**CONTRACT**
**BETWEEN THE STATE OF TENNESSEE,**
**DEPARTMENT OF EDUCATION**
**AND**
**ENCORE TECHNOLOGY GROUP LLC**

This Contract, by and between the State of Tennessee, Department of Education ("State") and Encore Technology Group LLC ("Contractor"), is for the provision of Eligible Broadband Internal Connections for the East, Middle, and West Grand Divisions, 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 Limited Liability Company.
Contractor Place of Incorporation or Organization: South Carolina
Contractor Edison Registration ID # 0000195760

**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: An exhaustive listing of terms related to the E-rate program can be found at http://www.usac.org/_res/documents/sl/pdf/handouts/SL-Glossary-of-Terms.pdf.

| TERM | DEFINITION |
|---|---|
| **Organizations** | |
| Federal Communications Commission (FCC) | An independent agency of the United States government created by Congress via the Communications Act of 1934 responsible for the regulation of interstate communications. The Wireline Competition Bureau of the FCC is responsible for the policy development for Schools and Libraries Program of the Universal Service Fund. |
| Local Education Agency (LEA) | Public School District |
| Schools and Libraries Division (SLD) | Division of USAC that administers the E-Rate Program |
| Universal Service Administration Company (USAC) | Created by the Telecommunications Act of 1996, is the independent American nonprofit corporation tasked to manage the contribution of revenue to and distribution of funding from the Universal Service Fund. The Schools and Libraries Program (E-rate) is managed by this group. |
| **Programs** | |
| Category 1 | One of two service categories defined in the eligible services list (ESL); this category focuses on data transmission services and internet access, and voice services (how to get the pipes to the side of the building). |
| Category 2 | One of two service categories defined in the ESL; this category focuses on internal connections, managed internal broadband services, and basic maintenance of internal connections (how to get the pipes into the classroom and students). |
| E-rate | The Schools and Libraries Program funded via the Universal Service Fund and administrated by USAC. The E-rate program is responsible for the discount funding provided to schools and libraries across the nation for procurement of broadband services to the building and into the classroom. |
| E-rate Productivity Center (EPC) | Per FCC rule, this is the portal that all Form 470(s) and related procurement documentation will be available. Respondents must register with USAC to obtain login credentials to access the online information. You can reach USAC at 888.203.8100. |
| Eligible Services List (ESL) | A list published by USAC, each funding year, providing guidance on the eligibility of products and services under E-rate. The 2016 ESL is published |

| | |
|---|---|
| | at http://www.usac.org/_res/documents/sl/pdf/ESL_archive/EligibleServicesList-2016.pdf. |
| FCC Registration Number (FCCRN) | Required to do business with the FCC. https://apps.fcc.gov/coresWeb/publicHome.do |
| Managed Internal Broadband Services (MIBS) | A category of service on the Eligible Services List. Services provided by a third party for the operation, management, and monitoring of eligible broadband internal connections components. E-rate support is limited to eligible expenses or portions of expenses that directly support and are necessary for the broadband connectivity within schools and libraries. |
| **FCC Forms** | |
| FCC Forms | Forms required by the FCC for schools and libraries to make application to the E-rate program for discounted broadband services.<br><br>(all descriptions and form information can be seen at http://www.usac.org/sl/tools/forms/default.aspx) |
| 470 | Description of Services Requested and Certification Form – opens a competitive bidding process for services requested on the form, may have a RFP associated with the filing. |
| 471 | Services Ordered and Certification Form – filed with USAC to request discounts on eligible services for eligible schools, libraries, and consortia of those entities under the E-rate program based upon a previously approve FCC Form 470. |
| 472 | Billed Entity Applicant Reimbursement (BEAR) Form - used by the Billed Entity that received a Funding Commitment Decision Letter (FCDL) from the fund administrator, the SLD of USAC, and filed an FCC Form 486, Receipt of Service Confirmation Form, indicating that the Billed Entity intended to submit to USAC an invoice for reimbursement of discounts on eligible services received on or after the effective date of discounts and already paid for by the applicant. |
| 474 | Service Provider Invoice (SPI) Form -to be completed and submitted by a service provider that has provided discounted eligible services to eligible schools and libraries, in order to seek universal service support in the amount of the discounts. The service provider must have provided the service and given a discounted bill to the applicant prior to submitting the FCC Form 474. |
| 486 | Receipt of Service Confirmation and Children's Internet Protection Act and Technology Plan Certification Form - notifies USAC that the billed entity and/or the eligible entities that it represents is receiving, or has received, service in the relevant funding year from the named service provider(s). |
| 498 | Service Provider Identification Number and General Contact Information Form - used to collect contact, remittance, and payment information for service providers that receive support from the federal universal service programs. |
| **Technology** | |
| Local Area Network (LAN) | Network that connects computers and other devices in a relatively small area, typically a single building or a group of building. |
| Internet | Worldwide network of interconnected computers and networks using the Internet Protocol (IP) |
| Network Operations Center (NOC) | A place from which administrators supervise, monitor, and maintain a telecommunications network. |
| Service Level Agreement (SLA) | Agreement between a service provider and the end user that defines the level of service expected from the service provider. SLAs are output-based in that their purpose is specifically to define with the customer will receive. |
| Wide Area Network (WAN) | A telecommunication network or computer network that extends over a large geographical distance. |
| Wireless Local | Wireless computer network that links two or more devices using a wireless |

| | |
|---|---|
| Area Network (WLAN) | distribution method within a limited area. |

A.3. Contractor Standing. The Contractor must be in good standing with the FCC, have no debts outstanding that are owed to the FCC and must not be on Red Light Status. The Contractor must immediately notify the State in any event that the Contractor is put on Red Light Status by the FCC and must take immediate measures to resolve and remove its Red Light Status. Contractor's Red Light Status may constitute a material breach of contract and the State reserves the right to cancel the Contract immediately and without incurring any termination charges. Red Light status can be checked via the Red Light Display System at https://apps.fcc.gov/redlight/login.cfm.

A.4. Lowest Corresponding Price. Contractor shall comply with the FCC's Lowest Corresponding Price rule and not charge a price above the LCP for E-rate eligible services. See 47 C.F.R. Section 54.511 and 47 CFR Section 54.500(f). Contractor may refer to USAC guidance additional information.

A.5. Mini-Bid Process. LEAs shall institute and qualified contractor shall participate in a mini-bid process, as described on USAC's website, as part of the LEA's FCC Form 471 application.

a. Costs submitted during the mini-bid on individual items shall not exceed the costs published in this Contract. Published costs will be an upper limit or ceiling. Costs can be submitted during the mini-bid processes that are lower than the published costs.
b. In accordance to FCC regulations and USAC guidance, cost will be the most heavily-weighted factor in the mini-bid evaluation matrix.
c. Schools and libraries shall develop an evaluation matrix based upon local requirements with the understanding that if a conflict exists between local procurement regulations and USAC guidance, the most restrictive of the regulations prevail.

A.6. Audit and Review Support. Contractor shall cooperate with LEA and SLD / USAC during audit exercises by providing documentation about services provided and related invoicing information including details of calculations used to produce said invoices.

A.7. Contractor Registration. Contractor shall annually submit to the SLD, a completed Form 473, Service Provider Annual Certification Form, which is a program requirement. The Contractor shall provide a copy of the completed Form 473 to the State upon request.

A.8. Records Retention. Contractor shall maintain all records of services provided under the resulting contract for a period of no less than 10 years from the last date of service in the fiscal year in which a contract is in place in accordance with FCC regulations. This documentation shall be digitally archived and be made available at the request of the State or LEA.

A.9. On-Premise Security. All Contractor personnel assigned to this Contract shall be required to carry company picture ID's while on-site, and premise visits must be authorized by site contact. These steps must be consistent with modern security practices and those practices instituted by the LEA to ensure the safety of its students.

A.10. The Contractor shall maintain compliance with all FCC policy and USAC procedures in regards to E-rate.

A.11. 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 Service Recipient 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 Service Recipient's rights under this Section shall not prejudice the Service Recipient's rights to seek any other remedies available under this Contract or applicable law.

A.12. Inspection and Acceptance. The Service Recipients 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 Service Recipient shall notify Contractor, and Contractor shall re-deliver the goods or provide the services at no additional cost to the Service Recipient. If after a period of thirty (30) days following delivery of goods or performance of services the Service Recipient does not provide a notice of any Defects, the goods or services shall be deemed to have been accepted by the Service Recipient.

A.13. Products/Services. The Contractor will provide a discount percentage for one or more manufacturer lines/brands for one or more component areas identified below based upon a publicly published list already in existence prior to the issuance of this Contract for goods and services for which the Contractor was qualified to provide during the State's RFQ process. Examples of such publicly published sources include, but are not limited to, Manufacturer's Suggested Retail Price (MSRP), Retail Price, Catalog Pricing, Online Store Pricing, List Price, Educational Pricing or other similar pricing available to the general public without predetermined login access. The Contractor shall provide a permanent URL to this catalog resource.

**Internal Connections Products/Services**

1. The Contractor shall reply to mini-bids executed by LEAs and libraries as part of a FCC Form 471 application process seeking bids on one or more of the following component categories for one or more manufacturers for which the Contactor has been qualified by the State to provide:
    a. Access points
    b. Antennas, cabling, connectors, and related components providing connectivity paths for internal broadband connections
    c. Caching devices and supporting software
    d. Firewall Services and Components separate from basic firewall protection provided as a standard component of a vendor's Internet access service
    e. Switches
    f. Routers
    g. Racks
    h. Uninterruptible Power Supply (UPS) / Battery Backup
    i. Wireless controller systems
    j. Software supporting the eligible components used to distribute high-speed broadband throughout school buildings and libraries
    k. Installation services

2. The Contractor shall be responsible for providing all training for facility personnel required to properly use the device and/or software as a daily service within the facility. This training shall include all information and procedures required to request support from the Contractor in the event of a component(s) or system failure.

Scope of Work (SOW). The Contractor shall provide a Scope of Work document outlining the costs and procedures to achieve the component solution in response to a mini-bid solicitation for a specific facility or group of facilities within a LEA or library system. LEAs and libraries may elect to provide services to part or all of their constituent facilities.

a. The SOW shall clearly identify the total cost for the proposed solution via an itemized list of components and software and demonstrate that the overall solution does not exceed the maximum cost presented by the Contractor in the cost proposal provided during the qualifying round.
b. The SOW shall clearly identify the timeline by which the goods and services will be delivered and/or installed and become fully functional.
c. The SOW will clearly describe the escalation procedures to address service issues after deployment including a list of response times for multiple issue severity tiers.
d. The SOW will have signatures from both the Contractor and authorized LEA or library personnel accepting the solution description and timeline for deployment.

**B. TERM OF CONTRACT:**

B.1. This Contract shall be effective on March 15, 2016 ("Effective Date") and extend for a period of forty (40) 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.

B.2. Renewal Options. This Contract may be renewed upon satisfactory completion of the Term. The State reserves the right to execute up to two (2) renewal options under the same terms and conditions for a period not to exceed twelve (12) months each by the State, at the State's sole option. In no event, however, shall the maximum Term, including all renewals or extensions, exceed a total of sixty (60) months.

**C. PAYMENT TERMS AND CONDITIONS:**

C.1. Estimated Liability. The total purchases of any goods or services under the Contract are not known. The State estimates the purchases during the Term shall be four million two hundred thousand dollars and zero cents ($4,200,000.00) ("Estimated 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 in Section C.3 and the Travel Compensation provided in Section C.4.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 or 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) |
|---|---|
| See Attachment 3 | See Attachment 3 |

C.4. Travel Compensation. Compensation to the Contractor for travel, meals, or lodging shall be subject to amounts and limitations specified in the current "State Comprehensive Travel Regulations." Travel Compensation will not be reimbursed for fixed cost services.

The Contractor must include (in addition to other invoice requirements of this Contract) a complete itemization of requested travel compensation and appropriate documentation and receipts as required by the "State Comprehensive Travel Regulations."

C.5. Invoice Requirements. The Contractor shall invoice the Service Recipient only for goods delivered and accepted by the State or services satisfactorily provided at the amounts stipulated in Section C.3., above, and present said invoices monthly, with all necessary supporting documentation. The invoice must be submitted electronically (Comma Delimited Format and Portable Document Format) and on paper, to the email and billing address provided by the Service Recipient.

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:
(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.
(5) Separately itemize the cost of E-rate eligible and ineligible products and/or services.

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.
d. Upon Service Recipient's receipt of E-Rate funding approval, Contractor agrees to bill and receive a portion of the payment for the provisions of goods and services described

herein directly from USAC via the Form 474 Service Provider Invoice (SPI). Upon E-Rate approval, Service Recipient shall only be responsible for paying their non-discounted share of costs and do not intend to use the BEAR process (Form 472), the maximum percentage the Service Recipient will be liable for is the pre-discount amount minus the funded amount as shown on the FCC Form 471 Funding Commitment Decision Letter and any identified ineligible costs. Alternately, should a Service Recipient decide that it is in their best interest to utilize Form 472; the Service Recipient will inform the Service Provider of its intent.

e. All credit adjustments must have sufficient detail to allow for proper crediting to occur. Requested credits/billing disputes must be resolved or credit issued within one month.

f. Partial month's billing shall be prorated from date of activation and upon the date of notice for deactivation.

g. Accurately list the names and addresses. The Contractor shall make any corrections to location names and addresses within 30 days of receiving such requests.

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:

Eric Brown
Department of Education
710 James Robertson Parkway
Andrew Johnson Tower, 10th Floor
Nashville, TN 37243
Eric.Brown@tn.gov
Telephone # (615) 306-1292
Telephone # (931) 260-5247

The Contractor:

**Mr. Kristian Pflieger** | Finance Manager
Encore Technology Group
2000 Wade Hampton Blvd., Suite 210
Greenville, SC 29615
kpflieger@encoretg.com
Direct: (864) 326-3546
Office: (888) 983-6267
Fax: (864) 438-0731

**Rob Mosley** | Account Executive
Encore Technology Group
2000 Wade Hampton Blvd., Suite 210
Greenville, SC 29615
rmosley@encoretg.com
Direct: (423) 491-5202
Office: (888) 983-6267
Fax: (864) 990-1176

**Sheldon Pettigrew** | Account Manager
Encore Technology Group
2000 Wade Hampton Blvd., Suite 210
Greenville, SC 29615
spettigrew@encoretg.com
Direct: (864) 326-3640
Office: (888) 983-6267
Fax: (864) 990-1176

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, or if the Contractor materially violates any terms of this Contract ("Breach Condition"), the State shall provide written notice to Contractor specifying the Breach Condition. If within thirty (30) days of notice, the Contractor has not cured the Breach Condition, the State may 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 of this Contract by the Contractor 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, 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 ten (10) 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), which includes Attachments 1, and 2;
c. any clarifications of or addenda to the Contractor's proposal seeking this Contract;
d. the State solicitation, as may be amended, requesting responses in competition for this Contract;
e. any technical specifications provided to proposers during the procurement process to award this Contract; and
f. the Contractor's response seeking this Contract.

D.31. Insurance. Contractor shall provide the State a certificate of insurance ("COI") evidencing the coverages and amounts specified below. The COI shall be provided ten (10) business days prior to the Effective Date and again upon renewal or replacement of coverages required by this Contract. If insurance expires during the Term, the State must receive a new COI at least thirty (30) calendar days prior to the insurance's expiration date. If the Contractor loses insurance coverage, does not renew coverage, or for any reason becomes uninsured during the Term, the Contractor shall notify the State immediately.

The COI shall be on a form approved by the Tennessee Department of Commerce and Insurance ("TDCI") and signed by an authorized representative of the insurer. The COI shall list each insurer's national association of insurance commissioners (also known as NAIC) number or federal employer identification number and list the State of Tennessee, Risk Manager, 312 Rosa L. Parks Ave., 3rd floor Central Procurement Office, Nashville, TN 37243 in the certificate holder section. At any time, the State may require the Contractor to provide a valid COI detailing coverage description; insurance company; policy number; exceptions; exclusions; policy effective date; policy expiration date; limits of liability; and the name and address of insured. The Contractor's failure to maintain or submit evidence of insurance coverage is considered a material breach of this Contract.

If the Contractor desires to self-insure, then a COI will not be required to prove coverage. In place of the COI, the Contractor must provide a certificate of self-insurance or a letter on the Contractor's letterhead detailing its coverage, liability policy amounts, and proof of funds to reasonably cover such expenses. Compliance with Tenn. Code Ann. § 50-6-405 and the rules of the TDCI is required for the Contractor to self-insure workers' compensation.
All insurance companies must be: (a) acceptable to the State; (b) authorized by the TDCI to transact business in the State of Tennessee; and (c) rated A- VII or better by A. M. Best. The Contractor shall provide the State evidence that all subcontractors maintain the required insurance or that the subcontractors are included under the Contractor's policy.

The Contractor agrees to name the State as an additional insured on any insurance policies with the exception of workers' compensation (employer liability) and professional liability (errors and omissions) ("Professional Liability") insurance. Also, all policies shall contain an endorsement for a waiver of subrogation in favor of the State.

The deductible and any premiums are the Contractor's sole responsibility. Any deductible over fifty thousand dollars ($50,000) must be approved by the State. The Contractor agrees that the insurance requirements specified in this Section do not reduce any liability the Contractor has assumed under this Contract including any indemnification or hold harmless requirements.
The State agrees that it shall give written notice to the Contractor as soon as practicable after the State becomes aware of any claim asserted or made against the State, but in no event later than thirty (30) calendar days after the State becomes aware of such claim. The failure of the State to give notice shall only relieve the Contractor of its obligations under this Section to the extent that the Contractor can demonstrate actual prejudice arising from the failure to give notice. This Section shall not grant the Contractor or its insurer, through its attorneys, the right to represent the State in any legal matter, as the right to represent the State is governed by Tenn. Code Ann. § 8-6-106.

All coverage required shall be on a primary basis and noncontributory with any other insurance coverage or self-insurance carried by the State. The State reserves the right to amend or require additional endorsements, types of coverage, and higher or lower limits of coverage depending on the nature of the work. Purchases or contracts involving any hazardous activity or equipment, tenant, concessionaire and lease agreements, alcohol sales, cyber-liability risks, environmental risks, special motorized equipment, or property may require customized insurance requirements (e.g. umbrella liability insurance) in addition to the general requirements listed below.

a. Commercial General Liability Insurance

    1) The Contractor shall maintain commercial general liability insurance, which shall be written on an Insurance Services Office, Inc. (also known as ISO) occurrence form (or a substitute form providing equivalent coverage) and shall cover liability arising from property damage, premises/operations, independent contractors, contractual liability, completed operations/products, personal and advertising injury, and liability assumed under an insured contract (including the tort liability of another assumed in a business contract).
    2) The Contractor shall maintain bodily injury/property damage with a combined single limit not less than one million dollars ($1,000,000) per occurrence and two million dollars ($2,000,000) aggregate for bodily injury and property damage,

including products and completed operations coverage with an aggregate limit of at least two million dollars ($2,000,000).

b. Workers' Compensation and Employer Liability Insurance

1) For Contractors statutorily required to carry workers' compensation and employer liability insurance, the Contractor shall maintain:

i. Workers' compensation and employer liability insurance in the amounts required by appropriate state statutes; or

ii. In an amount not less than one million dollars ($1,000,000) including employer liability of one million dollars ($1,000,000) per accident for bodily injury by accident, one million dollars ($1,000,000) policy limit by disease, and one million dollars ($1,000,000) per employee for bodily injury by disease.

2) If the Contractor certifies that it is exempt from the requirements of Tenn. Code Ann. §§ 50-6-101 – 103, then the Contractor shall furnish written proof of such exemption for one or more of the following reasons:

i. The Contractor employees fewer than five (5) employees;

ii. The Contractor is a sole proprietor;

iii. The Contractor is in the construction business or trades with no employees;

iv. The Contractor is in the coal mining industry with no employees;

v. The Contractor is a state or local government; or

vi. The Contractor self-insures its workers' compensation and is in compliance with the TDCI rules and Tenn. Code Ann. § 50-6-405.

c. Automobile Liability Insurance

1) The Contractor shall maintain automobile liability insurance which shall cover liability arising out of any automobile (including owned, leased, hired, and non-owned automobiles).

2) The Contractor shall maintain bodily injury/property damage with a limit not less than one million dollars ($1,000,000) per occurrence or combined single limit.

## 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. Extraneous Terms and Conditions. Contractor shall fill all orders submitted by the State under this Contract. No purchase order, invoice, or other documents associated with any sales, orders, or supply of any good or service under this Contract shall contain any terms or conditions other than as set forth in the Contract. Any such extraneous terms and conditions shall be void, invalid and unenforceable against the State. Any refusal by Contractor to supply any goods or services under this Contract conditioned upon the State submitting to any extraneous terms and conditions shall be a material breach of the Contract and constitute an act of bad faith by Contractor.

E.4. State Furnished Property. The Contractor shall be responsible for the correct use, maintenance, and protection of all articles of nonexpendable, tangible personal property furnished by the State for the Contractor's use under this Contract. Upon termination of this Contract, all property furnished by the State shall be returned to the State in the same condition as when received, less reasonable wear and tear. Should the property be destroyed, lost, or stolen, the Contractor shall be responsible to the State for the fair market value of the property at the time of loss.

E.5. 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.6. Performance Bond. The State authorizes the Service Recipients to determine when a performance bond for Area of Focus Two products and services shall be required. The Service Recipient shall reserve the right to not require a performance bond for Area of Focus Two products and services where the Service Recipients, at their sole discretion, deem it necessary. Where a Service Recipient does require a performance bond, such bond will only be assessed at the time of procurement and the Contractor will be notified of the requirement in writing during the mini-bid process and will submit in the manner and form prescribed by the State in Attachment 2.

E.7. 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, 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.8. 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.9. Federal Educational Rights and Privacy Act & Tennessee Data Accessibility, Transparency and Accountability Act. The Contractor shall comply with the Federal 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 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.

**IN WITNESS WHEREOF,**

**ENCORE TECHNOLOGY GROUP LLC:**

**CONTRACTOR SIGNATURE** **DATE**

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

**DEPARTMENT OF EDUCATION:**

**CANDICE MCQUEEN, COMMISSIONER** **DATE**

Russell Young 3/10/2016

**CONTRACTOR SIGNATURE** **DATE**

Russell Young , CFO

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

**DEPARTMENT OF EDUCATION:**

Candice McQueen 3/10/16

**CANDICE MCQUEEN, COMMISSIONER** **DATE**

**ATTACHMENT 2**
BOND NO. #

**PERFORMANCE BOND**

**KNOW ALL MEN BY THESE PRESENTS:** that We,
Contractor name
Contractor address
Contractor telephone

(hereinafter called the "Principal"), whose principal business address and telephone number is as stated above; and

Surety name
Surety address
Surety telephone

(hereinafter called the "Surety"), whose principal address and telephone number is as stated above, a surety insurer chartered and existing under the laws of the State of state name and authorized to do business in the State of Tennessee;

are held and firmly bound unto the State of Tennessee Department of General Services Central Procurement Office ("State"), whose principal address is 312 Rosa L. Parks Avenue, 3rd Floor, Nashville, TN 37243, and whose principal telephone number is 615-741-1035 in the penal sum of written amount ($ number) for payment of which we bond ourselves, our heirs, our personal representatives, our successors and our assignees, jointly and severally.

**WHEREAS,** Principal has entered into a contract with State for solicitation name (Solicitation No. #) (the "Contract") in accordance with the scope of services and deliverables (the "Scope") set forth in Section reference of the Contract.

**THE CONDITION OF THIS BOND** is that if Principal:

1. Performs the Contract at the times and in the manner prescribed in the Contract; and

2. Pays State any and all losses, damages, costs and attorneys' fees, including appellate proceedings, that State sustains because of any default by Principal under the Contract, including, but not limited to, all delay damages, whether liquidated or actual, incurred by State; and

3. Performs, to the satisfaction of State the Scope under the Contract for the time specified in the Contract;

then this bond is void; otherwise it remains in full force.

The Surety, for value received, hereby stipulates and agrees that no changes, extensions of time, alterations or additions to the terms of the Contract or other work to be performed hereunder, or the specifications referred to in the Contract shall in anyway affect its obligation under this bond. The Surety waives notice of any such changes, extensions of time, alterations or additions to the terms of the Contract or to the Scope.

It is expressly understood the time provision under Tenn. Code Ann. § 12-3-502 shall apply to this bond. Bond must be received within fourteen (14) calendar days of receipt of request by the State or a Delegated State Agency.

By execution of this bond, the Surety acknowledges that it has read the Surety qualifications and obligations imposed by the Contract and hereby satisfies those conditions.

**IN WITNESS WHEREOF,** the above bounded parties have executed this instrument this _____ day of _____, 20____, the name of each party being affixed and these presents duly signed by its undersigned representative, pursuant to authority of its governing body.

Signed, sealed and delivered
In the presence of:

PRINCIPAL:

Contractor name

By:_____
(Contractor's authorized signatory)

_____
(Printed name and title)

STATE OF TENNESSEE
COUNTY OF
On this _____ day of _____, 20 _____, before me personally appeared _____, to me known to be the person (or persons) described in and who executed the foregoing instrument, and acknowledged that such person (or persons) executed the same as such person (or person's) free act and deed.

_____
Notary Public
Printed Name: _____
Commission Expires:
_____

Signed, sealed and delivered
In the presence of:

SURETY:

Surety name

By:_____
(Surety's authorized signatory)

_____
(Printed name and title)

STATE OF TENNESSEE
COUNTY OF
On this _____ day of _____, 20 _____, before me personally appeared , to me known to be the person (or persons) described in and who executed the foregoing instrument, and acknowledged that such person (or persons) executed the same as such person (or person's) free act and deed.

_____
Notary Public
Printed Name: _____
Commission Expires:
_____

**ATTACHMENT 3**
**PAYMENT METHODOLOGY**