughout the Warranty Period. Any nonconformance of the goods or services to the terms and conditions of this Contract shall constitute a "Defect" and shall be considered "Defective." If Contractor receives notice of a Defect during the Warranty Period, then Contractor shall correct the Defect, at no additional charge.

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

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

If Contractor fails to provide the goods or services as warranted, then Contractor will re-provide the goods or services at no additional charge. If Contractor is unable or unwilling to re-provide the goods or services as warranted, then the State shall be entitled to recover the fees paid to Contractor for the Defective goods or services. Any exercise of the State's rights under this Section shall not prejudice the State's rights to seek any other remedies available under this Contract or applicable law.

- A.4. Inspection and Acceptance. The State shall have the right to inspect all goods or services provided by Contractor under this Contract. If, upon inspection, the State determines that the goods or services are Defective, the State shall notify Contractor, and Contractor shall re-deliver the goods or provide the services at no additional cost to the State. If after a period of thirty (30) days following delivery of goods or performance of services the State does not provide a notice of any Defects, the goods or services shall be deemed to have been accepted by the State.

B. TERM OF CONTRACT:

This Contract shall be effective on 07/01/2016 ("Effective Date") and extend for a period of sixty (60) months after the Effective Date ("Term"). The State shall have no obligation for goods provided by the Contractor prior to the Effective Date.

C. PAYMENT TERMS AND CONDITIONS:

C.1. **Maximum Liability.** In no event shall the maximum liability of the State under this Contract exceed Three million four hundred twenty-five thousand dollars (\$3,425,000.00) ("Maximum Liability"). This Contract does not grant the Contractor any exclusive rights. The State does not guarantee that it will buy any minimum quantity of goods 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 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 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 as set forth in Section A.

b. The Contractor shall be compensated based upon the following payment methodology:

a. For goods provided from July 1, 2016 through June 30, 2021 the following rates shall apply:

Goods Description	Amount (per compensable increment)
FY17 – 549 Subtest ID Voucher Codes for Tennessee & Processing Fee	\$ 21.50 each
FY17 – 8,800 Testing BD Voucher Codes for Tennessee & Processing Fee	\$ 76.50 each
FY18 – 549 Subtest ID Voucher Codes for Tennessee & Processing Fee	\$ 21.50 each
FY18 – 8,800 Testing BD Voucher Codes for Tennessee & Processing Fee	\$ 76.50 each
FY19 – 549 Subtest ID Voucher Codes for Tennessee & Processing Fee	\$ 21.50 each
FY19 – 8,800 Testing BD Voucher Codes for Tennessee & Processing Fee	\$ 76.50 each
FY20 – 549 Subtest ID Voucher Codes for Tennessee & Processing Fee	\$ 21.50 each
FY20 – 8,800 Testing BD Voucher Codes for Tennessee & Processing Fee	\$ 76.50 each
FY21 – 548 Subtest ID Voucher Codes for Tennessee & Processing Fee	\$ 21.50 each
FY21 – 8,800 Testing BD Voucher Codes for Tennessee & Processing Fee	\$ 76.50 each

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:

TN Dept. of Labor & Workforce Development
ATTN: Accounts Payable
220 French Landing Drive – 4A
Nashville, TN 37243

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

C.6. Payment of Invoice. A payment by the State shall not prejudice the State's right to object to or question any payment, invoice, or other matter. A payment by the State shall not be construed as acceptance of goods delivered, any part of the services provided, or as approval of any amount invoiced.

C.7. Invoice Reductions. The Contractor's invoice shall be subject to reduction for amounts included in any invoice or payment that is determined by the State, on the basis of audits conducted in accordance with the terms of this Contract, to not constitute proper compensation for goods delivered or services provided.

- C.8. Deductions. The State reserves the right to deduct from amounts, which are or shall become due and payable to the Contractor under this or any contract between the Contractor and the State of Tennessee, any amounts that are or shall become due and payable to the State of Tennessee by the Contractor.
- C.9. Prerequisite Documentation. The Contractor shall not invoice the State under this Contract until the State has received the following, properly completed documentation.
- a. The Contractor shall complete, sign, and present to the State the "Authorization Agreement for Automatic Deposit Form" provided by the State. By doing so, the Contractor acknowledges and agrees that, once this form is received by the State, payments to the Contractor, under this or any other contract the Contractor has with the State of Tennessee, may be made by ACH; and
 - b. The Contractor shall complete, sign, and return to the State the State-provided W-9 form. The taxpayer identification number on the W-9 form must be the same as the Contractor's Federal Employer Identification Number or Social Security Number referenced in the Contractor's Edison registration information.

D. MANDATORY TERMS AND CONDITIONS:

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

The State:

Julie Lee / ASA3 - Procurement
Tennessee Department of Labor and Workforce Development – Adult Education Division
220 French Landing Drive – 4B
Nashville, TN 37243
Julie.Lee@tn.gov
Telephone # 615-532-1244
FAX # 615-741-3002

The Contractor:

Amy Riker, Executive Director
K12A HiSET
Educational Testing Service
660 Rosedale Road, mail Stop 18P
Princeton, NJ 08541
ARiker@ets.org
Telephone # 609-619-1640

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 1 (one), 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: (i) intellectual property or any Contractor indemnity obligations for infringement for third-party intellectual property rights; (ii) any claims covered by any specific provision in the Contract providing for liquidated damages; or (iii) any claims for intentional torts, criminal acts, fraudulent conduct, or acts or omissions that result in personal injuries or death.
- D.19. Hold Harmless. The Contractor agrees to indemnify and hold harmless the State of Tennessee as well as its officers, agents, and employees from and against any and all claims, liabilities, losses, and causes of action which may arise, accrue, or result to any person, firm, corporation, or other entity which may be injured or damaged as a result of acts, omissions, or negligence on the part of the Contractor, its employees, or any person acting for or on its or their behalf relating to this Contract. The Contractor further agrees it shall be liable for the reasonable cost of attorneys for the State to enforce the terms of this Contract.

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

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

- c. The State and the Contractor will sign documents, including but not limited to business associate agreements, as required by the Privacy Rules and that are reasonably necessary to keep the State and Contractor in compliance with the Privacy Rules. This provision shall not apply if information received or delivered by the parties under this Contract is NOT "protected health information" as defined by the Privacy Rules, or if the Privacy Rules permit the parties to receive or deliver the information without entering into a business associate agreement or signing another document.
- d. The Contractor will indemnify the State and hold it harmless for any violation by the Contractor or its subcontractors of the Privacy Rules. This includes the costs of responding to a breach of protected health information, the costs of responding to a government enforcement action related to the breach, and any fines, penalties, or damages paid by the State because of the violation.

D.21. Tennessee Consolidated Retirement System. Subject to statutory exceptions contained in Tenn. Code Ann. §§ 8-36-801, *et seq.*, the law governing the Tennessee Consolidated Retirement System ("TCRS"), provides that if a retired member of TCRS, or of any superseded system administered by TCRS, or of any local retirement fund established under Tenn. Code Ann. §§ 8-35-101, *et seq.*, accepts State employment, the member's retirement allowance is suspended during the period of the employment. Accordingly and notwithstanding any provision of this Contract to the contrary, the Contractor agrees that if it is later determined that the true nature of the working relationship between the Contractor and the State under this Contract is that of "employee/employer" and not that of an independent contractor, the Contractor, if a retired member of TCRS, may be required to repay to TCRS the amount of retirement benefits the Contractor received from TCRS during the Term.

D.22. Tennessee Department of Revenue Registration. The Contractor shall comply with all applicable registration requirements contained in Tenn. Code Ann. §§ 67-6-601 – 608. Compliance with applicable registration requirements is a material requirement of this Contract.

D.23. Debarment and Suspension. The Contractor certifies, to the best of its knowledge and belief, that it, its current and future principals, its current and future subcontractors and their principals:

- a. are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any federal or state department or agency;
- b. have not within a three (3) year period preceding this Contract been convicted of, or had a civil judgment rendered against them from commission of fraud, or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, state, or local) transaction or grant under a public transaction; violation of federal or state antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification, or destruction of records, making false statements, or receiving stolen property;
- c. are not presently indicted or otherwise criminally or civilly charged by a government entity (federal, state, or local) with commission of any of the offenses detailed in section b. of this certification; and
- d. have not within a three (3) year period preceding this Contract had one or more public transactions (federal, state, or local) terminated for cause or default.

The Contractor shall provide immediate written notice to the State if at any time it learns that there was an earlier failure to disclose information or that due to changed circumstances, its principals or the principals of its subcontractors are excluded 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, workaround plans or other means. A strike, lockout or labor dispute shall not excuse either Party from its obligations under this Contract. Except as set forth in this Section, any failure or delay by a Party in the performance of its obligations under this Contract arising from a Force Majeure Event is not a default under this Contract or grounds for termination. The non-performing Party will be excused from performing those obligations directly affected by the Force Majeure Event, and only for as long as the Force Majeure Event continues, provided that the Party continues to use diligent, good faith efforts to resume performance without delay. The occurrence of a Force Majeure Event affecting Contractor's representatives, suppliers, subcontractors, customers or business apart from this Contract is not a Force Majeure Event under this Contract. Contractor will promptly notify the State of any delay caused by a Force Majeure Event (to be confirmed in a written notice to the State within one (1) day of the inception of the delay) that a Force Majeure Event has occurred, and will describe in reasonable detail the nature of the Force Majeure Event. If any Force Majeure Event results in a delay in Contractor's performance longer than forty-eight (48) hours, the State may, upon notice to Contractor: (a) cease payment of the fees until Contractor resumes performance of the affected obligations; or (b) immediately terminate this Contract or any purchase order, in whole or in part, without further payment except for fees then due and payable. Contractor will not increase its charges under this Contract or charge the State any fees other than those provided for in this Contract as the result of a Force Majeure Event.

- D.25. State and Federal Compliance. The Contractor shall comply with all applicable state and federal laws and regulations in the performance of this Contract.
- D.26. Governing Law. This Contract shall be governed by and construed in accordance with the laws of the State of Tennessee. The Tennessee Claims Commission or the state or federal courts in Tennessee shall be the venue for all claims, disputes, or disagreements arising under this Contract. The Contractor acknowledges and agrees that any rights, claims, or remedies against the State of Tennessee or its employees arising under this Contract shall be subject to and limited to those rights and remedies available under Tenn. Code Ann. §§ 9-8-101 - 407.
- D.27. Entire Agreement. This Contract is complete and contains the entire understanding between the Parties relating to its subject matter, including all the terms and conditions of the Parties' agreement. This Contract supersedes any and all prior understandings, representations, negotiations, and agreements between the Parties, whether written or oral.
- D.28. Severability. If any terms and conditions of this Contract are held to be invalid or unenforceable as a matter of law, the other terms and conditions of this Contract shall not be affected and shall remain in full force and effect. The terms and conditions of this Contract are severable.
- D.29. Headings. Section headings of this Contract are for reference purposes only and shall not be construed as part of this Contract.
- D.30. Incorporation of Additional Documents. Each of the following documents is included as a part of this Contract by reference. In the event of a discrepancy or ambiguity regarding the Contractor's duties, responsibilities, and performance under this Contract, these items shall govern in order of precedence below:
- a. any amendment to this Contract, with the latter in time controlling over any earlier amendments;
 - b. this Contract with any attachments or exhibits (excluding the items listed at subsections c. through f., below)
 - c. any clarifications of or addenda to the Contractor's proposal seeking this Contract;
 - d. the State solicitation, as may be amended, requesting responses in competition for this Contract;
 - e. any technical specifications provided to proposers during the procurement process to award this Contract; and
 - f. the Contractor's response seeking this Contract.

E. SPECIAL TERMS AND CONDITIONS:

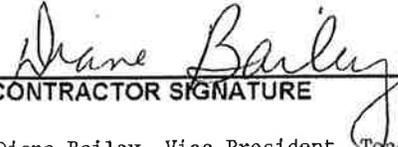
- E.1. Conflicting Terms and Conditions. Should any of these special terms and conditions conflict with any other terms and conditions of this Contract, the special terms and conditions shall be subordinate to the Contract's other terms and conditions.
- E.2. Confidentiality of Records. Strict standards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

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

- E.3. 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.

IN WITNESS WHEREOF,

EDUCATIONAL TESTING SERVICE:



CONTRACTOR SIGNATURE



DATE

Diane Bailey, Vice President, Teacher Licensure & Certification & HiSET

PRINTED NAME AND TITLE OF CONTRACTOR SIGNATORY (above)

DEPARTMENT OF LABOR & WORKFORCE DEVELOPMENT



BURNS PHILLIPS, COMMISSIONER



DATE

ATTESTATION RE PERSONNEL USED IN CONTRACT PERFORMANCE

If the attestation applies to more than one contract, modify this row accordingly. SUBJECT CONTRACT NUMBER:	.50100
CONTRACTOR LEGAL ENTITY NAME:	Educational Testing Service
EDISON VENDOR IDENTIFICATION NUMBER:	12160

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

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

Diane Bailey

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.

Diane Bailey, Vice President, Teacher Licensure & Certification & HiSET

PRINTED NAME AND TITLE OF SIGNATORY

6/9/2014

DATE OF ATTESTATION

Amendment Request

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

APPROVED

CHIEF PROCUREMENT OFFICER

DATE

Agency request tracking #	33709-11118
1. Procuring Agency	Department of Labor & Workforce Development
2. Contractor	Educational Testing Services, Inc.
3. Edison contract ID #	50100
4. Proposed amendment #	1
5. Contract's Original Effective Date	07/01/2016
6. Current end date	06/30/2021
7. Proposed end date	06/30/2021
8. Current Maximum Liability or Estimated Liability	\$ 3,425,000.00
9. Proposed Maximum Liability or Estimated Liability	\$ 3,425,000.00
10. Strategic Technology Solutions Pre-Approval Endorsement Request – information technology service (N/A to THDA)	<input checked="" type="checkbox"/> Not Applicable <input type="checkbox"/> Attached
11. eHealth Pre-Approval Endorsement Request – health-related professional, pharmaceutical, laboratory, or imaging	<input checked="" type="checkbox"/> Not Applicable <input type="checkbox"/> Attached
12. Human Resources Pre-Approval Endorsement Request – state employee training service	<input checked="" type="checkbox"/> Not Applicable <input type="checkbox"/> Attached
13. Explain why the proposed amendment is needed	This contract pays for vouchers which eligible examinees use to offset costs associated with the HiSET high school equivalency exam. Test fees are changing in 2019, and we request an amendment to ensure the contract covers the new fee schedule.
14. If the amendment involves a change in Scope, describe efforts to identify reasonable, competitive, procurement alternatives to amending the contract.	N/A

Agency request tracking #	33709-11118
Signature of Agency head or authorized designee, title of signatory, and date (the authorized designee may sign his or her own name if indicated on the Signature Certification and Authorization document) <i>Burns P. Phillips III</i> <i>MB</i>	



Jason Carter
National Executive Director
660 Rosedale Road
Princeton, NJ 08541
Phone: 240-229-1587
Email: jcarter@ets.org

October 30, 2018

Hello Ian,

As of January 1, 2019, there will be new HiSET fees. This is the HiSET Program's first price increase and helps defray the costs of improvements and implementation while maintaining quality across the Program.

The following is a summary of what the HiSET test taker fee covers – all test components, including:

- use of the HiSET registration, scheduling, and payment system
- processing testing accommodations, as needed and required, and communication with test centers and test takers about approved testing accommodations
- use of ETS-printed paper-based test booklets, including shipping to approved test centers and return shipping to ETS of secure materials
- use of ETS-printed paper based answer sheet and related test center materials, including shipping
- to approved test centers and return shipping to ETS of used answer sheet documents to be scored
- use of the HiSET computer-based administration platform at approved test centers
- access to HiSET customer service center support, available through three convenient channels: toll-free telephone number, e-mail, and fax
- access to a HiSET Informational Web site with free resources for all stakeholders, including sample questions and practice tests in each content area
- HiSET-specific training for state staff, test taker preparation entities, TCAs, and test takers
- scoring and reporting, including HiSET score reports to individual test takers
- retake/retest opportunities (as defined in the Cost Notes)

Optional Services and Fees

Test takers have the option to choose to take advantage of the following available service enhancements and conveniences. Note that these services are not required by either the State or the HiSET Program.

- **Telephone Registration Service Fee.** There is a \$10.00 charge to register by telephone, with ETS customer service. The fee applies once per call, regardless of the number of appointments being made.
 - This fee is not applicable to bulk upload registrations, such as those used by the Department of Corrections.

- **Score Verification Service Fee.** The score verification service fee is \$25.00 per score. This service is available for all paper-based tests (PBTs) subtests, and it reviews both the multiple-choice (MC) items and the essay portion. For computer-based tests (CBTs), this service is only available for the essay portion of the Writing section. MC items are not available for CBTs, because those responses are scored twice — once at the test center and again when received at ETS. These items are verified before reporting. If the verification results in a score change, then the new score will be reported, and the fee paid for this service will be refunded.
 - It is important to note that, due to our high quality scoring methods, the score verification process has not resulted in a score change since program launch.

- **Updated HiSET Policies.** The following HiSET policies reflect adjustments to those found on the HiSET Informational Web site and in the HiSET Program Manual.
 - **Reschedule Policy.** A test taker may reschedule an appointment as many times as needed. However, they may only do so for free once. Additional reschedules will incur a \$10.00 fee. This does not apply to test center administrator (TCA) model sites.
 - **No-Show Policy.** If a test taker is a no-show for an appointment made using a retake credit, then that test taker will forfeit that credit. The number of forms available to test takers each year will not be reduced; however, a test taker must pay the individual test fee once retake credits have been exhausted.

Practice Tests

Free Practice Tests – Public (\$0 per Subtest). Half-length practice tests are available to the general public at no cost via the HiSET Web site at: <https://hiset.ets.org/resources/prep/>.

Additional Practice Tests – (\$10.00 per Subtest). If test takers or AEL Providers choose to purchase additional practice tests, these are the optional practice tests that are available:

- **Practice Tests – Restricted Paid (\$10.00 per Subtest).** In addition to the free practice tests available on the HiSET Web site, test takers or AEL Providers can purchase extra practice tests for \$10.00 per subtest. These extra paid practice tests (PPTs) are not required and are available in English or Spanish.
- **Practice Tests – Restricted AEL Providers Only.** AEL Providers can purchase restricted paid practice tests. These official practice tests (OPTs) are available only to educators, state directors and test center administrators. OPTs cannot be purchased by test takers. The OPTs are available in English or Spanish.

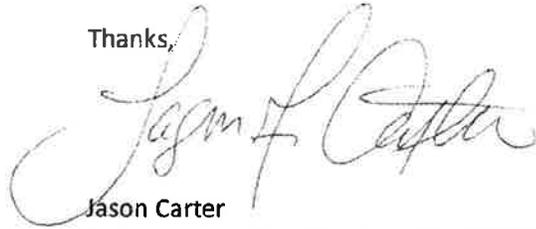
- **Paper-based OPTs are available for \$10.00 per Subtest.** The current order form for these HiSET Official Practice Tests can be found on the HiSET Web site.
- **Computer-based OPTs are available for \$2.00 per Subtest** via Essential Education (minimum purchases apply) at <https://www.essentialed.com/educators/hiset-opt>.

While ETS does not expect additional fee increases in the short term, fees are subject to change at a future date to maintain test quality or offer program enhancements. In the event of any fee changes, the HiSET Program will follow appropriate notification procedures to existing HiSET clients.

Additionally, attached is a summary 2019 HiSET fee schedule.

Please let me know if you have any additional questions.

Thanks,

A handwritten signature in cursive script that reads "Jason Carter".

Jason Carter
National Executive Director, ETS HiSET Program

HiSET Fee Schedule

Fee Description	Test Taker Fees As of January 1, 2019	
HiSET Test Subtest Fees: Must pass all five subtests for certificate.		
Language Arts-Reading	\$15.00 Paper	\$10.75 Computer
Language Arts-Writing	\$15.00 Paper	\$10.75 Computer
Mathematics	\$15.00 Paper	\$10.75 Computer
Science	\$15.00 Paper	\$10.75 Computer
Social Studies	\$15.00 Paper	\$10.75 Computer
Retest Policy:		
<ul style="list-style-type: none"> • Up to two retest attempts are included in subtest fee above if taken within 12 months of the date of purchase. Test Center fees may apply. • After 12 months, or third retest within 12 months of purchase, retests are treated as a new test. Must pay the applicable subtest fee (fees will change January 1, 2019). 		
Practice Tests:		
Paper-based practice test	\$10.00 per subtest	
Computer-based practice test	\$2 per subtest (minimum purchases apply)	
Optional Services:		
Telephone Registration	One-time, first call-in	\$10.00
Score Verification	For each test being verified	\$25.00
Reschedule Fee	1 st time free, any additional will be charged	\$10.00



CONTRACT AMENDMENT COVER SHEET

Agency Tracking # 33709-11118	Edison ID 50100	Contract # 33701-33709	Amendment # 1		
Contractor Legal Entity Name Educational Testing Service			Edison Vendor ID 12160		
Amendment Purpose & Effect(s) Adjustment to Payment Methodology					
Amendment Changes Contract End Date: <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO		End Date: 06/30/2021			
TOTAL Contract Amount INCREASE or DECREASE per this Amendment (zero if N/A):			\$ 0		
Funding —					
FY	State	Federal	Interdepartmental	Other	TOTAL Contract Amount
17	\$685,000.00				\$685,000.00
18	\$685,000.00				\$685,000.00
19	\$685,000.00				\$685,000.00
20	\$685,000.00				\$685,000.00
21	\$685,000.00				\$685,000.00
TOTAL:	\$3,425,000.00				\$3,425,000.00
Budget Officer Confirmation: There is a balance in the appropriation from which obligations hereunder are required to be paid that is not already encumbered to pay other obligations.				<i>CPO USE</i>	
Speed Chart (optional)		Account Code (optional)			

**AMENDMENT 1
OF CONTRACT 50100**

This Amendment is made and entered by and between the State of Tennessee, **Department of Labor & Workforce Development**, hereinafter referred to as the "State" and **Educational Testing Service**, hereinafter referred to as the "Contractor." For good and valuable consideration, the sufficiency of which is hereby acknowledged, it is mutually understood and agreed by and between said, undersigned contracting parties that the subject contract is hereby amended as follows:

1. Contract Attachment **C.3.** is deleted in its entirety and replaced with the new attachment **C.3.** attached hereto.

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 Description (includes processing fees)	Amount (per compensable increment)
Individual Subtest Voucher Code (Paper Exam)	\$ 26.50 each
Individual Subtest Voucher Code (Computer-Based Exam)	\$ 22.25 each
Bundled Testing Voucher Codes (Paper Exam)	\$ 101.50 each
Bundled Testing Voucher Codes (Computer-Based Exam)	\$ 80.25 each

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 **1/1/2019**. All other terms and conditions of this Contract not expressly amended herein shall remain in full force and effect.

IN WITNESS WHEREOF,

EDUCATIONAL TESTING SERVICE:

SIGNATURE

DATE

PRINTED NAME AND TITLE OF SIGNATORY (above)

TENNESSEE DEPARTMENT OF LABOR & WORKFORCE DEVELOPMENT:

BURNS P. PHILLIPS III, COMMISSIONER

DATE